ANNEX F

REPLIES BY THE PARTIES TO THE QUESTIONS POSED BY THE PANEL AND OTHER PARTIES AFTER THE SECOND SUBSTANTIVE MEETING, AND COMMENTS BY THE PARTIES ON THE OTHER PARTY'S REPLIES

ANNEX F-1

REPLIES BY THE UNITED STATES TO QUESTIONS POSED BY THE PANEL AND TURKEY AFTER THE SECOND SUBSTANTIVE MEETING
(6 February 2007)

Questions from the Panel

Q99. (Both Parties) The Panel has examined the data provided by each of the parties. Certain data contained in some of the Exhibits provided by the Parties show significant discrepancies. For example:

(a) Figures in Exhibits US-45 and TR-23 for rice imports from 2001 to 2006;

Please explain why, in your view, this is the case, referring to relevant evidence, as appropriate.

1. The United States notes, as a general matter, that a number of the Panel's questions relate to discrepancies in the data submitted by Turkey and the United States. The United States had noted some of the same discrepancies, and furthermore observed that even accounting for these discrepancies, the overwhelming evidence – the Letters of Acceptance, the rejection letters given to importers, the voluminous court documents, statements made by Turkish counsel and other government officials, and newspaper articles – indicates that Turkey is restricting trade in rice and is thus in breach of Article XI:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994").

2. There are at least two possible reasons for the apparent discrepancy between the rice importation data in Exhibits US-45 and TR-23. First, the US numbers are estimated on a "milled rice equivalent" basis, under which imports of paddy rice and brown rice are converted into the weight they would be as milled rice. (When paddy rice is first milled into brown rice, the rice is de-husked. When brown rice is further processed into milled rice, the bran is removed. Thus, the total weight of the initial raw material, paddy rice, is reduced by a certain factor for brown rice and a certain factor for milled rice.) The US data uses milled rice equivalent because milled rice is the final product that is consumed, so the conversion enables a better comparison between total supply (including imports) and total demand.

3. By contrast, it appears that Turkey's numbers, which are higher than the US numbers, are based on the "product weight" of paddy and brown rice prior to milling. Turkish trade data provided by the United States in Exhibit US-53 are on a product weight basis. In Exhibit US-81, the United States has added an annual totals column for each year to the original tables provided in Exhibit US-53. The annual totals for 2003, 2004, and 2005 in Exhibit US-81 are comparable to the annual totals for the same years provided by Turkey in Annex TR-23. With respect to the 2006 data, the annual total of Turkish rice imports contained in Exhibit US-81 is approximately 58,000 metric tons less than the figure provided by Turkey in Annex TR-23. The data provided by the United States in Exhibit US-81 are official Turkish import data for rice. To the extent Turkey's data provided in Annex TR-23 is different, Turkey is in the best position to explain the discrepancy.

4. A second possible reason for the discrepancy is that Turkey and the United States appear to use different sources for estimating rice importation. Turkey uses Undersecretariat for Foreign Trade (FTU) data, which is reportedly based on imports. The United States Department of Agriculture (USDA) derives Turkish rice imports from export data. To do so, it uses a combination of sources. To estimate Turkey's imports of rice from the United States, USDA uses export data from the US

Department of Commerce, Bureau of Census.[1] To estimate Turkey's imports of rice from other countries, USDA uses export data from the customs authorities of other countries or entities, such as EuroStat, China Customs, and the Thai Customs Department.[2]

5. In addition, Turkey does not specify whether it used data covering a marketing year (MY) or a trade (i.e., calendar) year (TY) to arrive at its estimate. The United States provided data estimates for both periods for each year. Therefore, it is unclear to which estimate Turkey's figure should be compared. However, it is interesting to note that both the US and Turkish data follow a similar trend. Imports appear to have been significantly lower in 2003/2004[3] than in 2001/2002 and 2002/2003 before rebounding in 2004/2005 and 2005/2006, although not to the levels seen prior to 2003/2004. Turkey issued its first Letter of Acceptance on September 10, 2003 and, as previously noted, during the period September 10, 2003 through at least late-April 2004, there was no mechanism to import rice into Turkey because the TRQ had not yet been opened. This explains the decrease in imports in 2003/2004. The fact that Turkey's restrictions have remained in place since that time explains why import levels have not recovered to pre-2003/2004 levels.

(b) Figures in Exhibits US-53 and TR-25 for paddy rice imports in January and December 2004 and January to May 2006; for brown rice imports in March 2003 and January to September 2006; and for milled rice imports in July 2004 and January to July 2006.

6. The United States cannot explain the discrepancies in the data. The United States provided data that was compiled by the State Institute of Statistics, which the United States understands has been renamed the Turkish Statistics Corporation (TUIK). The United States obtained this information by downloading it from the website of the widely used Global Trade Information Service (www.gtis.com), a "supplier of international merchandise trade data," to which the United States is a subscriber. The GTIS website states that the data posted on its database was obtained from Turkey's State Institute of Statistics.[4] Thus, the United States has provided the Panel with official Turkish import data for rice. To the extent Turkey has provided data that is different from its official data, Turkey is in the best position to explain the discrepancies. With respect to milled rice imports in July 2004, the United States did not find a discrepancy between US and Turkish data.

(c) Figures in Exhibits US-55 and TR-28 for landed CIF prices of paddy rice in December 2004; of brown rice in March 2003, March to June 2004, September to December 2004 and June 2006; and of milled rice in December 2005.

7. Please see the answer to (b) above. The discrepancies in the quantity of imports between the official Turkish import data provided by the United States and the data provided by Turkey probably account for most of the discrepancies in the data for landed CIF prices. Turkey is in the best position to explain the discrepancies.

On the other hand, some figures provided by the United States and Turkey show a high degree of similarity. For example:

(a) Figures in Exhibits US-45 and TR-24 for milled rice consumption from 2001 to 2005.

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[1] *See* Exhibit US-73.

[2] *See* Exhibit US-73.

[3] The 2003/2004 figure in Exhibit US-45 corresponds to the 2004 column in Annex TR-23, and each of the figures in the remainder of this paragraph follows the same pattern.

[4] *See* Exhibit US-73.

8. The primary source for USDA's milled rice consumption estimate is the Turkish rice industry. This may explain why Turkey's official estimate of milled rice consumption is similar to that of the United States.

(b) Figures in Exhibits US-53 and TR-25 for paddy rice imports throughout 2003, February to November 2004, throughout 2005, June and July 2006; for brown rice imports in January, February and April to December 2003, throughout 2004 and 2005; and for milled rice imports throughout 2003 (except for May), throughout 2004 (except for July), and throughout 2005.

9. As previously noted, the United States has provided official Turkish trade data compiled by the State Institute of Statistics. In the instances noted by the Panel above, Turkey has apparently relied on the same data, which explains why the figures are similar.

(c) Figures in Exhibits US-55 and TR-28 for landed CIF prices of paddy rice throughout 2003, April to November 2004, throughout 2005 and June to August 2006; of brown rice throughout 2003 (except for March), throughout 2005, and April to June 2006; and of milled rice throughout 2003, throughout 2004, throughout 2005 (except for December) and from January to July 2005.

10. Please see the answer to (b) above.

Q100. (Both Parties) The Panel has considered the information provided by Turkey on "Monthly landed CIF values" in Exhibit TR-28, and noted a sharp increase in paddy rice prices in June 2003, January and November 2004, February 2005 and March 2006. Likewise, it has noted a sharp increase in milled rice prices in September 2003, January and August 2004 and September 2005. It has also noted a significant fall in the price for milled rice in December 2003. Please explain why, in your view, these sharp increases and this significant fall in prices occurred, referring to relevant evidence, as appropriate.

11. The United States has the following observations regarding the price fluctuations noted by the Panel:

– *June 2003*: It is unclear to the United States what may have caused the increase in the price of imported paddy rice in June 2003.

– *September 2003*: On September 10, 2003, Turkey imposed a legal prohibition on the granting of Control Certificates for MFN trade in rice in the form of Letter of Acceptance 964. This had the effect of constricting the supply of milled rice in the Turkish market, which put upward pressure on prices. Imports of milled rice from Egypt dropped from 12,042 metric tons in August 2003 *to zero* in September 2003. Imports of milled rice from China dropped from 21,038 metric tons in August 2003 *to zero* in September 2003. And imports of milled rice from the United States dropped from 6,990 metric tons in August 2003 *to zero* in September 2003. Because EC origin rice imports were unaffected by the Minister's decision, as they are imported duty free under a separate quota regime, relatively expensive Italian milled rice was the only imported milled rice available for purchase. This also had a significant effect on average imported milled rice prices.

– *December 2003*: It is unclear whether there was an actual drop in milled rice prices. According to Turkish import data, China shipped 10,000 tons of milled rice in December 2003. However, there is no record in Annex TR-33 of any Control Certificate(s) granted by MARA for the import of Chinese milled rice that was used

in December 2003. Assuming that the data provided in Annex TR-33 is correct, and assuming that the Turkish price data is based on erroneous import data, there may not have been a drop in price at all.

– *January 2004*: As submitted in Exhibit US-55, Turkish trade data shows that there were no paddy rice imports and negligible milled rice imports (of EC-origin) in January 2004. As previously mentioned, there had been a legal prohibition in place on the granting of Control Certificates for MFN trade in rice since September 10, 2003. It is possible that, after four months with no MFN rice imports, market prices for paddy and milled rice began to react.

– *August 2004*: The most likely reason behind the increase in average imported milled rice prices was two-fold. Imports of Italian milled, one of the most expensive types of imported rice in the Turkish market, which had been absent from the market during the previous five months, resumed in August. At the same time, imports of Vietnamese milled rice, one of the lowest priced imported milled rice in the Turkish market, which had been present in the market during the previous months, ceased in August.

– *November 2004*: With the TRQ closed in September/October 2004, and a legal prohibition on the granting of Control Certificates for MFN trade in rice still in place, imports of rice in the two months preceding November 2004 were severely restricted. Turkey re-opened the TRQ on November 1, 2004. The shortage of imported rice in the market may have caused an increase in the price of imports of paddy rice as shipping resumed.

– *February 2005*: The average US landed CIF price in 2005 was $260 per metric ton,[5] so this price spike appears to be an anomaly, which is amplified due to the fact that there was a very small quantity of paddy rice imported that month.

– *September 2005*: The TRQ was now closed and, with the legal prohibition on the granting of Control Certificates for MFN trade still in place, importers could only import EC origin rice. Indeed, Turkey's import data shows that only Italian milled rice was present in the market in September 2005, and Italian milled is one of the most expensive types of imported rice in the Turkish market. This probably explains the average price increase of imported rice.

– *March 2006*: The average US landed CIF price in 2006 was $274 per metric ton,[6] so this price spike also appears to be an anomaly.

Q101. (United States) Could the United States provide monthly figures (separately for paddy, brown and milled rice) for 2003-2006 concerning:

(a) Total US rice production;

(b) Total US rice exports; and,

(c) Total US rice exports to Turkey.

[5] *See* paragraph 70 of the US Rebuttal Submission which explained how this figure was derived.

[6] This figure was derived by summing the US monthly totals for 2006 in Annex TR-25 and dividing value by quantity.

12. Please see Exhibit US-74, which contains annual US rice production data and annual and monthly data on total US rice exports and total US rice exports to Turkey. With respect to monthly data on US rice production, USDA does not maintain this data, so the United States is unable to provide it. USDA does not follow what industry mills on a monthly basis, and it does not collect data on paddy production on a monthly basis because paddy production is concentrated between August and October each year.

13. According to this data, US rice producers exported to Turkey 14,333 metric tons of paddy rice in December 2003, 12,475 metric tons of paddy rice in January 2004, and 15,900 metric tons of paddy rice in March 2004. Yet Turkish import data shows that, between October 2003 and May 2004, Turkey did not import any rice from the United States. Letter of Acceptance 964, in which Turkey's Minister of Agriculture ordered that no Control Certificates were to be granted, was issued on September 10, 2003, and the TRQ did not open until at least late-April 2004. Thus, the discrepancy between the US export data and Turkey's import data during the October 2003/May 2004 period provides further evidence that Turkey enforces the Letters of Acceptance and is prohibiting or restricting imports of rice. The United States believes that, because importers could not obtain Control Certificates, this rice was most likely put into bonded warehouses and, thus, did not register in Turkey's import statistics.

Q116. (United States) According to the information contained in Exhibit TR-33, since 1 May 2006, 27 Certificates of Control have been approved for MFN rice imports from the United States. However, 25 of these approved Certificates of Control do not appear to have, as yet, been utilised. Although these Certificates of Control have been approved after the date when the panel was established, could the United States comment on this.

14. The United States cannot confirm that these 27 Certificates of Control have actually been approved because Turkey has rejected the Panel's request that Turkey provide copies of the Certificates. In response to questioning from the Panel during the two substantive meetings, Turkey asserted that providing such information would violate elements of Turkish domestic law; however, Turkey did not identify a specific provision to that effect. Moreover, as the United States noted during that meeting, it is not uncommon for WTO panels to adopt procedures for the protection of confidential information submitted by a party. Such procedures, which ensure that only the panelists, the WTO Secretariat, and designated representatives of the other party have access to such information, have generally worked well in the past and could have been employed in this dispute if Turkey had concerns. In response, Turkey asserted that it was less a matter of what Turkey could provide than what it was *choosing* to provide to the Panel.

15. Had Turkey provided copies of the Certificates it asserts were granted, this might have helped to clarify the situation with respect to other, contrary evidence before the Panel. For example, the United States has provided documentary evidence showing that two Turkish rice importers, ETM and Mehmetoglu, applied for Control Certificates after March 24, 2006 and were denied. In both cases, it was clear that the importers' applications were not denied for missing documents or other process deficiencies; rather, Turkish officials made clear that they were not granting Control Certificates for MFN trade at all. Further, the rumor that MARA had granted a Control Certificate to Mehmetoglu without requiring it to purchase domestic paddy rice reportedly caused 40 Turkish rice producers and importers to visit MARA in order to protest the alleged issuance of a Certificate under these circumstances. In response, Mehmetoglu strongly denied it had been granted such a Certificate.[7] Further, a recent article in the Turkish publication, *Referans*, also notes that, despite Minister

[7] *See* Exhibit US-21.

Tuzmen's announcement that importation without domestic purchase would be permitted starting in April, "no companies were given a permission to import until August 1 [2006]."[8]

16. The United States also questions why importers would have applied for Control Certificates for the volumes allegedly granted, given the actual level of trade. As noted in paragraph 54 of the US Rebuttal Submission, Turkey asserts that it granted Control Certificates for 400,000 metric tons of US rice, while Turkey's import data shows that 90,000 metric tons of US rice entered Turkey in 2006. US export statistics record 17,789[9] metric tons of US rice shipped to Turkey in 2006, and no future sales have been recorded in the USDA Export Sales Report. The United States understands that any additional entries would have come from US rice Turkey finally released from bonded warehouse that had previously been refused entry. Under these circumstances, there would have been no reason for importers to apply for Control Certificates of the magnitude reported for imports of US rice.

17. Finally, the United States also notes that by the time any Control Certificates for MFN rice imports were allegedly made available from May-July 2006 (recall that Letter of Acceptance 390 states that the period for granting Control Certificates would expire on August 1, 2006), shipment arrangements for that period would likely already have been made. Under Article 2 of the September 21, 2005 Notification, importers had to purchase domestic paddy rice prior to April 1, 2006, in order to import under the TRQ regime which "expired" on July 31, 2006.[10] Given the pattern in previous years, that rice imports would be halted after July 31, by April 1, 2006, importers likely had already planned out their importations under the TRQ through July 31, 2006.

Q117. (United States) Could the United States clarify whether the import figures provided in Exhibit US-45 for imports (rows 6, 7 and 8) correspond to imports of milled rice or total rice imports?

18. The import figures in Exhibit US-45 correspond to total rice imports. However, they are adjusted on a milled rice equivalent basis, as explained in the answer to Question 99. To convert paddy and brown rice into milled rice equivalent, USDA uses a conversion factor of 70 per cent for volumes of paddy rice and 88 per cent for volumes of brown rice. In other words, the total weight of paddy rice is reduced by 30 per cent in order to arrive at the milled rice equivalent, and the total weight of brown rice is reduced by 12 per cent in order to arrive at the milled rice equivalent.[11]

Q131. (Both Parties) In its response to question 40 (d) posed by the Panel, Turkey submits that Certificates of Control provide importers with "trade facilitation benefits", such as "guaranteeing consistency and uniformity in the customs clearance procedures ... provid[ing] greater commercial predictability and legal certainty to importers (in relation to what they can expect to happen at border control), and ... reduc[ing] the possibility for goods to be blocked at customs with the potential for costly and time-consuming customs litigation."

(a) Are Certificates of Control in their current form the only instruments by which Turkey can achieve those "trade-facilitation benefits" or would there be any other way of achieving these same benefits? Please justify your answer, making reference to relevant evidence, as appropriate.

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[8] *See* Exhibit US-75. As described in the US Answer to Question 150, Turkey instituted minimum import prices for rice on August 1, 2006. The article also noted that rice importation was only permitted in specific periods, and that the TRQ system was enacted to protect domestic producers.

[9] *See* Exhibit US-74.

[10] *See* Exhibit US-11.

[11] Andy Aaronson and Nathan Childs, "Developing Supply and Utilization Tables for the US Rice Market," Rice Situation and Outlook/RCS-2000/November 2000, page 45. *See* Exhibit US-80.

19. Turkey's Minister of Agriculture has ordered that no Control Certificates be granted for importing rice at the MFN rate. The United States fails to see how denying these Control Certificates facilitates trade in rice; in fact, it has the opposite effect, prohibiting or restricting trade. Further, Turkey has not succeeded in its asserted goal of reducing the volume of lawsuits, given the large number of lawsuits brought by importers whose Control Certificate applications have been denied. Control Certificates serve neither a customs nor an SPS purpose and only serve as an access point for MARA to restrict the rice trade. Elimination of the Control Certificate requirement would be the best way to facilitate trade.

(b) Does the fact that Certificates of Control allegedly provide importers with trade facilitation benefits mean that, in the absence of the requirement to obtain Certificates of Controls, the importation of rice would in some way be more cumbersome? If so, please describe in what manner the importation of rice would be more cumbersome in the absence of such requirement, justifying your answer with appropriate arguments and evidence.

20. In its answer to Panel Question 14, the United States explained the steps involved in the rice importation process in Turkey.[12] An importer must file paperwork with four different government agencies – FTU, MARA, the Turkish Grain Board, and Turkish Customs – and obtain two separate import licenses – the import permit from FTU and the Control Certificate from MARA. In addition, an importer must fill out the same type of customs-related paperwork three times – for the two import licenses and again for Turkish Customs. Moreover, an importer has to make two separate trips to Turkish Customs and two separate trips to MARA – once to the Provincial Agricultural Directorate in Ankara and once to the regional Agricultural Provincial Directorate – as part of the process.

21. Article 1.6 of the Import Licensing Agreement requires that "[a]pplication procedures ... shall be as simple as possible." It further provides that "[a]pplicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies." As previously described by the United States, the rice importation process in Turkey is far from simple. This highly cumbersome system would certainly be less so if the domestic purchase and Control Certificate requirements were eliminated. Further, the United States has demonstrated that multiple Turkish agencies are collecting the same customs-related information from importers, and that MARA's collection of this information serves neither a customs nor an SPS purpose. Accordingly, it is not "strictly indispensable" that applicants approach more than one Turkish agency in order to import rice. Even if it were, Turkey requires that importers approach *four* agencies, which is more than the Import Licensing Agreement permits under the "strictly indispensable" exception.

Q134. (Both Parties) In response to question 44 (f) posed by the Panel, regarding the denial of Certificates of Control, Turkey provided the Panel with Exhibit TR-36, listing the application date, origin, quantity and quality of the rice for which each Certificate of Control was requested during the years 2003 to 2006. As reasons for denial, the list states the following: "Missing documents not completed", "Upon the demand of the Company" and "Incomplete Administrative Requirements".

(a) What should be understood from these reasons?

22. Without being able to examine the actual Control Certificates, it is impossible to state definitively how these terms should be understood.

[12] *See* paragraphs 22-33 of the US Answers to Panel Questions.

(c) Are detailed reasons for denial provided in writing to the requesting companies in the document of rejection or are these reasons communicated to applicants in a similarly succinct manner as what is indicated in Exhibit TR-36?

23. It is our understanding from conversations with importers and the documentary evidence we have submitted that no or very little explanation is provided to importers whose Control Certificate applications are rejected. (Indeed, MARA sometimes fails to respond at all.) In some cases, as the United States has previously discussed, MARA officials have communicated to importers, either orally or in writing, that a Control Certificate application was being rejected because MARA was simply not granting, or could not grant (as a matter of Turkish law), Control Certificates. The United States submits that, whatever other procedural flaws MARA may have identified with particular applications, this was the fundamental reason for the rejections.

Q136. (Both Parties) According to Turkey's statements (see, for example, para. 25 of its first submission), Certificates of Control for the importation of rice are valid for periods of 12 months.

(a) If this is the case, why would importers not import rice during periods in which Certificates of Control are allegedly not being approved, but some Certificates of Control are presumably still valid?

24. As the data and arguments provided by Turkey demonstrate, MARA issues two types of Control Certificates: Control Certificates for in-quota imports and Control Certificates for out-of-quota imports. In Annexes TR-20 and TR-33, Turkey separates Control Certificates into these two categories. There is no category provided for "dual use" Certificates, or Certificates that can be used for either in-quota or out-of-quota trade in rice. Further, Turkey has repeatedly differentiated between in-quota and out-of-quota Control Certificates throughout its submissions in this dispute. For example:

- in paragraph 27 of Turkey's First Submission, Turkey notes that the Control Certificate "has not been used differently on the basis of whether it related to TRQ *or* MFN rice import applications" (emphasis added);

- in its response to Question 83 from the Panel, Turkey stated that it "does not consider the number of *out-of-quota Certificates of Control* for 2004 and 2005 is 'disproportionate,' ... In addition, the comparison between *out-of-quota and in-quota Certificates of Control* in 2005 shows no disproportion at all, as figures show that *394 Control Certificates were approved for out-of-quota imports and 432 for in-quota imports*") (emphasis added);

- in paragraph 20 of Turkey's Rebuttal Submission, Turkey stated 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)" (emphasis added); and

- in paragraph 36 of Turkey's Rebuttal Submission, Turkey refers to the " '*de minimis*' rate of approval of Certificates of Control *in connection with* MFN imports") (emphasis added).

25. Because Control Certificates granted for in-quota trade cannot be used for out-of-quota trade (and vice versa), when the TRQ is closed, in-quota Control Certificates granted while the TRQ was open would no longer be valid.

26. In addition, while Turkey asserts that Control Certificates are valid for periods of 12 months, this is, at a minimum, not always the case. The Panel will recall that the Communiqués state that the validity periods of Certificates cannot be *extended*, but are silent on the issue of whether those periods can be *shortened*.[13] Exhibit US-79 contains a Control Certificate that MARA issued on August 15, 2003. The Certificate provides that it cannot be used beyond September 1, 2003 (the beginning of the Turkish rice harvest).[14] The validity period of this particular Control Certificate is far less than 12 months.

(b) During periods when the TRQ was not open, why would imports of rice not occur under Certificates of Control that were presumably still valid?

27. Please see answer to Question 136(a).

(c) Is there any difference between the Certificates of Control issued to import at the MFN rate, under preferential trade agreements and under the TRQ? If so, please specify the differences between them. If not, does this mean that a same Certificate of Control could have been equally used to import under the different rates? Did an importer have to specify whether the intended import was to be in-quota or over-quota when applying for a Certificate of Control? Please make reference to relevant evidence, as appropriate.

28. Please see answer to Question 136(a).

(d) Would a Certificate of Control still be valid for twelve months, even during a period when a TRQ was in place? Would an in-quota Control Certificate maintain its validity of 12 months, and therefore still allow imports to take place at the preferential in-quota tariff rate, despite the tariff quota period closing?

29. Please see answer to Question 136(a).

(e) Does the amount permitted to be imported under the Certificate of Control hold any relation with the amount permitted to import when applying for an import license to the Turkish Foreign Trade Undersecretariat (FTU)?

30. Please see answer to Question 136(a).

Q139. (United States) The United States has claimed that Turkey has acted inconsistently with a number of provisions of the Import Licensing Agreement, inter alia, because it has failed to notify its alleged import licensing regime for rice. The United States also noted (in its first written submission, para. 127) that it "requested that Turkey notify its non-automatic import licensing regime for rice to the Import Licensing Committee." Has the United States notified Turkey's alleged licensing regime, as provided for in paragraph 5 of article 5 of the Import Licensing Agreement? If not, why?

31. The United States notes that such a notification would be the first use of the paragraph 5 mechanism. The United States contemplated making such a notification to the Import Licensing

[13] *See, e.g.,* Article 9 of the 2004, 2005, and 2006 Communiqués (Exhibits US-7 and US-78; Annex TR-1).

[14] The Control Certificate number and date of issuance – August 15, 2003 – are noted in the upper right hand corner of the document. The document is stamped "26 Agustos 2003," which is the date on which the importation was made. The phrase "FIILI ITHALAT 01/09/2003 Tarihine kadar yapilmalidir" towards the bottom left side of the document means "The importation must be carried out by September 1, 2003."

Committee but concluded that any such notification would not add to the notification that the United States has already provided to the Committee on Import Licensing of Turkey's import licensing regime through the invocation of the dispute settlement procedures, including notifying Members of the Committee of the US request for the establishment of a panel and the claims concerning Turkey's regime.

32. The United States claims in this dispute include that Turkey operates a discretionary import licensing system that is in breach of several WTO provisions, including paragraphs 1.4(a) and (b), 1.6, 3.5 (a), (e), (f), and (h), 5.1, 5.2 (a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement. The question of the existence and nature of Turkey's import licensing regime will be resolved through the DSB recommendations and rulings on the issues at stake in this dispute.

Q140. (United States) In paragraph 26 of its first written submission, the United States claims that on 30 December 2004, MARA's General Directorate would have issued a Letter of Acceptance which recommended "yet another 'delay' in the opening date for issuing Certificates of Control until August 1, 2005". How can this statement be reconciled with the figures in Annex TR-33 that show that Certificates of Control for imports of US rice would have been issued in April and May 2005 and that imports over the quota took place during these two months?

33. Without being able to examine the actual Control Certificates, the United States cannot investigate the authenticity of these claims and the circumstances surrounding the alleged issuance of Certificates. Even assuming that Turkey's figures are correct, this was at most a temporary relaxation of the legal prohibition for US imports. In this regard, the United States notes that, to the extent Certificates were in fact granted, this would have closely followed US statements at the March 16, 2005 meeting of the WTO Committee on Agriculture, where the United States noted that Turkey's import licensing regime for rice appeared to be inconsistent with several provisions of the covered agreements, including Article III of the GATT 1994, the TRIMs Agreement, and Article 4.2 of the Agreement on Agriculture.[15]

34. As noted in paragraphs 47 and 48 of the US Rebuttal Submission, Annex TR-33 purports to show that, during one six-week period during April/May 2005, MARA allegedly issued Control Certificates to import U.S.-origin paddy rice at the MFN rate. However, that data also indicates that, prior to March 16, 2005, MARA had not issued any Control Certificates for the importation of U.S.-origin rice at the MFN rate during the second TRQ opening. And during this six-week period, it is noteworthy that Egyptian milled rice continued to be imported under the TRQ – in other words, any relaxation of the legal prohibition only seemed to apply to imports of US rice.

35. Moreover, under Turkey's figures, after May 12 the status quo resumed with nearly every Control Certificate granted for importation of U.S.-origin rice occurring at the in-quota rate. Thus, at most, Turkey's figures indicate that March/April certificates were an anomaly following US statements at the WTO. Importers brought in US rice almost exclusively under the TRQ for 2 ½ years, except for one six-week period where every single Control Certificate for US rice was purportedly issued for out-of-quota imports.

36. The United States notes that even if the United States could confirm that these Control Certificates were granted, the United States has provided voluminous evidence in the form of Letters of Acceptance, importer rejection letters, court documents, statements from Turkish officials, and newspaper articles that Turkey restricts rice importation in contravention of Article XI:1 of the GATT 1994. Further, as noted in paragraphs 60-62 of the US Rebuttal Submission, the Appellate Body and a GATT panel have found that mandatory measures that were not enforced at all were, nonetheless,

[15] G/AG/R/42, 25 May 2005, para. 21.

inconsistent with GATT/WTO rules. Here, all of the evidence and data points to the fact that the legal prohibition on the granting of Control Certificates at the MFN rate was consistently enforced for 2 ½ years, except for possibly one six-week period. Therefore, the Panel should still find that Turkey's restrictions on MFN trade in rice are inconsistent with Article XI:1.

Q143. (Both Parties) Were so-called "Letters of Acceptance" issued prior to the ones identified by the United States in its submissions. If so, can you provide any evidence as to the existence of these earlier Letters of Acceptance?

37. The United States does not possess any Letters of Acceptance that were issued prior to September 10, 2003. US industry had raised concerns with the US government since 2001 that Turkey had been imposing a seasonal ban on rice imports during the Turkish rice harvest, so it is very possible that Turkey's Minister of Agriculture had issued such Letters.

Q145. (Both Parties) In its statement during the second substantive meeting with the Panel (para. 12), the United States argued that Turkish courts have attributed legal effect to the so-called "Letters of Acceptance" and upheld MARA's enforcement of such Letters. In response, in its closing statement during the same meeting (para. 9), Turkey argued that, in a specific case cited, a "Court of first instance appears to have given effect to an ultra vires act [from the Minister of Agriculture and Rural Affairs]". What should be the appropriate value given by the Panel, if any, to interpretations of domestic law developed by local courts? What should be the appropriate value given by the Panel, if any, to interpretations of domestic law advanced by the administration of a Member before a local court? Was the allegedly erroneous interpretation of Turkish domestic law developed by the local court appealed by the Turkish administration? Should interpretations of domestic law developed by local courts be accorded a different value by the Panel if they were issued by higher courts?

38. The United States notes that regardless of the precise legal status in Turkey's municipal law of the Letters of Acceptance, Turkey's issuance of these letters restricts trade in breach of Article XI:1. Nevertheless, the evidence supports the conclusion that these documents are not, as Turkey asserts here, *ultra vires*, and the Panel need not accept Turkey's assertion.

39. Turkey's initial position in this dispute was that the Letters of Acceptance were internal/confidential and unenforceable documents. These assertions, even if true, would not have changed the fact that Turkey had in place a measure, for WTO purposes, that prohibited or restricted rice imports at the MFN rate. In any case, the United States has shown that these assertions were factually incorrect. The United States provided documentary evidence demonstrating that the Letters are not, in fact, internal/confidential, in the form of court documents showing that the Turkish government relied on the Letters in Turkish domestic court to defend its failure to issue Control Certificates. The United States also provided documentary evidence that the Letters are being enforced, in the form of Turkish court decisions, in which the courts agree with the government's position, as well as import data and rejection letters to importers. Turkey's own Control Certificate data supports the US contention that Turkey has been restricting rice trade at the MFN rate.

40. Turkey's new assertion is that at least two Turkish Ministers of Agriculture acted *ultra vires* in issuing the Letters of Acceptance. As a general matter, when examining a Member's measure, WTO panels are not bound by that Member's characterization of the measure. As noted by the Panel in the *1916 Act* dispute:

> [O]ur understanding of the term "examination" as used by the Appellate Body[16] is that panels need not accept at face value the characterisation that the respondent attaches to its law. A panel may analyse the operation of the domestic legislation and determine whether the description of the functioning of the law, as made by the respondent, is consistent with the legal structure of that Member. This way, it will be able to determine whether or not the law as applied is in conformity with the obligations of the Member concerned under the WTO Agreement.[17]

41. In this specific case, Turkey's suggestion that the Letters of Acceptance are *ultra vires* is strongly contradicted by other evidence. Not only the court opinions, but the overwhelming body of evidence presented, support the conclusion that the letters are legally binding. The Minister of Agriculture is the head of the Ministry of Agriculture and Rural Affairs (MARA). The Communiqués make clear that the Control Certificate system is administered by MARA. The application for the Control Certificate is contained in an annex to each Communiqué. The determination as to whether a Control Certificate is to be granted is in the hands of MARA, as provided by Article 2 of the Communiqués. Further, under Article 2, MARA's granting of a Control Certificate application is contingent on an importer's provision of certain documents that MARA may ask for, depending on the product. Thus, on the face of the regulation, MARA has the authority to deny the issuance of Control Certificates if certain unspecified documents are not provided. In fact, Turkey has been denying Control Certificates to importers who do not present documentation, in the form of proof of domestic purchase and an FTU import permit, demonstrating that the requirement to purchase domestic paddy rice has been satisfied. Therefore, Turkey's Minister of Agriculture not only is the head of the agency that issues (or fails to issue) Control Certificates, but the regulation the Minister administers provides ample authority to deny Control Certificates if certain unspecified product-specific documentation is not provided.

42. Turkey's "*ultra vires*" argument is also at odds with its statements to its domestic courts and with the conclusions of those courts. Turkey has asked, or is continuing to ask, in at least 14 Turkish domestic court proceedings,[18] that the courts *enforce* the Letters of Acceptance. Turkey is continuing to argue in domestic court that the Letters are *valid* and that it cannot grant Control Certificates. At least five Turkish courts have upheld the government's position thus far.[19] Whatever any court of appeal might or might not say on this issue, there is simply no evidence at this time to support Turkey's assertion in this proceeding that its issuance of Letters of Acceptance was *ultra vires* under

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[16] Appellate Body Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, WT/DS50/AB/R, adopted January 16, 1998, para. 67. In that dispute, the Appellate Body noted that the United States had alleged that India's "administrative instructions" with respect to mailbox applications would not override, as a legal matter, the application of certain mandatory provisions of India's Patents Act, but that India disagreed with the US characterization of the Indian measure. The Appellate Body upheld the Panel's finding that the measure in question was in breach of WTO rules, noting the Panel's statement that it had "reasonable doubts" concerning India's assertions with respect to how the Indian courts would reconcile the administrative instructions with the applicable provisions of the Patents Act. *Id.*, paras. 74-75. The Appellate Body further noted that the Panel had the authority to examine India's law to determine whether it was in compliance with the *TRIPs Agreement*:

> To say that the Panel should have done otherwise would be to say that only India can assess whether Indian law is consistent with India's obligations under the *WTO Agreement*. This clearly cannot be so.

Id., para. 66.

[17] Panel Report, *United States – Anti-Dumping Act of 1916*, WT/DS136/R, adopted 26 September 2000, at para. 6.51.

[18] *See* Turkey's Answers to Questions, Reply to Question 53(e).

[19] *See* Turkey's Answers to Questions, Reply to Question 53(e).

Turkish municipal law. Again, however, whatever the status of the Letters, they do restrict trade, and Turkey is therefore in breach of Article XI:1.

43. In order to resolve this dispute, it is thus not necessary to answer as a general matter the precise evidentiary weight to be given to court opinions, which will vary from Member to Member. Indeed, because of variations in the municipal legal systems of different Members, it is unlikely that there is one set of answers to the Panel's questions that would be applicable to all Members.

44. WTO panels may consider domestic court proceedings, including arguments advanced by a Member in those proceedings and the decisions rendered by domestic tribunals, as relevant factual evidence in evaluating what a measure brought to WTO dispute settlement actually does and how it works in practice. In this case, the Panel should consider the Turkish government's stated position in domestic court on what the Letters of Acceptance mean and what force and effect the Turkish courts decide those Letters have as a matter of Turkish law, as relevant factual evidence in evaluating whether Turkey is prohibiting or restricting imports of rice through a discretionary import licensing regime.[20] The United States believes that the evidence presented on this score is compelling.

Q150. (Both Parties) In paragraph 37 of its response to question 18 (c) posed by the Panel, the United States asserts that it "has been informed by the trade (sic) that MARA is orally informing importers that the MFN tariffs will henceforth be calculated based upon government-determined reference prices for paddy, brown, and milled rice, respectively, rather than on the actual customs value of the merchandise." Could the United States provide further information and evidence to support this assertion.

45. The TRQ regime "expired" on July 31, 2006. The very next day, FTU sent a letter to Turkish Customs noting that FTU and MARA had arrived at a "mutual understanding" regarding Turkey's Control Certificate system. Specifically, as of August 1, 2006, duties would no longer be calculated on the actual value of imported rice but on certain references prices: CIF $340 USD per metric ton for imported paddy rice, CIF $425 USD per metric ton for imported brown rice, and CIF $570 USD per metric ton for imported paddy rice. On August 10, 2006, Turkey's General Directorate of Customs ordered all Turkish customs houses to take the above-mentioned reference prices into account when determining the price for purposes of calculating duty levels.[21] To the knowledge of the United States, neither document was ever published.

46. In the August 10, 2006 Order, the General Directorate of Customs noted that, under the understanding reached between MARA and FTU, calculation of the applicable duty according to the reference price calculation is made a component of Control Certificates for rice:

> ... a mutual understanding is reached for *application of a reference price in the control documents drawn up in connection with the export of rice and rice paddy pursuant to the Communiqué of Standardization in Foreign Trade with number 2006/5*.

[20] *See* Panel Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/R, adopted January 8, 2003, as modified by the Appellate Body Report, WT/DS212/AB/R, at paras. 7.124-7.128 (noting that relevant factual evidence a Panel must consider in analyzing whether a Member has complied with WTO rules includes municipal court decisions, declarations made by governmental authorities, and domestic application of a measure, and that such evidence must be examined jointly when evaluating whether the measure is in breach).

[21] The United States submitted this document in Exhibit US-68.

> [The references prices noted above] will be considered as references prices in case a control document is drawn up and this fact is communicated to the Ministry of Agriculture and Rural Affairs.
>
> Consequently, *since the values mentioned above will be considered as reference in the establishment of control documents for the subject items* from the date of 01.08.2006, this fact has to be taken into account while determining the price.[22] (emphasis added).

47. On October 19, 2006, Turkey's General Directorate of Customs sent another unpublished letter to its customs houses.[23] This second document makes reference to the August 10, 2006 letter which noted the memorandum of understanding between MARA and FTU regarding the new reference prices that were executed in accordance with the 2006 Communiqué. In sum, the document states that the reference price system has not been properly enforced – some companies had been importing rice at a lower unit value than the applicable reference prices – and emphasizes that it is necessary for customs officials to enforce the reference prices. It suggests that customs officials had not been adequately considering the values specified in the invoices, which are attached to the Control Certificates, when determining the basis on which customs duties would be levied. The document concludes that:

> it is extremely important to take the invoices that are attached to the import licenses issued by the Ministry of Agriculture and Rural Affairs, and, that are declared by the companies, as the basis in determining the value that will be the basis of customs tariff in the importation of the products in question.
>
> In this regard, it is **absolutely necessary** that the values indicated on the invoices attached to the import licenses be taken into consideration in the import customs procedures for the goods in question, and that during the approval phase, the declaration should be checked against the invoices attached to the import licenses for any inconsistencies (emphasis in the original).

48. One Turkish importer, Mehmetoglu, attempted to avoid the reference price on milled rice imports by importing 42,000 metric tons of milled rice from Egypt at $305 per ton, even though the company was obliged under the reference price regime to pay duties on $570 per ton. The company apparently paid the duty on $305 per ton and presented a letter of credit from its bank to Turkish Customs to cover the difference. According to a December 5, 2006, article in *Referans*, Mehmetoglu expressed its intention to contest any assertion that it needed to pay the difference, on the grounds that the reference price scheme was illegal. Mehmetoglu's action apparently was the subject of discussion in Turkish Parliament, and Turan Comez, a member of Parliament from Balikesir, submitted a question to Minister Tuzmen asking him to investigate this specific Mehmetoglu transaction, from which he alleged Mehmetoglu realized $5 million in illegal revenues.[24]

49. On December 15, 2006, perhaps in response to the controversy generated by "the Mehmetoglu affair," Turkey's Minister of Agriculture, Mehdi Eker, issued a public explanation of Turkey's rice import regime through the Office of Press and Public Relations. In that explanation, Minister Eker noted that FTU started the reference price system in response to these WTO panel proceedings and in order to protect domestic rice producers. He further noted that any rumor that the reference rice system has been suspended was false and that, as of December 15, 2006:

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[22] Exhibit US-68.
[23] *See* Exhibit US-76.
[24] *See* Exhibit US-75.

> our Ministry had not issued an *import license* (Control Document) that is below the Reference Prices ... .[25]

Minister Eker closed by stating that Turkish Customs had opened an investigation into Mehmetoglu, in response to the inquiry that had been raised by Mr. Comez.

50. The December 15th statement by Turkey's Minister of Agriculture is significant for at least two reasons. First, the Minister has *conceded* that the Control Certificate is an import license. This admission provides further evidence that the Control Certificate is an import license for purposes of Article XI:1 of the GATT 1994 and that Turkey's Control Certificate system, as set forth in the Communiqués and the Letters of Acceptance, constitutes "import licensing" under the Import Licensing Agreement.[26]

51. Second, the Minister has made clear that the reference prices are not merely taken into consideration when issuing a Control Certificate and determining on what value the customs duty is levied. Rather, the reference prices, not the actual value of the merchandise, are the values on which the customs duty is levied. Moreover, if an importer attempts to avoid the reference price, that importer risks being investigated. In other words, Turkey has put in place minimum import prices for rice, and those prices are being enforced. Minimum import prices on the import of agricultural products are specifically listed as prohibited in footnote 1 to Article 4.2 of the Agreement on Agriculture.

52. For purposes of this dispute, Turkey's establishment of minimum import prices for rice provides further evidence that Turkey restricts trade in rice and operates a discretionary import licensing regime. A joint examination of the official Customs documentation, Minister Eker's statements on December 15th, and the *Hurriyet* newspaper article reveals that MARA will not grant a Control Certificate for the import of rice unless the importer agrees to pay a duty based on the applicable reference price, rather than on the actual value of the imported rice. Instead of granting import licenses automatically, Turkey utilizes discretion in determining whether or not to grant them. If the importer agrees to the reference price, Turkey may decide to grant the license; if the importer does not agree to the reference price, Turkey will not issue the license. Accordingly, Turkey's import licensing regime prohibits or restricts trade in contravention of Article XI:1 of the GATT 1994 and constitutes discretionary import licensing under Article 4.2 of the Agreement on Agriculture.

Q152. (United States) In its statement during the second substantive meeting with the Panel (para. 21), the United States argued that it would be necessary for the Panel to make a finding and recommendation regarding the so-called "domestic purchase requirement", in order to resolve the dispute between the parties.

(a) Could the United States explain why this would be the case, in its view.

53. Turkey argues that the Panel should decline to make a finding or issue a recommendation with respect to the domestic purchase requirement because it allegedly has ceased to exist. However, as the United States has pointed out, under its terms of reference and under DSU Article 19.1, the Panel is charged with making findings and recommendations on the measures identified in the US panel request, including the domestic purchase requirement. Inasmuch as the domestic purchase

[25] *See* Exhibit US-77 (emphasis added).

[26] The United States further notes that Minister Eker's statement acknowledges that the TRQ resulted in an 87 per cent increase in domestic rice production since 2002 and that, as a result, domestic rice increased from 40 to 66 per cent as a percentage of total domestic consumption. The statement makes clear that the institution of Turkey's import system for rice, including the TRQ with domestic purchase, was done with the objective of protecting domestic producers and increasing investment in the Turkish rice sector.

requirement was in existence at the time this Panel was established, that measure is within the Panel's terms of reference, the Panel is charged with examining that measure as it existed on the date of establishment.[27] The TRQ regime existed on March 17, 2006, the date this Panel was established by the DSB.

54. Further, the United States considers that findings and a recommendation with respect to the domestic purchase requirement are necessary to resolve the dispute. First, the United States believes that, contrary to Turkey's assurances, the TRQ regime is still in existence. Turkey has previously re-opened the TRQ on two separate occasions after it claimed that the TRQ had expired. In one of those instances, Turkey informed the WTO Committee on Agriculture that the TRQ had expired and would not be re-imposed. Yet Turkey subsequently re-opened the TRQ with domestic purchase. The fact that Turkey closes the TRQ periodically does not change the fact that the regime continues to exist. Turkey has neither repealed the legislation providing the legal basis under Turkish law for imposing a TRQ with an absorption requirement nor amended those regulations to ensure that FTU cannot re-open the rice TRQ. Because Turkey continues to argue that its TRQ scheme is beneficial in that it allegedly provides stability in the market with respect to price and supply and is beneficial to imports, it is likely that Turkey will re-open the TRQ when it deems appropriate.

55. Second, if the Panel were *not* to make findings and a recommendation with respect to the domestic purchase requirement**,** and if Turkey were to re-open the TRQ and impose a domestic purchase requirement, Turkey might argue before a WTO compliance panel that that panel would not have jurisdiction to make findings on the measure because it was not a "measure taken to comply" under Article 21.5 of the DSU. Were this argument to succeed, the United States would have to again request original panel proceedings, thereby needlessly prolonging a dispute that this Panel has the authority and mandate to resolve.

(b) In paragraph 20 of its statement, the United States also argued that its request that the Panel make findings and recommendations regarding the TRQ regime would be supported by the interpretation contained in the Appellate Body report in the Dominican Republic - Import and Sale of Cigarettes case. Could the United States elaborate on this assertion, explaining in what manner does the Appellate Body's decision in that case support its request. Please refer to specific sections of the report, as appropriate, and their relevance to the present case.

56. The United States made this statement in response to Turkey's continued unsupported allegations that WTO panel reports support its argument that this Panel does not need to make findings and recommendations on the domestic purchase requirement. Turkey has continually argued that WTO panels should not make findings on measures that have ceased to exist. What Turkey ignores is that, in determining whether a measure is still in existence, the relevant date for purposes of WTO dispute settlement is the date of panel establishment. Every single dispute cited by Turkey respects the distinction between measures that existed on the date of panel establishment, such as the domestic purchase requirement, and those measures that did not exist on the date of panel establishment.

57. The outcome of the *Dominican Republic – Cigarettes* dispute also supports the US position. In that dispute, the panel made an adverse finding with respect to the Dominican Republic's Selective Consumption Tax, which existed on the date of panel establishment, but which was subsequently modified. However, the panel decided *not* to make a *recommendation* to the DSB that the Dominican

[27] *See* paragraphs 19-22 of the US Oral Statement at the Second Panel Meeting and paragraphs 42-47 of the US Oral Statement at the First Panel Meeting.

Republic bring the measure into conformity with WTO rules, on the grounds that the measure was no longer in force.[28]

58. The Appellate Body disagreed with the panel by making a broad recommendation that the Dominican Republic bring its measures into compliance with WTO rules. Specifically, in paragraph 130 of its report, the Appellate Body states:

> The Appellate Body also *recommends* that the Dispute Settlement Body request the Dominican Republic to bring its ... measures [other than the tax stamp requirement], found in the Panel Report as modified by this Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement.[29]

The Appellate Body's broad recommendation covers the Selective Consumption Tax and other measures that the panel had found to be inconsistent with WTO rules.

59. Further, in paragraph 129, the Appellate Body recommended that the DSB request the Dominican Republic to bring into conformity with WTO rules its tax stamp requirement, a measure that existed on the date of panel establishment, even though the Dominican Republic had modified that requirement subsequent to panel establishment:

> In view of the above, the Appellate Body recommends that the Dispute Settlement Body request the Dominican Republic to bring the tax stamp requirement, found in this Report and in the Panel Report as modified by this Report to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement if, and to the extent that, the said modifications to the tax stamp regime have not already done so.[30]

In recommending that the Dominican Republic bring into conformity a measure which had already been modified, the Appellate Body acknowledged the modification without prejudging whether it had brought the Dominican Republic into compliance.

60. Similarly, in *EC – Biotech*, the panel made a recommendation with respect to a measure the EC asserted no longer existed.[31] While the measure in that dispute allegedly expired prior to panel establishment, the panel's reasoning in determining the need to make a recommendation is relevant for the instant dispute. First noting that the aim of WTO dispute settlement, pursuant to Article 3.7 of the DSU, was "to secure a positive resolution to a dispute,"[32] the panel stated:

> In addition to noting the continuing existence of opposition to approvals amongst member States, we also recall the informal, *de facto* nature of the general moratorium on approvals, which means that it can be re-imposed just as soon as it can be ended. In these circumstances, we agree that even if the general moratorium ceased to exist after August 2003, if we were to find that the European Communities acted

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[28] Panel Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/R, adopted May 19, 2005, as modified by the Appellate Body Report, WT/DS302/AB/R, at para.8.3 ("*Dominican Republic – Cigarettes*").

[29] Appellate Body Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/AB/R (emphasis added).

[30] Appellate Body Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/AB/R (emphasis added).

[31] Panel Reports, *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291, 292, 293/R, para. 8.16 ("*EC – Biotech*").

[32] Panel Reports, *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291, 292, 293/R, para. 7.1309.

> inconsistently with its WTO obligations by applying a general moratorium in August 2003, this could help prevent a WTO-inconsistent general moratorium from being reintroduced and, in this way, secure a positive resolution to this dispute.[33]

In a footnote to paragraph 7.1311, the panel further noted:

> [I]f we were not to make findings on the general moratorium, there would effectively be a possibility of shielding it from scrutiny by a panel because this type of *de facto* measure could be ended shortly before or during panel proceedings and promptly re-imposed thereafter.

61. The panel ultimately recommended that the DSB request that the EC bring its measure into conformity with its WTO obligations "if, and to the extent that, that measure has not already ceased to exist."[34]

62. Turkey's domestic purchase requirement existed on the date of panel establishment, and this Panel is charged with making findings and recommendations to the DSB, in accordance with Article 19.1 of the DSU and the Panel's terms of reference, in order "to secure a positive resolution to a dispute" pursuant to Article 3.7 of the DSU. Turkey's mere assurance that it has no intention of re-opening the TRQ with domestic purchase does not provide legal grounds for the Panel to disregard its mandate and the text of the DSU, and the guidance provided by past panels supports this conclusion.[35]

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[33] Panel Reports, *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291, 292, 293/R, para. 7.1311.

[34] Panel Reports, *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291, 292, 293/R, para. 8.16.

In its reasoning, the panel cited the Panel Report in *Canada – Wheat* as an example of where a panel did not make a recommendation with respect to a measure that had been amended after panel establishment. That report, which addresses a measure that was *amended* during panel proceedings, is inapplicable to the present dispute, where the panel is addressing a measure that one party argues has *ceased to exist* during the panel proceedings. Nevertheless, the panel in *Canada – Wheat* noted that, during the panel proceedings, Canada had acknowledged that the amended measure, on which the panel made its recommendation, had the "same" "substantive effect" as the measure that existed on the date of panel establishment. (And the United States agreed with that assessment, as noted in US Response to Panel Question 67 in that dispute.) Panel Report, *Canada - Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/R, adopted September 27, 2004, para. 7.3 (*Canada – Wheat*"). That the text of the DSU requires panels to make a recommendation is meant to ensure that a WTO-inconsistent measure cannot be subsequently re-imposed by the respondent. Because Canada's amended measure was substantively the same as the original measure, a panel recommendation that Canada bring that measure into conformity with its WTO obligations would also have precluded Canada from re-imposing the original measure.

[35] *See* Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54, 55, 59, 64/R, adopted July 23, 1998, para. 14.9. The panel decided to make a finding on a measure that Indonesia deemed "obsolete" since it had allegedly been terminated after the panel was established:

> In any event, taking into account our terms of reference, and noting that any revocation of a challenged measure could be relevant to the implementation stage of the dispute settlement process, we consider that it is appropriate for us to make findings in respect of the National Car programme. In this connection, we note that in previous GATT/WTO cases, where a measure included in the terms of reference was otherwise terminated or amended after the commencement of the panel proceedings, panels have nevertheless made findings in respect of such a measure. We shall therefore proceed to examine all of the claims of the complainants.

Questions from Turkey

Question TR-1: Could the United States indicate which specific provision of the Turkish law on Certificates of Control (i.e., Communiqué of Standardization for Foreign Trade No. 2005/5, 2006/5 and 2007/21) defines, de jure, a Certificate of Control as an import license?

63. The United States has not found any provision in the Communiqués that states "the Certificate of Control is an import license." However, this is irrelevant for purposes of the Article XI:1 analysis. Article XI:1 states that:

> No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party ... .

64. According to customary rules of interpretation of public international law, as reflected in Article 31 of the *Vienna Convention on the Law of Treaties*, the text of Article XI:1 of the GATT 1994 must 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." The ordinary meaning of the term "import licence" is formal permission from an authority to bring in goods from another country. Thus, the relevant starting point for purposes of Article XI:1 is whether the Control Certificate constitutes formal permission from the Turkish government to bring in rice from another country. The United States has made a *prima facie* case that the Control Certificate does amount to such permission and therefore is an import license for purposes of Article XI:1. The United States has also rebutted Turkey's argument that the Control Certificate is required for either customs or SPS purposes.[36]

65. Turkey has not identified any provision in Article XI:1 or elsewhere in the WTO Agreement that a Member must label a document an "import license" in order for it to be one. Indeed, how a Member characterizes an instrument does not determine whether an instrument constitutes formal permission from an authority to bring in goods from another country, or is otherwise a measure for purposes of WTO dispute settlement.[37] Footnote 1 to Article 1 of the Import Licensing Agreement, which provides relevant context to the interpretation of the term "import license" in Article XI:1 of the GATT 1994, makes clear that regardless of how a Member characterizes or refers to particular administrative procedures, such procedures are still considered "import licensing" if they satisfy the criteria in Article 1.

66. In this case, however, the United States believes that Turkey's characterization of the Control Certificate *is* relevant to the Panel's determination. As previously noted in the US Answer to Question 150, Turkey's Minister of Agriculture, Mehmet Eker recently stated that:

> our Ministry had not issued an *import license* (Control Document) that is below the Reference Prices ... .[38]

Footnote omitted. One of the referenced panel reports in the footnote was the Panel Report in *United States – Measures Affecting Imports of Wool Shirts and Blouses from India*, WT/DS33/R, adopted 23 May 1997 (where the Panel made a finding on a measure that the United States withdrew during the panel proceedings).

[36] Further, neither the words "de jure" nor "de facto" appear anywhere in the text of Article XI:1, so the United States is unsure of the legal basis for this distinction that Turkey is apparently making.

[37] *See* US Response to Panel Question 145.

[38] Exhibit US-77 (emphasis added).

Thus, the Turkish official that is the ultimate authority on Control Certificates has characterized the Control Certificate as an import license. As noted by the United States in response to Panel Question 145, past panels have found that the characterization of a government's measures by a governmental authority is relevant evidence in evaluating the meaning of a measure, and the United States urges the Panel to take Minister Eker's statement into account.

Question TR-2: Could the United States identify which specific provisions of Turkish law provide the Turkish Ministry of Agriculture and Rural Affairs, (i.e., MARA) with the discretion necessary to deny the approval of applications for Certificates of Control which otherwise comply with the requirements of the law?

67. As noted in previous US submissions and statements, paragraph 2 of the Communiqués provides that, in order to obtain a Control Certificate from MARA, an importer must provide the application form, an invoice, and "other documents which may be asked for, depending on product, by the Ministry."[39] This provides MARA with the discretion necessary to deny the issuance of Control Certificates for rice, which should be automatically issued. Instead, the Ministry demands that importers provide proof of purchase of domestic paddy rice and an FTU import permit (which is issues contingent on such purchase) before approving a Control Certificate application.

68. In addition, at least two Ministers of Agriculture have issued Letters of Acceptance, ordering that no Control Certificates be granted unless this documentation is provided. Whether these Letters are an exercise of the discretion provided in Article 2 or override Article 2, the Letters are being enforced. The Government of Turkey is arguing in multiple domestic courts that it cannot grant Control Certificates pursuant to the Letters, and the courts are agreeing with the government's position. Thus, the Letters of Acceptance are binding under Turkish law or, at the very least, provide strong evidence that Turkey operates a discretionary import licensing regime.

Question TR-3: What leads the United States to argue that there should be an a priori exclusion of the Certificates of Control approved in relation to out-of-quota FTA trade from the alleged application of the "blanket denial" for all out-of-quota requests for approval?

69. Turkey continues to mis-characterize the US claim. The US claim is that Turkey is prohibiting or restricting imports of rice at the MFN rate by failing to issue Control Certificates. Since 2003, the United States has been requesting that Turkey provide copies of Control Certificates that it has granted. To date, Turkey has not done so. However, Turkey recently has clarified that it does require "in-quota Control Certificates" under the TRQ, as well as "out-of-quota Control Certificates" for both MFN and "FTA" trade, the latter of which apparently refers to trade with the EC, Macedonia, and other entities/countries with which Turkey has negotiated "free trade agreements." The US argument that there was a blanket denial of Control Certificates was made in support of the claim that there is a prohibition or restriction on MFN rice imports. Whether Certificates are required for non-MFN, out-of-quota trade is irrelevant.

[39] *See* Annex TR-1, which contains the text of the 2006 Communiqué. Paragraph 2 of the 2005 Communiqué contains the same language in Turkish. *See* Exhibit US-7. Paragraph 2 of the 2004 Communiqué uses the phrase "other documents that may be required by the Ministry of Agriculture and Rural Affairs." *See* Exhibit US-78.

ANNEX F-2

COMMENTS BY THE UNITED STATES TO THE REPLIES BY TURKEY TO THE QUESTIONS POSED BY THE PANEL AFTER THE SECOND SUBSTANTIVE MEETING

(20 February 2007)

1. The United States appreciates the opportunity to provide comments on the "Replies by Turkey to the Questions Posed by the Panel" submitted by Turkey on February 6, 2007. The United States has reviewed Turkey's answers and will provide comments on some of those answers as set forth below. With respect to those answers on which the United States is not providing comments, the United States submits that Turkey's arguments are substantially the same as in previous submissions and statements or are rebutted elsewhere in the US comments, so the United States will refrain from repeating its arguments.

Q100. (Both Parties) The Panel has considered the information provided by Turkey on "Monthly landed CIF values" in Exhibit TR-28, and noted a sharp increase in paddy rice prices in June 2003, January and November 2004, February 2005 and March 2006. Likewise, it has noted a sharp increase in milled rice prices in September 2003, January and August 2004 and September 2005. It has also noted a significant fall in the price for milled rice in December 2003. Please explain why, in your view, these sharp increases and this significant fall in prices occurred, referring to relevant evidence, as appropriate.

2. Turkey's contention that the price trends noted by the Panel can be explained by sales of paddy rice for planting during certain periods is not supported by Turkish trade data. There is an 8-digit Harmonized Tariff System code for "rice in the husk (paddy or rough) for sowing" (HS1006.1010). The United States has submitted a more detailed version of Turkish trade data for paddy rice imports.[1] This more specific break-out of the paddy rice sub-heading shows that none of the sales that Turkey describes in the first paragraph of its response actually occurred.

Q102. (Turkey) Aside from the alleged lack of competitiveness of rice from the United States, what other reasons may explain in Turkey's view the fact that, according to the information provided by Turkey in Exhibit TR-25, there seem to have been no imports of:

(a) Paddy rice or brown rice in the months of October in 2003, 2004 and 2005. In addition, the data in Exhibit TR-33 suggest that no rice imports whatsoever (paddy, brown or milled) took place in February and March 2004. Further, the data in Exhibit TR-33 seem to suggest that there were no rice imports other than EC/Former Yugoslav Republic of Macedonia out-quota rice imports in October - December 2003 and in September - October 2005.

(b) Milled rice from the United States during: (i) January - May 2004; (ii) July 2004; (iii) September - November 2004; (iv) July - December 2005; and, (v) January 2006 - onwards.

(c) Paddy rice from the United States during: (i) October - December 2003; (ii) February - May 2004; and, (iii) September - November 2005

3. From September 10, 2003 through the date of panel establishment and beyond, Turkey maintained a legal prohibition on the granting of Control Certificates for MFN trade. Turkey

[1] *See* Exhibit US-82.

instituted minimum import prices for rice on August 1, 2006 – the day after the TRQ allegedly expired – and Turkish import data during the September-December 2006 period shows that rice imports have ceased.[2] Turkey's maintenance of a discretionary import licensing regime, including the TRQ with domestic purchase, is the most compelling reason that rice imports have ceased altogether in certain periods, as the United States has previously argued.

4. Several of the explanations provided by Turkey are unsupported by the evidence on the record. Turkey argues that there was an increase in rice stocks by the beginning of 2004; however, the data on the record shows just the opposite, with Turkish rice stocks declining from 260,000 metric tons on September 1, 2003[3] to 135,000 metric tons on September 1, 2004.[4] Turkey contends that there was a steep increase in world rice prices in 2004, but that would not explain the decline in imports that began in *September 2003.* With respect to prices in 2004, one cannot measure the effect of an increase in world prices for rice in the Turkish market without knowing the domestic prices for rice in Turkey during the period in question. Annex TR-29 shows that TMO purchasing prices increased significantly in 2004 from the previous year, and Exhibit US-54 demonstrates that Turkish wholesale prices rose throughout the 2003-2006 time period. Turkey has taken issue with the data in Exhibit US-54 but has not provided a clear explanation as to why that data is inaccurate. The Panel has requested that Turkey provide data on domestic rice prices in Turkey but, to date, Turkey, which is in the best position to supply this data, has not done so. The Panel should draw the appropriate inference from Turkey's failure to provide this data.

5. Turkey also argues that import decisions have always been exclusively determined by business considerations. Yet an examination of the data shows that the United States has exported large quantities of rice throughout the world since September 2003, yet has been unable to export to Turkey during certain time periods, which implies that something other than business considerations was driving the import trends. Moreover, Turkey maintains that preferential tariffs on rice from the EC and Macedonia could affect importers' choices. However, the EC quota only covers 28,000 metric tons of milled rice, a small percentage of the Turkish rice market. Further, as the United States noted in paragraph 51 of the US Rebuttal Submission, Macedonia is a non-factor in the rice trade. It does not export rice. Even Turkey's Annex TR-33 shows that only one-third of the Control Certificates allegedly granted for the importation of Macedonian rice were ever utilized; some of those Certificates were only utilized in part; and the total quantity of Macedonian rice allegedly imported was less than 1,500 metric tons.

Q103. (Turkey) In reference to the previous question, is Turkey of the view that the lack of imports during the indicated periods was a result of a lack of applications for Certificates of Control to import rice or rather of a rejection of those applications? Please reason your response, referring to relevant evidence, as appropriate.

6. Without examining the actual Control Certificate data, it is impossible to discern whether there was a lack of applications for Control Certificates. However, the United States would not be surprised if that were indeed the case; as the United States has demonstrated, Turkey's legal prohibition on the granting of out-of-quota Control Certificates for MFN trade in rice prohibited or restricted the importation of rice at least through the date of panel establishment. Even Turkey's alleged Control Certificate data shows that it granted only 56 out-of-quota Control Certificates at the

[2] *See* Exhibit US-81rev, which is Exhibit US-81 as revised to include December 2006 data. Turkish data shows imports of US paddy rice in July and August, but US export statistics show a minuscule level of US rice exports to Turkey in 2006, except for approximately 16,000 metric tons of paddy rice in March 2006. As the United States previously has mentioned, the large amount of alleged Turkish imports of US rice in the July-August 2006 period can only be accounted for by US rice that had been stored in Turkish bonded warehouses.

[3] September 1 is the first day of the rice marketing year in Turkey.

[4] *See* Exhibit US-45.

MFN rates over a 2 ½ year period and, as the United States explained previously, many of those alleged Certificates were either not utilized, covered the importation of very small amounts of rice, or were anomalies. Importers would have known from past years that Turkey would ensure that all imports of rice, with the exception of imports covered by a preferential agreement (e.g., the EC), would be made through the TRQ while it was open, and that such imports would cease during the Turkish rice harvest when the TRQ was closed. Further, no rice importer could have mistaken the significance of MARA's apparent decision to go to court to enforce its denial of such Control Certificates, as well as the court decisions siding with the government's position.

7. With respect to the new table provided by Turkey, the United States is unable to verify the accuracy of this data without examining the actual Control Certificates, which Turkey has opted not to provide, and the data in the chart regarding approved Control Certificates is not consistent with the data Turkey provided in Annex TR-33. However, even Turkey's data shows that 11 out of 28 applications for a Control Certificate were rejected, a nearly 40 per cent rejection rate. The United States believes it unlikely that, in the periods covered by the table, almost 40 per cent of Control Certificate applications for rice warranted denial for reasons such as missing documentation or incomplete administrative requirements. Turkey's table provides further evidence that Turkey is restricting the importation of rice and operates a discretionary import licensing regime for rice.

Q105. (Turkey) Exhibit TR-35 seems to show lower figures of rejected applications for Certificates of Control in 2005 and 2006, than Exhibit TR-36. In particular, Exhibit TR-36 would suggest that there were 85 rejections in 2006 versus 38 shown in Exhibit TR-35. Could Turkey explain these discrepancies, including their implications for the total number of rejections and the percentage of rejections shown in Exhibit TR-35.

8. Turkey has confirmed that it rejected 85 applications for Control Certificates in 2006. This admission provides further evidence that Turkey is restricting the importation of rice and operates a discretionary import licensing regime for rice.

Q108. (Turkey) According to Exhibit TR-25 there were no imports of milled rice in April 2004; however, Exhibit TR-33 indicates that 21,000 kg of rice were imported from Pakistan in the same month. Could Turkey please explain this, or any other similar, discrepancies between Exhibits TR-33 and TR-25?

9. The United States agrees that this in-quota importation could not have occurred on April 23, 2004. FTU did not announce the details of the first TRQ opening until April 27, 2004, so this importation could not have occurred before that date.

Q109. (Turkey) In its reply to question 4(c) posed by the Panel, Turkey stated that Exhibit TR-8 provided "import data, broken down into types of rice *and into MFN and TRQ imports* for the years 2004 to 2006" (emphasis added). Actually, the table in Exhibit TR-8 seems to show import figures broken down by types of rice and by "Total imports" (A), "Import Licenses Issued" (B) and a third column indicating the difference between A and B, which is supposed to show the "Total out of quota imports".

(a) Can Turkey please confirm this.

(b) As regards milled rice, the corresponding figure for imports of US rice in the third column is negative. According to footnote 2 to the table, the negative sign indicates that the total quantity of import licenses was larger than the actual imports. Does the negative sign also mean that there were no out of quota imports of US milled rice during the period under consideration?

10. Without being able to examine the actual Control Certificates, which Turkey has elected not to provide, the United States is unable confirm the authenticity of the data provided in the table.

Q110. (Turkey) In its question 7 posed to both Parties, the Panel had asked, *inter alia*, for information regarding Turkey's average prices for domestic production of, separately, paddy, brown and milled rice in its market, for the period from July 2003 to the end of 2006 (including estimates, as appropriate). In response to this question, Turkey indicated that "reference should be made to Annex TR-27". However, the data in Exhibit TR-27 seems to refer only to individual purchases by companies in 2005. It does not show monthly averages and specify the type of rice it refers to, nor does it cover the period requested by the Panel. In the absence of such information, can Turkey comment on the data provided by the United States in Exhibit US-54. Can Turkey find a relation between the price data provided in Exhibit TR-27 and that provided in Exhibit TR-29?

11. As an initial matter, Turkey has not provided the information requested by the Panel, and the Panel should draw an appropriate inference.

12. With respect to the role of TMO in the Turkish market, Turkey understates the effect that TMO's decisions have on market prices. TMO sets the purchase prices for rice produced domestically which, in turn, influences the prices that Turkish producers and producer associations charge importers who must purchase their rice in order to import rice from abroad. TMO also helps establish the domestic purchase requirements under the TRQ. Under each TRQ opening, it has the discretion to import an additional 50,000 tons of rice in order to stabilize the market, and the mere possibility that it may utilize this discretion will have an effect on prices. As Turkey itself notes in its reply to Panel Question 111, TMO "acts as an intervention agency." Whether TMO makes small or large purchases, it still has a major role in influencing "market" prices for rice in Turkey. The fact that TMO may have been purchasing less rice was by design: the domestic purchase requirements under the second and third TRQ openings were set in such a way that an importer could import more rice by purchasing rice directly from the Turkish producers and producer associations than by purchasing the rice from TMO. Thus, importers, rather than TMO, now bore the burden of purchasing and storing domestic rice.

13. Regarding Turkey's comparison between the pricing data in Exhibit US-54 and Annex TR-29, prices for paddy rice will, of course, be lower than prices for milled rice, so it is clear that TMO purchasing prices for paddy rice will be lower than the price of US milled rice. However, the record does not support Turkey's contention that prices paid by individual companies for paddy rice purchased directly from producers are lower than TMO purchasing prices for paddy rice in general. The average price for paddy rice purchased from producers in 2005 – 640 New Turkish Lira (or $477) per metric ton – was higher than the average TMO purchasing price in 2005 – 612 New Turkish Lira (or $456) per metric ton.[5]

Q111. (Turkey) In its reply to question 9 posed by the Panel, Turkey provided Exhibit TR-30 showing overall purchases and sales of milled and paddy rice by the Turkish Grain Board (TMO) during the period 2003 to 16 November 2006. Could Turkey please explain the reasons for the significant difference in the quantities of paddy rice sold by the TMO in 2004, as compared to the quantities sold in 2005 and 2006, respectively?

14. The TRQ regime was designed to reduce TMO stocks, which were high entering 2004,[6] so the fact that the quantities of paddy rice sold by TMO declined in 2005-2006 are evidence that the regime

[5] The 640 and 612 New Turkish Lira figures were taken from Annexes TR-27 and TR-29, respectively. The equivalent dollar amounts were derived by multiplying those figures by 0.744759956, the average interbank exchange rate for 2005, which can be found in Exhibit US-52.

[6] *See* Annex TR-30.

was operating as intended. Importers purchased more rice from Turkish producers than from TMO because, under the second and third TRQ openings, one could import more rice by purchasing rice from domestic producers and producer associations than from TMO. Second, the fact that importers were purchasing domestic rice at all had nothing to do with the purported "advantage" of having to make purchases of large quantities of domestic rice as a condition upon import; rather, importers made such purchases because that was the only way to import rice not covered by a special quota arrangement.

Q112. (Turkey) How does Turkey explain the sudden occurrence of over-quota imports of United States rice in May 2005 shown in Exhibit TR-33?

15. The United States respectfully refers to its previous answer. From September 10, 2003 through the date of panel establishment, there was virtually no MFN trade in rice. However, in one six-week period, every Control Certificate allegedly granted for US rice was out-of-quota. Even if Turkey could substantiate this which, to date, it has not, this was an anomaly and does not detract from the conclusion that Turkey prohibited or restricted the importation of rice at the MFN rates at least through the date of panel establishment, and operates a discretionary import licensing regime for rice. As noted by the United States in paragraphs 60-62 of the US Rebuttal Submission, the alleged non-enforcement of the legal prohibition in limited instances, even if Turkey could substantiate it, does not excuse an Article XI:1 breach.

Q114. (Turkey) In its reply to question 15 posed by the Panel, Turkey refers to Exhibit TR-33.

(b) With reference to the data in that same Exhibit, please provide the reasons, other than commercial considerations, which explain why no Certificates of Control for over quota imports for US rice seem to have been issued between September 2003 and April 2005 and consequently no over quota imports of US rice seem to have actually occurred during the same period, with the exception of one shipment of 611 tons of paddy rice (date of Certificate of Control 15.09.2004; importation date 16.09.2004).

(c) The period mentioned in the preceding paragraph seems to coincide that in which the United States claims that consecutive so-called "Letters of Acceptance" from MARA's General Directorate would have delayed the date for issuing Certificates of Control (see paras. 23 to 26 of the United States first written submission). If, in Turkey's view, the lack of imports and approved Certificates of Control bears no relation with the issuance of Letters of Acceptance, could Turkey then explain what reasons, other than commercial considerations, may explain this apparent coincidence.

16. Throughout this dispute, Turkey has argued that there is no blanket ban on the issuance of Control Certificates and, if there was, it is not enforced; therefore, the US Article XI:1 claim necessarily fails. This argument attempts to distort the US claim, mis-states the correct legal test under Article XI:1 of the GATT 1994, and ignores past panel reports which provide useful guidance on the subject.

17. The US claim is that Turkey prohibits or restricts trade in rice at the MFN rates for paddy, brown, and milled rice.[7] It does so by failing to issue Control Certificates. The earlier US argument

[7] As discussed in paragraph 13 of the US First Submission, the MFN rates are 45 per cent *ad valorem* for paddy, brown, and milled rice. However, Turkey's domestic tariff schedule provides different effective tariff rates for paddy, brown, and milled rice: 34 per cent *ad valorem* for paddy rice, 36 per cent *ad valorem* for brown rice, and 45 per cent *ad valorem* for milled rice. In the US panel request, the United States claimed that Turkey

that there was a blanket ban on the issuance of Control Certificates was based on the US belief that Turkey did not require such Certificates under the TRQ. Turkey has clarified that it does require importers to obtain Certificates under the TRQ, which provides further evidence that the TRQ regime is discretionary – as is the entire Turkish import licensing regime for rice. Thus, Turkey's argument that it grants Control Certificates under the TRQ does not rebut the US claim that it is denying the issuance of such Certificates at the MFN rates.

18. Second, Article XI:1 provides that a breach occurs if a measure prohibits or restricts importation. Thus, even if Turkey did issue some Control Certificates, that would not rebut the US claim that Turkey is restricting imports through the use of a discretionary import licensing regime. The United States has provided voluminous evidence that Turkey is restricting imports of rice – the Letters of Acceptance, the rejection letters, the court cases decided in favor of the government, statements of Turkish officials, newspaper articles and, most recently, the December 15, 2006 statement from the Turkish Minister of Agriculture[8] and documentary proof that Turkey has imposed a minimum import pricing scheme as part of its Control Certificate process for rice.[9] That Turkey is restricting imports of rice and has exercised discretion in denying the issuance of Control Certificates is confirmed by Turkish trade data, Turkey's own Control Certificate data, and Turkey's refusal to provide the actual Control Certificates that the Panel has repeatedly requested.

19. Turkey's contention that it has granted Certificates at the MFN rates for Egypt, China, Vietnam, Thailand, and Pakistan demonstrates the weakness of its argument. As the United States discussed in paragraph 10 of its Oral Statement during the second panel meeting, the fifteen Certificates referenced here by Turkey, assuming that they were granted, were exceptions to the rule, covering minuscule amounts of trade. We cannot confirm that the Certificates were even granted because Turkey has chosen not to provide the actual Certificates. Further, whereas Turkey allegedly granted 56 Control Certificates for MFN rice imports during the September 10, 2003 through March 17, 2006 period, it allegedly granted 740 in-quota Control Certificates for rice during that same period.[10] Even if MARA approved 56 Certificates during that time, the data still shows that the overwhelming majority of Certificates were issued to importers who "chose" to purchase large quantities of domestic paddy rice as a condition for obtaining a license to import rice, rather than importers who imported without having to make such purchases. Thus, the wide disparity in Annex TR-33 between the number of Certificates allegedly granted in quota and at the MFN rates provides further compelling evidence that Turkey is restricting rice imports at the MFN rates.

20. Essentially, Turkey's response to the documentary evidence provided by the United States has been that the documents do not mean what they say on their face and, that even if they did, the Letters of Acceptance are not enforced. It is troubling that Turkey continues to maintain this position despite taking a directly contrary view in its aggressive enforcement of those Letters in Turkish court. In any event, non-enforced mandatory measures may still be found to be inconsistent with GATT/WTO rules, as evidenced by the *Malt Beverages* panel report. Turkey has failed to distinguish, or even address, this report in any of its submissions or statements, instead arguing that the Letters of Acceptance are not laws and regulations so they are not subject to WTO rules. But Article XI:1 of the GATT 1994 necessarily has a broad scope of application and does not make an exception for measures based on their form or how a Member chooses to characterize them; if it did make such an exception, Article XI:1 would have no teeth. Turkey has imposed a legal prohibition on the issuance of Control Certificates for those importers who do not purchase domestic paddy rice, in order to

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denied or failed to grant import licenses to import rice "at or below the bound rate of duty" in order to cover importation at the effective tariff rates, as well as the MFN rates.

[8] *See* Exhibit US-77.

[9] *See* Exhibits US-68 and US-76.

[10] *See* Exhibit US-71.

prohibit or restrict MFN trade in rice. The Letters provide for the denial of Certificates on their face, and Turkey has not denied their authenticity.

Q115. (Turkey) During the second substantive meeting with the Panel, the United States presented Exhibit US-71, in which the number provided by Turkey of the allegedly approved Certificates of Control of 2,242, was broken down in order to exclude the ones that in its opinion were not relevant, such as those approved during an allegedly "irrelevant time period", as well as those granted for in-quota imports and for rice imports from the EC and the Former Yugoslav Republic of Macedonia (with whom Turkey has preferential trade agreements). The United States thus suggested that, once all these exclusions were made, the final number of relevant Certificates of Control allegedly approved by Turkey was 56. Can Turkey comment on this number and what would it imply. If in Turkey's view, the final number suggested by the United States is not correct, could Turkey provide its reasons, referring to relevant evidence, as appropriate.

21. In its answer, Turkey contends that Control Certificates allegedly granted for the import of EC and Macedonian rice are relevant to the US claim that Turkey is prohibiting or restricting MFN trade in rice. The United States respectfully refers to its answer to Panel Question 114. Turkey wants the US claim to be that Turkey denies all Control Certificates. As previously mentioned, that is not the US claim. The US claim is that Turkey is prohibiting or restricting imports at the MFN rates by denying Control Certificates for the importation of rice at those rates. Accordingly, the fact that Turkey may grant Certificates to the EC and Macedonia under special quota regimes and may grant Certificates under the TRQ with domestic purchase does not rebut the US claim. The United States notes, however, that while Turkey argues that the number 56 is irrelevant, it does not contest the validity of that figure.

22. Turkey now argues that, if it had intended to use Certificates to restrict rice imports, it would have denied Certificates for EC and Macedonian rice under the special quota regimes because imports from the EC and Macedonia presented a threat to the domestic industry. That contention is not supported by the evidence on the record. First, as previously noted by the United States in its comment on Turkey's reply to Panel Question 102, Macedonian rice is a complete non-factor. Second, the EC quota regime covers 28,000 metric tons of milled rice. This is a relatively small quantity of rice, relative to the Turkish market. As neither EC rice nor Macedonian rice would pose a threat to the Turkish rice industry, there would have been no reason to block such imports.

23. Turkey also alleges that the US calculation of 2.5 per cent is incorrect because the United States used the wrong denominator in its calculation. The United States used the number 2,242 because that is the number Turkey provided, and the United States stands by its calculation. Even if Turkey were correct and the actual number were either 3.25 per cent or 6 percent, it is striking that the overwhelming majority of importers "chose" to import rice under a regime where they had to purchase massive quantities of domestic rice as a condition for importing rice, rather than importing the rice "free and clear." Any of these figures would provide further compelling evidence that Turkey is restricting trade in rice.

24. Lastly, the United States would like to clarify its characterization of time periods as "relevant" or "irrelevant." The United States is not alleging that Turkey did not grant Control Certificates prior to September 10, 2003 and does not need to prove that Turkey has not granted Control Certificates after the date of panel establishment in order to establish a breach. Turkey has attempted to inflate the alleged number of Control Certificates it has granted during the time period where the United States is alleging a breach (September 10, 2003 through March 17, 2006) by referring to Certificates it may have issued during other periods (i.e., prior to September 10, 2003 and after panel establishment). Turkey's attempt to re-cast the US claim to its liking is what prompted the United States to make the distinction between periods that are "relevant" and periods that are "irrelevant."

25. In fact, it would have been more precise to say that, on the one hand, there were periods where the United States was alleging a breach and, on the other hand, there were periods where it was not alleging a breach (pre-September 10, 2003) or did not need to allege breach to sustain its claims for purposes of WTO dispute settlement (post-panel establishment). In fact, these other periods are highly relevant, because Turkey's actions in these periods provide strong evidence of a breach during the period covered by the US claims.

26. Indeed, the United States has provided documentary evidence that Turkey is continuing to prohibit or restrict imports since March 17, 2006 through the denial of Control Certificates and the imposition of a minimum import price regime for rice, which appears to be having the same effect on imports. Since Minister Tuzmen's announcement that Control Certificates will be issued as of April 1, 2006, Turkish import data shows that only 1,044 metric tons of rice were imported into Turkey between that date and the end of 2006.[11]

27. Moreover, as demonstrated in Exhibit US-71, the United States is not alleging that Turkey was prohibiting or restricting trade in rice prior to September 10, 2003; therefore, the period January 1, 2003 through September 9, 2003 should provide a relevant "control" period for how Turkey's import regime should work in the absence of such a prohibition or restriction. In fact, the evidence to be gathered from this period is compelling. According to Annex TR-33, Turkey allegedly granted 274 Control Certificates at the MFN rates from January 1 - September 9, 2003. There was no TRQ regime during that time, so all of these Certificates were issued outside the TRQ. This figure is significant because, from September 10, 2003 through March 17, 2006, the period in which the United States is alleging a breach, Turkey allegedly granted just 56 Certificates at the MFN rates. Thus, over the 2 ½ year period in which the United States is alleging a breach, Turkey granted only 56 Certificates, whereas during the previous eight months where the United States is not alleging a breach, Turkey granted almost five times that number of Certificates.

Q125. (Turkey) In its reply to question 14 posed by the Panel, Turkey submitted "that the import procedure which applies for imports at both MFN and TRQ rates is described in the scheme provided in Annex TR-32". In that Exhibit, Turkey has identified the legal basis for both the procedure for importation at MFN rate and that for importation at TRQ rate. During the second substantive meeting with the Panel, however, Turkey stated that Communiqué No. 2006/5 on the Standardization in Foreign Trade had been replaced by new legislation.

(a) Can Turkey confirm that Communiqué No. 2006/5 on the Standardization in Foreign Trade has been replaced by new legislation and provide a copy of such new legislation.

28. In its response, Turkey contends that Communiqué No. 2006/5 (the 2006 Communiqué) has been repealed and replaced by Communiqué No. 2007/21 (the 2007 Communiqué). However, Turkey has provided no documentary evidence that the 2006 Communiqué has been repealed. Article 12 of the 2006 Communiqué states that the 2005 Communiqué has been abolished. By contrast, Article 12 of the 2007 Communiqué notes that two other Communiqués have been abolished but it does not mention the 2006 Communiqué.

29. The 2007 Communiqué appears to be the same as the 2006 Communiqué in most respects. However, the 2007 Communiqué contains a new Article 8, which provides that:

> [u]nder the protocol that will be made between the Ministry of Agriculture and Rural Affairs and Undersecretariat for Customs all-important information related to the

[11] *See* Exhibit US-81rev.

> realized importation will be provided to the Ministry of Agriculture and Rural Affairs by Undersecretariat for Customs.

30. As the United States noted in its response to Panel Question 150, Turkey's reference price system for rice, which is enforced by Turkish Customs, is linked to the issuance of Control Certificates. In an August 10, 2006 Order, the General Directorate of Customs noted that, under an understanding reached between MARA and FTU, calculation of the applicable duty according to the reference price calculation is made a component of Control Certificates for rice:

> ... a mutual understanding is reached for application of a reference price in the control documents drawn up in connection with the export of rice and rice paddy pursuant to the Communiqué of Standardization in Foreign Trade with number 2006/5.
>
> [The references prices noted above] will be considered as references prices *in case a control document is drawn up and this fact is communicated to the Ministry of Agriculture and Rural Affairs*.
>
> Consequently, *since the values mentioned above will be considered as reference in the establishment of control documents for the subject items* from the date of 01.08.2006, this fact has to be taken into account while determining the price.[12] (emphasis added).

Article 8 of the 2007 Communiqué appears to operationalize the obligation of Turkish Customs under an interagency agreement to provide information on invoice values to MARA so that MARA can consider that data in making a determination regarding whether to issue a Control Certificate. This provision demonstrates a direct link between the reference price scheme for rice and MARA's Control Certificate system, thereby providing further evidence that Turkey restricts trade in rice and operates a discretionary import licensing regime.

(b) Can Turkey confirm what is the basis, in Turkish domestic legislation, for the authority that the Turkish Foreign Trade Undersecretariat (FTU) has to issue Communiqués on the Standardization in Foreign Trade. Is it Decree No. 2005/9454 on "The Regime for Technical Regulations and Standardization for Foreign Trade" in Exhibit TR-2?

31. In paragraph 19 of the US First Submission, the United States noted that Article 1 of the 2005 Communiqué states that it had been promulgated pursuant to subparagraph 2(g) of the 1996 General Assessment.[13] Article 14 of the 2007 Communiqué states that the "Annex" to the 1996 General Assessment was abolished; however, it is silent on whether the rest of the General Assessment remains in force. As a result, while subparagraph 2(g) of the General Assessment was not cited in either the 2006 or 2007 Communiqués, Turkey has not provided any evidence that that provision has become inoperative.

Q128. (Turkey) Article 6 of Turkey's Communiqué No. 31 on the Approval of Control Certification at the Importation of Foodstuffs and Packaging Materials that come into Contact with Foodstuffs and on Control Procedures at Importation Stage apparently contains the list of documents required for the issuance of a Certificate of Control for imports into Turkey. In section 6 B) c), this provision lists "other documents that must be presented according to the type of product".

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[12] Exhibit US-68.
[13] *See* Exhibit US-1.

(b) In its reply to question 25 posed by the Panel, the United States argued that the language in the 2005 and 2006 MARA Communiqués was "broad enough to provide MARA with the flexibility to 'ask for' other documents on a product-by-product basis". Does Turkey agree with this statement? If the United States' statement is not correct, could Turkey provide its reasons, referring to relevant evidence, as appropriate.

32. Article 2 states that "it is necessary to apply to [MARA] "with control certificate form (Annex VII), pro forma invoice or invoice, and other documents which may be asked for, depending on product, by the Ministry."[14] Turkey argues that this language does not provide MARA with the flexibility to ask for documents other than the application form and invoice on a product-specific basis. In sum, Turkey is contending that Article 2 does not mean what it says on its face. The United States has also demonstrated that, in fact, Turkey has imposed a legal prohibition on the granting of Control Certificates for the importation of rice unless importers provide documentation certifying that they have purchased the requisite quantity of domestic paddy rice. (Turkey failed to cite documentary proof of domestic purchase in its answer as one of the required documents.) Thus, Article 2 allows MARA to request other documents and MARA has utilized that discretion to do so, and deny or fail to issue Certificates where those documents are not provided.

33. Turkey also argues that it is "clear" that the reference to "other documents which may be asked for, depending on product, by the Ministry" refers to SPS-related documentation, such as an SPS certificate. The United States does not agree. The language used in Article 2 – "other documents" – is broad and could cover virtually any document that MARA would require. If MARA had meant to refer only to SPS-related documentation, it could have explicitly said so. In addition, Article 2 requires importers to submit customs-related documentation – i.e., the invoice or pro forma invoice – as part of the application process. Thus, it is not clear from the text of Article 2 that "other documents" should be interpreted to encompass only SPS-related documents. Turkey admits as much in its answer when it contends that the additional document requirement "is simply nature of the product (i.e., the degree of processing that the product has been subject to)." Accordingly, Turkey's arguments run directly contrary to the text of Article 2, as well as MARA's implementation of that Article.

Q129. (Turkey) Turkey has argued that the Certificates of Control act "as an element of trade facilitation ... provid[ing] legal certainty and commercial predictability to importers engaged in rice importation" (Turkey's oral statement during the first substantive meeting with the Panel, para. 6), as well as pursue "*inter alia,* sanitary and phytosanitary objectives" (Turkey's response to question 14 posed by the Panel, page 7).

(a) Please explain how these sanitary and phytosanitary purposes are achieved through the Certificate of Control, and how can MARA and Turkish Customs Officials verify the products compliance with relevant standards and technical regulations, without having either seen the appropriate sanitary and phytosanitary certificate or having made the relevant physical inspection of the good to be imported.

34. Turkey states that the Control Certificate "allows MARA and Turkey's customs authorities to verify, on a single document, all required customs information, including the product's compliance

[14] Article 6 of Communiqué No. 2003/31 on the "Issuance of Control Certification at the Importation of Foodstuffs and Packaging Materials that come into Contact with Foodstuffs and on Control Procedures at Importation Stage," as amended (Annex TR-21), also notes that MARA requests certain documents from importers, including the Control Certificate form, proforma invoice, and "[o]ther documents that must be presented according to the type of the product."

with relevant standards and technical regulations." Turkey has acknowledged that actual verification of product compliance with SPS controls occurs after MARA has issued the Certificate, so this statement is not correct. Further, Turkey has not explained why it is necessary for both MARA and Turkish Customs (not to mention FTU, with respect to its import permit) to verify the same customs-related information twice in two separate documents. Turkish Customs already requires submission of this information[15] and MARA does not conduct inspections until after it has granted the Certificate, so the Certificate is extraneous. The function of the Control Certificate is to prohibit or restrict imports of rice (and other agricultural products as MARA sees fit).

(c) Please provide supported arguments, making reference to relevant evidence, as appropriate, that can counter the United States' assertion (in its response to question 14 posed by the Panel, footnote 11 to para. 23) that, according to Turkish importers, the Ministry of Agriculture and Rural Affairs (MARA) "does not request the phytosanitary certificate at the stage when it decides whether or not to grant the Control Certificate. Rather, MARA does not require the presentation of a phytosanitary certificate until the Provincial Agricultural Directorate that has jurisdiction over the port where the importation is to be realized asks for it. But this step only takes place after MARA has already granted the Control Certificate."

35. Turkey is now contending that MARA requires SPS information and commitments from rice importers at the time they apply for Control Certificates. (Turkey refers to this as "early-screening" in its answer to Panel Question 132(a).) This contradicts the evidence, as both Turkey and the United States agree that the SPS process does not begin until after Certificates have been approved. The United States also would note that in Turkey's description of the rice importation process in its answer to Panel Question 14, Turkey makes no mention of any such requirement.[16]

Q133. (Turkey) In its question 44 (e) posed by the Panel after the first substantive meeting with the parties, the Panel asked Turkey to "provide a copy of each of the 2,223 Certificates of Control approved between 2003 and September 2006". In its response, Turkey stated that photocopies of such Certificates of Control were available; that the relevant Ministries were not, however, authorized to provide all the copies to the Panel; and that, in any event, Turkey would be able to provide to the Panel in strict confidence copies of any individual Certificate of Control listed in Annex TR-33 upon its request.

(a) Can Turkey elaborate on the legal reasons why, under Turkish domestic legislation, the government would not be authorized to provide the copies requested by the Panel.

(b) If Turkey cannot provide a photocopy of each of the 2,223 Certificates of Control approved between 2003 and September 2006, can it then at least provide a photocopy of each of the 56 approved Certificates of Control characterized as "relevant" by the United States during the second substantive meeting with the Panel (see para. 8 of the United States statement during the second substantive meeting with the Panel and Exhibit US-71).

(f) If Turkey cannot provide the full photocopies requested in paragraphs (b), (c), (d) and (e) above out of concerns for the privacy of the companies involved, can it at least provide those same photocopies after having blacked out the names of the companies.

[15] *See* Exhibit US-62.
[16] *See* Step 1 and Step 2 on pages 7-8 of Turkey's Replies to the First Set of Panel Questions.

36. The Panel first asked Turkey to provide the legal basis for its refusal to provide the Control Certificates at the first panel meeting. Turkey could not identify any specific provision and asserted that it was less a matter of what Turkey could provide than what it was *choosing* to provide to the Panel. Now, in the next-to-last-submission, Turkey has identified what it claims to be a provision of Turkish law that prohibits Turkey from providing the Certificates. Turkey has not provided an actual copy of this document, and the document is not readily available, so it is impossible for the Panel or the United States to discern whether the cited provision provides what Turkey says it does.

37. The United States has two observations on this matter. First, Turkey is claiming that Article 13 of the Turkish Statistical Law prohibits Turkey from providing the Control Certificates. Yet in its answer to Panel Question 133, Turkey has offered to provide these documents to the Panel (but only the Panel). To the extent Turkey is indicating that there is an exception to its law that would allow it to submit copies of the Certificates to the Panel in connection with this proceeding, there is no basis for concluding that the exception would not equally be applicable were Turkey to also provide these copies to the United States. However, the United States notes again that the contents of the Turkish Statistical Law are known only to Turkey, and it is possible, given Turkey's offer to provide copies to the Panel (only), that the Law does not in fact prohibit Turkey from providing the Certificates, as Turkey now asserts.

38. Second, the Panel has asked Turkey to provide copies of the Control Certificates at the first panel meeting, in its first set of questions to the parties (Question 44(e)), at the second panel meeting, and in its second set of questions to the parties (Question 133(b)). Turkey's answer to Question 133 is that Turkey will provide copies of the Certificates *if the Panel wants such documents*. The Panel has now requested that Turkey provide this information on no fewer than four occasions during these panel proceedings. It is clear that the Panel wants Turkey to provide this information. Yet Turkey still has not provided it. The Panel should draw an appropriate inference from Turkey's refusal to comply with the Panel's repeated requests for this information.

39. The United States has obtained only a handful of Certificates which pre-date the period in which the United States is alleging a breach. We provided a copy of one of those Certificates in Exhibit US-79. Turkey continues to maintain the position that all Control Certificates are valid for twelve months. However, the particular Certificate the United States submitted was valid for only two weeks and expired just prior to the beginning of the Turkish rice harvest. Only Turkey has copies of the Control Certificates during the period in which the United States is alleging a breach.

> **(e) In its reply to question 44 posed by the Panel, Turkey refers to Exhibit TR-36, with a list of rejected Certificates of Control, including the reasons for denial, until 21 September 2006. Can Turkey provide a photocopy of each of the rejected applications as well as of the corresponding letters by which it notified the requesting companies of the rejection of a requested Certificate of Control, for the importation of rice corresponding to each of the cases cited in Exhibit TR-36.**

40. In Annex TR-36, Turkey put together a chart listing several denied Control Certificate applications along with the alleged reasons for denial. This chart was submitted to the Panel on November 30, 2006. Turkey now claims that it does not maintain the information it would have needed in order to create Annex TR-36. The Panel should draw the appropriate inference from Turkey's failure to provide the information the Panel is requesting.

Q135. (Turkey) The United States has submitted, as Exhibit US-29, photocopy of an application for a Certificate of Control for the importation of 10,000 tons of rice, allegedly

"returned due to spelling errors". The Panel notes that "spelling errors" were not listed as "reasons for denial" of Certificates of Control in Exhibit TR-36.

(a) Can Turkey confirm whether spelling errors would be grounds for the rejection of an application for a Certificate of Control? If so, under which of the three categories ("Missing documents not completed", "Upon the demand of the Company" or "Incomplete Administrative Requirements") would a spelling error fall? What is the legal basis for rejecting applications owing to "spelling errors"?

(b) Can Turkey confirm whether the specific photocopy submitted by the United States as Exhibit US-29 corresponds to the application identified as number 3 in the list of "Denied Control Certificates Applications and Reasons for Denial in 2003", provided by Turkey in Exhibit TR-36?

41. In its response, Turkey asserts that it cannot respond to the Panel's question because the Control Certificate application submitted by the United States is not in MARA's records. If that is indeed the case, then the data Turkey has provided in Annex TR-36 is incomplete, and there could be more instances where MARA rejected Control Certificate applications on which Turkey has not reported. Beyond that, the United States takes note of Turkey's confirmation in its response that it sometimes rejects Control Certificates due to spelling errors. Further, contrary to Turkey's contention, the United States does not rely solely on individual episodes of rejection to make its case that applications are not being issued. The United States has submitted to the Panel documents issued by Turkey's Minister of Agriculture providing unambiguously that no Control Certificates are to be granted during certain time periods, and those documents cover a 2 ½ year time period with no gaps. There was a restriction on the granting of Control Certificates at the MFN rates in place at least through the date of panel establishment. The individual episodes of rejection, as well as the court cases in which the Turkish government has argued in favor of the legal prohibition and Turkish courts have upheld the government's position, provide evidence that the legal prohibition that was codified in the Letters of Acceptance is being enforced. Further, even enforcement of a clear legal prohibition is not necessary to sustain a successful claim that WTO rules have been breached.

Q136. (Both Parties) According to Turkey's statements (see, for example, para. 25 of its first submission), Certificates of Control for the importation of rice are valid for periods of 12 months.

(a) If this is the case, why would importers not import rice during periods in which Certificates of Control are allegedly not being approved, but some Certificates of Control are presumably still valid?

(b) During periods when the TRQ was not open, why would imports of rice not occur under Certificates of Control that were presumably still valid?

42. In its answer to Panel Question 136(a) and (b), Turkey asserts that "Certificates of Control ... are not quantity-specific." In Exhibit US-19, the United States provided a blank copy of a Control Certificate. The ninth item that an importer must list when it submits its application for a Control Certificate is "Quantity of the Commodity." In Annex TR-33, Turkey even lists the specific quantities covered by each Control Certificate it allegedly granted, as well as the specific quantities that were allegedly imported under each Certificate. Thus, Turkey's contention that a Control Certificate is not quantity-specific is belied by the Control Certificate document itself.

43. Throughout these panel proceedings, Turkey has made various assertions that contradict the documentary evidence then on the record or documentary evidence later provided. Without being

able to examine the actual Control Certificates, which Turkey refuses to provide, the United States cannot agree that Control Certificate issuance is never conditioned on importation of specific amounts. In fact, most of the Control Certificates for imports of US rice granted during the period in which the United States is alleging a breach were allegedly issued for quantities that are much smaller than a typical shipment of US paddy rice. A rational importer would apply for one Control Certificate to import 10,000 tons of paddy rice, not multiple Control Certificates. Yet the data provided by Turkey in Annex TR-33 shows that the majority of Control Certificates allegedly issued between September 10, 2003 and March 17, 2006 were for the importation of 2,000 metric tons of rice or less, and the amount of rice covered by each Certificate was often recorded right down to the ton because Turkey was enforcing a TRQ. Further, Letter of Acceptance 390 provides that, as of April 1, 2006, Control Certificates could be issued but only one at a time and with strict quantitative limits – 10,000 metric tons for milled rice and 15,000 metric tons for paddy rice.[17] Thus, the evidence in the record demonstrates that regulating quantity is a critical element of the Control Certificate process.

(c) Is there any difference between the Certificates of Control issued to import at the MFN rate, under preferential trade agreements and under the TRQ? If so, please specify the differences between them. If not, does this mean that a same Certificate of Control could have been equally used to import under the different rates? Did an importer have to specify whether the intended import was to be in-quota or over-quota when applying for a Certificate of Control? Please make reference to relevant evidence, as appropriate.

(d) Would a Certificate of Control still be valid for twelve months, even during a period when a TRQ was in place? Would an in-quota Control Certificate maintain its validity of 12 months, and therefore still allow imports to take place at the preferential in-quota tariff rate, despite the tariff quota period closing?

(e) Does the amount permitted to be imported under the Certificate of Control hold any relation with the amount permitted to import when applying for an import license to the Turkish Foreign Trade Undersecretariat (FTU)?

44. As the United States noted in its answer to this question, Turkey has maintained throughout these proceedings that it differentiates between "in-quota Certificates of Control" and "out-of-quota Certificates of Control." These were terms coined by Turkey, not the United States and, in Annex TR-33, Turkey set forth what it purported to be a list of all of the Control Certificates it has granted, broken down into "in quota" and "over quota." In the column "In Quota/Over Quota," there was not a single instance in 58 pages listing over 2,000 alleged Control Certificates in which the word "both" was entered in that column. In every single case, the Certificate was issued for either in-quota imports or over-quota imports.[18] Apparently, Turkey has now realized the implications of that distinction and is attempting to reverse itself, arguing that there is no such thing as in-quota or out-of-quota Certificates of Control. But its reversal is contradicted by its own prior arguments and the evidence it has itself provided.

Q138 (Turkey): The United States has submitted, as Exhibit US-35, a letter dated 24 March 2006, by which the Turkish Minister of State informs the United States Trade Representative that the Control Certificates "will be issued as of April 1, 2006".

(a) Does this letter imply that Certificates of Control were not being issued at the time when the letter was issued?

[17] *See* Exhibit US-36.
[18] Except for eleven entries where the "In Quota/Over Quota" column was left blank.

(c) Can Turkey also elaborate on its closing statement during the second substantive meeting with the Panel (para. 3), that the letter "was designed to reassure the United States that, with the phasing-out of the TRQ, traders would likely resume trading on MFN terms" and that "[i]t was not an implicit confirmation of any systematic denial of the approval of Certificates of Control".

45. Turkey was unable to answer this question when the Panel first posed it at the second panel meeting. Now Turkey is arguing that the letter was meant to "reassure the United States that, with the phasing-out of the TRQ, traders would have likely resumed trading on MFN terms" and that the letter "does not imply that Certificates of Control were not being issued." However, that is exactly what the letter implies. The letter states that Control Certificates "will be issued as of April 1, 2006." The logical implication of that statement is that Certificates were not being issued prior to that date. This is confirmed by the rest of the letter, which shows that the offer to issue Control Certificates was put forward by Turkey as a way to resolve this dispute. Turkey would not have offered something it was already doing as a concession to the United States in order to settle the dispute. Rather, Turkey was offering to do something it was not doing at that point in time.

46. Moreover, the letter does not state that traders would likely resume trading on MFN terms. What the letter provides is that the Government of Turkey would issue Control Certificates as of April 1, 2006.

47. Further, Turkey's new explanation that the letter meant to reassure the United States that trade would likely resume on MFN terms implicitly recognizes that traders were not trading at the MFN rates while the TRQ was open. The United States would not have needed reassurance that MFN trade would likely resume unless there was no MFN trade at the time Minister Tuzmen delivered the letter.

48. Turkey's *ex poste* interpretation and explanation of Minister Tuzmen's letter is inconsistent with the wording of the letter and the context in which it was issued and serves to confirm the US claim that Turkey was prohibiting or restricting MFN trade in rice.

(b) What relation, if any, does the date of 1 April 2006, mentioned in the Turkish Minister of State's letter, bear with the end of the TRQ on 31 July 2006 (please make reference to relevant evidence, as appropriate.)? Was the adoption of any new or modified measure necessary to achieve the results indicated in the Minister's letter? If so, has any such measure been adopted as a result of the Minister's letter? What is the factual and legal relationship between the letter in Exhibit US-35 and any measure adopted to put that into effect, on the one hand, and, on the other hand, the Letter of Acceptance signed by the Minister of Agriculture and reproduced in Exhibit US-36?

49. Turkey's assertion is contradicted by the evidence. Minister Tuzmen's letter, in which he states that Control Certificates will be issued as of April 1, 2006 and that the TRQ will "cease to exist" after July 31, 2006 was presented to Ambassador Portman on March 24, 2006. On the same day, Turkey's Minister of Agriculture approved the recommendation contained in Letter of Acceptance 390 which provides that the "start date to issue certificates will be April 1, 2006 and the closing date will be August 1, 2006."[19] August 1, 2006 was the day after the TRQ was set to "expire" (and we now know that, on that date, Turkey put in place a reference price system for rice which implicates various WTO obligations of Turkey). The evidence supports the conclusion that Letter of Acceptance 390 was the measure by which Turkey meant to implement the commitments contained in

[19] *See* Exhibit US-36. *See also* Exhibit US-24 ("The Decree to 'open the doors as of April 1, 2006' came from the Ministry of Agriculture. . . It is said that the Minister of Agriculture, Mr. Mehdi Eker, had positively responded to the requests of starting the rice import in April").

Minister Tuzmen's letter. As the United States has documented – in the form of importer rejection letters, newspaper articles, and Turkish trade data – Turkey did not do so.

50. On a final note, Turkey continues to argue that the Letters of Acceptance are internal, unofficial documents that were never enforced. The United States has already documented that Turkey introduced these documents in domestic court proceedings and that Turkey's lawyers argued that they constituted the sole legal authority for MARA's denial of Control Certificates. The United States has also shown that at least two Turkish courts have concurred with the government's position and enforced the restriction on the issuance of Control Certificates for MFN trade. Lastly, Turkey's argument that it does grant Control Certificates for rice is unresponsive to the US claim that Turkey is prohibiting or restricting rice imports by failing to grant Control Certificates for MFN trade.

Q141. (Turkey) In its statement during the second substantive meeting with the Panel (para. 6), Turkey asserted that "[t]here is no provision that gives the relevant authority discretion not to approve Certificates of Control." In other submissions (see, for example, para. 78 of its first submission and reply to question 23 from the Panel), Turkey has stated that the so-called "Letters of Acceptance" are internal communications aimed at developing policy recommendations.

(a) If the Minister of Agriculture and Rural Affairs has no discretion not to approve Certificates of Control, under what legal basis have then officers from the same ministry submitted internal communications to the Minister recommending that Certificates of Control not be approved? What could explain a Director General of MARA repeatedly making a recommendation to the Minister to adopt a policy if the Minister had no discretion to adopt such policy?

(b) What legal basis, if any, would give the Director General of MARA the authority to issue these so-called "Letters of Acceptance". Please also specify under what basis these letters could extend to the subject of the issuance of Certificates of Control.

(c) What factors or events would trigger these recommendations from the Director General of MARA?

(d) Would one of the reasons that could trigger such a recommendations from the Director General of MARA be that there is a sufficient level of domestic production or a high level of imports?

(e) Could the Minister refuse the recommendation made by a Director General of MARA through a so-called "Letter of Acceptance"? Please provide documentary evidence in support of your response.

51. In its answer to question (e), Turkey acknowledges that "the Minister may refuse the recommendation made by a Director General of MARA." There are consequences when a recommendation is refused and consequences when a recommendation is approved. When a recommendation is refused, no action is taken. On the other hand, when a recommendation is approved, the Minister is ordering that action be taken to implement that recommendation. In this dispute, the United States has provided documentary evidence of several instances where a recommendation from the Director General was approved. It is not a coincidence that, in the 2 ½ year period covered by these recommendations, Turkish trade data shows that MFN trade in rice was virtually shut down when the TRQ was closed. Even Turkey's alleged Control Certificate data – which, again, we are unable to verify because Turkey is refusing to provide the actual Certificates –

shows that, while only 56 Control Certificates were allegedly issued at the MFN rates during that period, there were 740 Control Certificates allegedly issued under the TRQ with domestic purchase, which no rational economic actor would select if he or she had the choice.[20]

52. Further, Turkey acknowledges that the "demands of interest groups" or high levels of imports could trigger the issuance of Letters of Acceptance, yet it maintains the position that the recommendations contained therein would never have been implemented. Instead, it contends that the Letters are merely set forth to "discuss" policy recommendations and to define an "internal policy." The United States has already shown that the Letters had effects that were not simply "internal" and that what was set forth in the Letters was enforced. But even a cursory examination of the Letters does not support Turkey's contention as to their character. The Letters do not engage in an analysis of potential options for further discussion. They set forth a recommendation that is accepted on the signature of the most senior official in the Ministry of Agriculture.

Q142. (Turkey) Can Turkey provide evidence of so-called "Letters of Acceptance" containing policy recommendations that the Minister of Agriculture and Rural Affairs did not approve?

53. Letters of Acceptance are not privileged and internal communications because Turkey introduces them in open domestic court. Turkey is refusing to provide information that the Panel is requesting, and the Panel should draw an appropriate inference.

Q144. (Turkey) Please describe the procedure that follows the issuance of a so-called "Letter of Acceptance". Would such a letter, after being accepted by the Minister, be communicated to the provincial MARA offices, and if so, how?

54. Recommendations that are approved by the Minister of Agriculture are circulated to provincial levels so that they can be enforced.

Q145 (Both Parties): In its statement during the second substantive meeting with the Panel (para. 12), the United States argued that Turkish courts have attributed legal effect to the so-called "Letters of Acceptance" and upheld MARA's enforcement of such Letters. In response, in its closing statement during the same meeting (para. 9), Turkey argued that, in a specific case cited, a "Court of first instance appears to have given effect to an ultra vires act [from the Minister of Agriculture and Rural Affairs]". What should be the appropriate value given by the Panel, if any, to interpretations of domestic law developed by local courts? What should be the appropriate value given by the Panel, if any, to interpretations of domestic law advanced by the administration of a Member before a local court? Was the allegedly erroneous interpretation of Turkish domestic law developed by the local court appealed by the Turkish administration? Should interpretations of domestic law developed by local courts be accorded a different value by the Panel if they were issued by higher courts?

55. Turkey cannot argue before this Panel that the Letters of Acceptance are not enforceable and not enforced, while simultaneously arguing (successfully) in its own domestic court that those same Letters are enforceable and must be enforced. There is no basis to conclude that Turkey's contrary arguments and aggressive enforcement of the Letters of Acceptance in its own courts are not relevant evidence in determining the legal status of the Letters. Turkey now claims that it did not appeal one of the court decisions "for reasons of judicial expediency." It seems more plausible that Turkey did not appeal the decision because the Government of Turkey argued for the court to make that decision and the court agreed with the government's position.

[20] *See* Exhibit US-71.

Q146. (Turkey) Could Turkey please confirm, making reference to relevant evidence, as appropriate, the dates during which the tariff quota for the various types of rice imports (paddy, brown, milled) was opened and closed. Could Turkey also please confirm whether or not there was a domestic purchase requirement at all periods and if so, whether or not there were specific domestic purchase ratios to imported paddy, brown and milled rice to which importers could determine how much domestic rice needed to be purchased to be able to import a certain volume of paddy, brown or milled rice.

56. The United States disagrees with Turkey's assertion that Turkey specified the domestic purchase ratios in each of the three TRQ openings thus far. In the first TRQ opening, the exact quantities of rice an importer had to purchase were not specified and, thus, it was within TMO's discretion how much rice had to be purchased with respect to each individual importation. *See* Exhibit US-3. This can be confirmed by examining the Turkish version of the regulation in both Exhibit US-3 and Annex TR-12. Contrary to what is contained in Turkey's English version of the regulation, there is no column specifying the domestic purchase requirement in the original Turkish version. Turkey appears to have inserted a column in the English version that is not contained in the Turkish version.

Q147. (Turkey) Could Turkey please explain why data from Exhibit TR-33 seem to indicate that in-quota imports of non-EC origin rice occurred during periods in which the Panel understands the TRQ was not in place (January, September and October 2004; August and September 2005; and August 2006)?

57. In the US view, Turkey has yet to substantiate that any rice imports have occurred at the MFN rates. The only concrete evidence that has been presented has come from the United States, in the form of the Letters of Acceptance, the importer rejection letters, the court filings and decisions, statements from Turkish officials, and newspaper articles, which demonstrate that the opposite is true.

58. A review of the instances identified by the Panel shows that the vast majority of the alleged Certificates identified by the Panel covered in-quota importations that occurred within three days after the TRQ was closed. It is impossible to know for certain without examining the Certificates and other accompanying documentation themselves, but a likely explanation is that the Certificates and FTU import permits were approved for in-quota importation before the TRQ was closed, but completion of the customs process was delayed so the importation did not officially occur until the beginning of the following month. As the United States previously noted in its answer to Panel Question 14, the importer obtains the FTU import permit first, then the Control Certificate, and then must undergo several other steps, including the SPS assessment at the applicable provincial directorate of MARA, returning to Turkish Customs to provide all of the necessary documentation, and then going to the port to secure the release of the product. If any one of these steps is delayed, or the importer is unable to pay for the merchandise in full or make alternative arrangements, the importation can be delayed. Thus, it is not inconceivable that, in a few cases where the importer was attempting to realize an importation just before the TRQ closed, the process ran over a few days.

59. Indeed, such a scenario is envisioned by Communiqué No. 2003/31 on the "Issuance of Control Certification at the Importation of Foodstuffs and Packaging Materials that come into Contact with Foodstuffs and on Control Procedures at Importation Stage," as amended, provided in Annex TR-21. Article 5(e) provides that:

> [r]egarding products, for which import procedures have been initiated following the registration of the customs declaration before the expiry date of the control certificate but the control certificate of which has expired at the date of delivery of the commodity to the relevant party, the procedures are completed regardless of such expiry.

Thus, the fact that a few in-quota imports of non-EC origin rice entered during periods when the TRQ was closed does not mean that such imports entered at the MFN rates, as Turkey contends. That would be impossible because, as Turkey has stated repeatedly in the past, there are in-quota Control Certificates and over-quota Control Certificates, and Annex TR-33 shows that there was no overlap between the two. Rather, these few instances where in-quota imports allegedly took place after the TRQ was closed, on the basis of in-quota Control Certificates that were technically no longer valid, were likely examples of the scenario provided for in Article 5(e) above.

Q148. (Turkey) In its response to question 18 posed by the Panel, Turkey responds that "no change was introduced into its import regime for rice in November 2005 or as a consequence of the initiation of WTO dispute settlement proceedings". The only change would have been that the TRQ lapsed on 31 July 2006, without being renewed.

(a) Please explain why the TRQ has not been reopened since?

(b) In its response to question 79 posed by the Panel, Turkey stated in turn that the TRQ regime "pursued, at the same time, two legitimate objectives, i.e., that of a greater market supply and that of market stabilization". Can Turkey explain how these two objectives could now be guaranteed in the absence of the TRQ regime.

(c) In its response to question 82 posed by the Panel, Turkey stated that "[t]he domestic and international economic indicators also lead Turkey to the assumption that there will not be, at least for the foreseeable future, needs for market intervention and stabilization of the types that the TRQ helped address." Is the Panel then right in concluding that if any of those domestic and international economic indicators were to change, Turkey could then reevaluate the convenience of reintroducing a TRQ regime for the importation of rice? If this is not the case, please explain making reference to relevant evidence, as appropriate.

60. Turkey claims that it has not re-opened the TRQ because TRQs are costly to administer and it prefers market forces. However, the TRQ was successful in achieving its objective of increasing Turkish domestic production and reducing imports, which is confirmed by documents that the United States has submitted, including Exhibits US-77, in which Turkey's Minister of Agriculture states that the 87 per cent increase in paddy production was the result of the domestic purchase requirement. Thus, there may be some validity to Turkey's contention that there is no longer a need to re-open the TRQ, although for different reasons than Turkey posits. Turkey is in a position to re-open the TRQ when it deems appropriate, and past history indicates it will do so.

(e) Were Turkey to reintroduce a TRQ regime for the importation of rice, would any change need to be introduced in the current domestic legislation? Is the legislation that allowed for the establishment of the TRQ still in force?

61. The United States notes that Turkey agrees that Decree No. 2004/7333 is still in force. Turkey did not answer the Panel's question as to whether that Decree would need to be modified in order to re-open the TRQ. Given that the referenced Decree supported the three previous TRQ openings, the United States submits that the Decree would not have to be modified for Turkey to re-open the TRQ.

Q149. (Turkey) In paragraph 50 of Turkey's rebuttal, Turkey argued that "[i]t is clear that a TRQ system without the domestic purchase requirement would have resulted in too great an advantage in favour of imported products. This outcome would have also carried negative

consequences in terms of the viability and affordability of Turkey's market intervention mechanisms and its ability to comply with WTO obligations in relation to its committed levels of Aggregate Measurement of Support." Could Turkey please explain how, in its view, it would have failed to comply with WTO obligations in relation to its committed levels of Aggregate Measurement of Support without the domestic purchase requirement as a part of its tariff quota mechanism?

62. Turkey has not answered the question posed by the Panel. Further, if Turkey considered that a TRQ without domestic purchase would have resulted in too great an advantage for imported rice, the United States believes that the obvious alternative would have been not to impose a TRQ at all and simply allow rice importation at the MFN rates. The United States also notes that, in any event, the AMS requirement does not create an exception to other WTO obligations.

Q151 (Turkey): In its reply to question 75 posed by the Panel, Turkey asserted that the correct methodology for interpretation of the TRIMs Agreement should require a preliminary assessment of the existence of both the trade and the investment elements of an alleged TRIM. Turkey also stated that, in order to establish the existence of a violation of the TRIMs Agreement, its domestic purchase requirement must first be found to be inconsistent with the provisions of GATT Article III. Finally, Turkey invited the Panel to reject the United States claims regarding an alleged violation of the TRIMs Agreement because the United States has not proved how Turkey's domestic purchase requirement would result in a trade-related investment measure and if so whether it would violate GATT Article III. Please clarify the implications of the above statements in relation to the "order of examination" of the US claims:

(a) Does Turkey propose that the Panel first examine US claims under GATT Article III:4 and then consider the claims under the TRIMs Agreement separately?

(b) In the negative, can Turkey explain why would the United States be required to prove how Turkey's domestic purchase requirement would result in a trade-related investment measure in the first place?

(c) Alternatively, does Turkey believe that once the Panel has made a ruling under GATT Article III:4, it should resort to judicial economy and refrain from making a finding under the TRIMs Agreement?

63. The United States agrees that, with respect to the domestic purchase requirement, the Panel should examine the US claim of an Article III:4 breach before turning to the US claim of a breach of Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement. The United States recognizes that, if the Panel finds that Turkey has breached Article III:4 of the GATT 1994 by instituting a domestic purchase requirement, it need not make a finding under Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement.

64. With respect to the substance of this claim, the United States stands by its previous arguments that the domestic purchase requirement contains an investment element. These arguments are supported by the nature of the domestic purchase requirement, Turkish production data, and other evidence, including statements from Turkish officials in Letters of Acceptance. By contrast, Turkey's assertions ignore the evidence. Turkey now alleges that certain factors – for example, the renewal and modernization of farm systems and technologies and an increase in the harvested area – provide evidence that the increase in domestic rice production resulted from increases in productivity, rather than the domestic purchase requirement. Turkey's argument does not necessarily follow. All of these factors also could provide evidence that the domestic purchase requirement worked as intended. For the previous three years, Turkish producers have been assured that their entire crop would be

purchased at above-market prices which, as the data demonstrates, has encouraged them to increase their harvested area. These developments have led to increased industry profits, some of which could have been expended on modernizing farming equipment and investing in new technologies.

65. Further evidence that the domestic purchase requirement has led to investment in the domestic industry that has benefitted many Turkish rice producers can be found in four letters that Turkish producer groups sent to the US Embassy in Ankara at the beginning of February.[21] The four letters, which are virtually identical, state that the WTO case "is penalizing us". Further, the letters threaten that if the United States does not drop its "meaningless" WTO case, "it will damage our bilateral trade relations" and there will be a "boycott of all American products we use such as seeds, machines, fertilizer and agricultural medicine ...".

66. Lastly, Turkey's argument that rice imports have increased from 2004 through 2006 is misleading. First, imports of rice in 2004 fell from 2003 levels because Turkey imposed its restrictions on September 10, 2003, when Turkey's Minister of Agriculture issued the first Letter of Acceptance, and imports of rice were not permitted to resume until late-April 2004, when FTU first opened the TRQ. As shown in Exhibit US-45, TY (trade, or calendar year) imports were 151,000 metric tons in 2004, as compared to 320,000 metric tons in 2003. With rice exports virtually zeroed out for nearly eight months, it is no surprise that imports would have subsequently increased. However, they did not rebound to previous levels. While TY imports in 2005 were 298,000 metric tons, they fell again in 2006 to approximately 154,000 metric tons, which is virtually the same quantity of imports as in 2004.[22]

[21] *See* Exhibit US-83.

[22] As shown in Exhibit US-45, USDA forecasted that TY2006 imports would be 200,000 metric tons (milled equivalent basis). In Exhibit US-81rev, the December 2006 trade data has been added, and the actual figure for TY2006 is 186,513 metric tons (product weight basis). Using the conversion factors referenced in the US answer to Panel Question 117, this figure is reduced to 153,983 metric tons on a milled equivalent basis.

ANNEX F-3

COMMENT BY THE UNITED STATES ON THE COMMENTS BY TURKEY ON THE REPLIES BY THE UNITED STATES TO THE QUESTIONS POSED BY THE PANEL AND TURKEY AFTER THE SECOND SUBSTANTIVE MEETING

(28 February 2007)

In its comments on the US 6 February 2007 answers to Panel Question 150 and Question TR-1, Turkey states that the United States has mistranslated the Turkish term "Kontrol Belgesi". Specifically, Turkey states that the term's proper English translation is "control document", rather than "import license".

The United States appreciates Turkey having brought this matter to its attention. As a result, the United States has now reviewed the US translations in this dispute, and discovered that, in Exhibits US-76 and US-77, its translators translated "Kontrol Belgesi" as "import license", while in other exhibits they translated this term as "control document". In light of the fact that the United States has confirmed with its translators that they consider either term to be a correct translation, and that the term used by Turkish officials has not changed, the United States wishes to withdraw its assertion in paragraphs 50 and 66 of the US answers to the Panel's second set of questions, which is based on the translation as "import license". The United States notes that this does not change its conclusion, supported by other evidence and argumentation, that Turkey's Control Certificate constitutes an "import license" for WTO purposes.

ANNEX F-4

REPLIES BY TURKEY TO QUESTIONS POSED BY THE PANEL AFTER THE SECOND SUBSTANTIVE MEETING
(6 February 2007)

Q99. (Both Parties) The Panel has examined the data provided by each of the parties. Certain data contained in some of the Exhibits provided by the Parties show significant discrepancies. For example:

(a) Figures in Exhibits US-45 and TR-23 for rice imports from 2001 to 2006;

(b) Figures in Exhibits US-53 and TR-25 for paddy rice imports in January and December 2004 and January to May 2006; for brown rice imports in March 2003 and January to September 2006; and for milled rice imports in July 2004 and January to July 2006.

(c) Figures in Exhibits US-55 and TR-28 for landed CIF prices of paddy rice in December 2004; of brown rice in March 2003, March to June 2004, September to December 2004 and June 2006; and of milled rice in December 2005.

On the other hand, some figures provided by the United States and Turkey show a high degree of similarity. For example:

(a) Figures in Exhibits US-45 and TR-24 for milled rice consumption from 2001 to 2005.

(b) Figures in Exhibits US-53 and TR-25 for paddy rice imports throughout 2003, February to November 2004, throughout 2005, June and July 2006; for brown rice imports in January, February and April to December 2003, throughout 2004 and 2005; and for milled rice imports throughout 2003 (except for May), throughout 2004 (except for July), and throughout 2005.

(c) Figures in Exhibits US-55 and TR-28 for landed CIF prices of paddy rice throughout 2003, April to November 2004, throughout 2005 and June to August 2006; of brown rice throughout 2003 (except for March), throughout 2005, and April to June 2006; and of milled rice throughout 2003, throughout 2004, throughout 2005 (except for December) and from January to July 2005.

Please explain why, in your view, this is the case, referring to relevant evidence, as appropriate.

Turkey submits that it uses realized import data collected by the Undersecretariat for Customs and processed by the Turkish Statistics Institute (TUIK), and it confirms the data that it has provided in Annexes TR-23, TR-25 and TR-28. Turkey and the United States have taken these figures from the same source (i.e., TUIK), and, as also noted by the Panel, much of these figures match with each other. However, for those periods showing discrepancies, some of the figures included in Exhibit US-53 reflect lower amounts than those included in Annex TR-25 and some others are even missing. In this sense, Turkey once again confirms its figures and believes the discrepancies are due to errors of Exhibit US-53. Moreover, Turkey would like to clarify that it has acquired the relevant statistics officially from TUIK, while the method through which the United States provided these statistics remains unknown. Monthly landed CIF prices shown in Annex TR-28 are calculated by dividing total value of the importation by total quantity for every month.

Q100. (Both Parties) The Panel has considered the information provided by Turkey on "Monthly landed CIF values" in Exhibit TR-28, and noted a sharp increase in paddy rice prices in June 2003, January and November 2004, February 2005 and March 2006. Likewise, it has noted a sharp increase in milled rice prices in September 2003, January and August 2004 and September 2005. It has also noted a significant fall in the price for milled rice in December 2003. Please explain why, in your view, these sharp increases and this significant fall in prices occurred, referring to relevant evidence, as appropriate.

Turkey submits that there are many types of rice and paddy rice which differ in terms of type, quality and also price. HS Code 1006.10 includes paddy rice for sowing, which has a greater value in price (up to 3,600 US$/tonne). In June 2003, for example, the sharp increase in average landed CIF value results from 4 imports of paddy rice for sowing of a single firm, with an average CIF value of 3,395 US$/tonne. The average landed CIF value of paddy rice in June 2003 is 233 US$/tonne if these 4 imports are excluded. On the other hand, the paddy rice import in January 2004 is realized in one single consignment from the United States, with an average CIF value of 897 US$/tonne, which almost equals the average CIF value of paddy for sowing. There are 2 import consignments in November 2004 for paddy rice, with landed CIF values of 1,329 US$/tonne and 268 US$/tonne respectively. In the same manner, a single import of paddy rice for sowing having 1,101 US$/tonne CIF value in February 2005 and again a single import of paddy rice for sowing having a CIF value of 1,530 US$/tonne in March 2006 increases the average landed CIF values. Provided that these imports are excluded from the imports figures, the average values would be 149 US$/tonne in February 2005 and 289 US$/tonne in March 2006 respectively.

On the other hand, all of the rice imports in September 2003 had been realized from Italy, and have higher exporting value due to the high quality of the product. Furthermore, there are only two consignments for rice importation in January 2004 and yet one of them has a CIF landed price of 2,743 US$/tonne. This price was questioned by the Turkish authorities, and the importer declared that the type of rice was "Carnaroli" and that the price was true, and that at the moment the price of this type of rice amounts to 1.25 €/Kg. Again, when in August 2004 and September 2005 imports of rice from Italy took place, the average CIF values started to increase (imports from Italy generally start after August that is crop season). The fall in price in December 2003 is a result of the importation of 10,450 tonnes of rice with average CIF value of 264 US$/tonne.

In any event, Turkey submits that it should be noted that values may often be distorted by importers' declarations.

Q102. (Turkey) Aside from the alleged lack of competitiveness of rice from the United States, what other reasons may explain in Turkey's view the fact that, according to the information provided by Turkey in Exhibit TR-25, there seem to have been no imports of:

(a) Paddy rice or brown rice in the months of October in 2003, 2004 and 2005. In addition, the data in Exhibit TR-33 suggest that no rice imports whatsoever (paddy, brown or milled) took place in February and March 2004. Further, the data in Exhibit TR-33 seem to suggest that there were no rice imports other than EC/Former Yugoslav Republic of Macedonia out-quota rice imports in October – December 2003 and in September – October 2005.

(b) Milled rice from the United States during: (i) January – May 2004; (ii) July 2004; (iii) September – November 2004; (iv) July – December 2005; and, (v) January 2006 – onwards.

(c) Paddy rice from the United States during: (i) October - December 2003; (ii) February - May 2004; and, (iii) September - November 2005

In Turkey, the crop season of paddy rice starts in the second half of September. The major importers of rice into Turkey used to be the millers, although their import share has recently decreased. As a result, generally, in the crop season the demand for importation tends to decrease due to the high volumes of paddy rice supply in the market.

On the other hand, there are two main reasons for the lack of imports in February - March 2004. The first one is the increase of rice stocks by the beginning of 2004, due to the fact that huge volumes of rice imports took place in 2003 (in particular, milled rice imports increased from 131,431 to 214,528 tonnes). The second reason is the steep increase of the world price for rice in 2004, as Annex TR-43 shows, that caused the fall of competitiveness of imported over domestic rice and resulted in a further decrease in the demand for importation.

In any event, Turkey submits once again that the trends in the Turkish rice market have always been exclusively determined by business determinations made by traders. Turkey has outlined above few elements which have affected importers' choices during a specific period. Other elements that play a substantial role on the importers' determination are, *inter alia*, the preferential tariff applied on EC and Macedonian rice within the quotas, together with the quota rent exploitations and licenses entitlement; import networks used by the traders; their commercial traditions; consumer preferences; quality of the rice; brand names; requests by distribution chains; currency fluctuations; existence of tariff advantages; and proximity of export markets.

Q103. (Turkey) In reference to the previous question, is Turkey of the view that the lack of imports during the indicated periods was a result of a lack of applications for Certificates of Control to import rice or rather of a rejection of those applications? Please reason your response, referring to relevant evidence, as appropriate.

Turkey submits that the lack of imports during certain periods was the result of a lack of applications for Certificates of Control. This largely depended on a combination of factors. Among those, the decrease in the demand of imported rice as a consequence of the increase of the world price for rice and the large presence of stocks certainly affected requests for Certificates of Control for the period going from February to March 2004. As for the decrease of imports of paddy in the month of October, Turkey refers to the reasons provided in its answer to question 102.

Turkey submits the following table with the breakdown of requests, rejections and approvals for each rice product (i.e., types of rice) in each period specified in question 102 as it relates to trade with the United States:

PERIOD	Total Application	Rejected	Approved	Product
January-May 2004	2	2	0	milled rice
July 2004	2	0	2	milled rice
September-November 2004	1	0	1	milled rice
July-December 2005	5	5	0	milled rice
January-9 November 2006	6	4	2	milled rice
October-December 2003	0	0	0	paddy rice
February-May 2004	2	0	2	paddy rice
September-November 2005	10	0	10	paddy rice

Q104. (Turkey) Exhibit TR-8 shows that in 2004 Certificates of Control were issued for France, Iran and "Iskenderun Customs Antr." However, Exhibit TR-33 does not show any Certificates of Control for these three. Could Turkey explain this potential discrepancy? Also, what is covered by "Iskenderun Customs Antr."?

Annex TR-8 does not show the figures pertaining to the Certificates of Control approved by the Ministry of Agriculture and Rural Affairs (MARA), but it shows instead the total quantities, for each country, for which import licenses were issued by the Undersecretariat for Foreign Trade (UFT) under the TRQ system. The non-existence of Certificates of Control for imports of rice from these three countries in Annex TR-33 indicates that despite the fact that these importers obtained the licenses from the UFT to import under the TRQ, in the end they did not request a Certificate of Control, therefore they did not import rice (either under the TRQ or over-quota). In addition, Turkey submits that "Iskenderun Customs Antr." refers to the warehouse at the Iskenderun Customs point of entry.

Q105. (Turkey) Exhibit TR-35 seems to show lower figures of rejected applications for Certificates of Control in 2005 and 2006, than Exhibit TR-36. In particular, Exhibit TR-36 would suggest that there were 85 rejections in 2006 versus 38 shown in Exhibit TR-35. Could Turkey explain these discrepancies, including their implications for the total number of rejections and the percentage of rejections shown in Exhibit TR-35.

Turkey submits that the data provided in Annex TR-36 are more updated and respectfully requests the Panel to take into consideration the mentioned Annex. On the other hand, Turkey submits an updated version of Annex TR-35, showing rejections up to 9 November 2006.

Q106. (Turkey) The data in Exhibit TR-33 seem to indicate that the total number of approved Certificates of Control for 2003, 2004 and 2006 were higher, and for 2005 they were lower, than what is indicated in Exhibit TR-35. Could Turkey explain these discrepancies, including their implications for the total number of approvals and the percentage of rejections shown in Exhibit TR-35.

The data provided in Annex TR-33 are more updated and Turkey respectfully requests the Panel to take into consideration the mentioned Annex.

Q107. (Turkey) The figures for Bulgaria and Russia in Exhibit TR-25 seem to show a discrepancy with the actual figures or dates for Bulgarian and Russian imports in Exhibit TR-33. Could Turkey please explain this apparent discrepancy?

The data concerning realized import figures or dates provided in Annex TR-33 is prepared by MARA, which records these figures after the product is released for free circulation following customs control. This method of recording may, at times, lead to certain minor statistical discrepancies with the records of the General Directorate of Imports of the UFT. Turkey requests the Panel to take into consideration, in relation to the realized import figures, Annex TR-25, prepared by the mentioned General Directorate.

Q108. (Turkey) According to Exhibit TR-25 there were no imports of milled rice in April 2004; however, Exhibit TR-33 indicates that 21,000 kg of rice were imported from Pakistan in the same month. Could Turkey please explain this, or any other similar, discrepancies between Exhibits TR-33 and TR-25?

Turkey respectfully submits that a closer scrutiny of Annex TR-33 would reveal that the Certificate of Control relating to the import of 21,000 Kg. of rice realized from Pakistan was approved on 8 June 2004, but the date of importation was inadvertently recorded as 23 April 2004. Annex TR-25 shows that the mentioned importation from Pakistan was realized in June.

Q109. (Turkey) In its reply to question 4(c) posed by the Panel, Turkey stated that Exhibit TR-8 provided "import data, broken down into types of rice and into MFN and TRQ imports for the years 2004 to 2006" (emphasis added). Actually, the table in Exhibit TR-8 seems to show import figures broken down by types of rice and by "Total imports" (A), "Import Licenses Issued" (B) and a third column indicating the difference between A and B, which is supposed to show the "Total out of quota imports".

(a) Can Turkey please confirm this.

Turkey confirms.

(b) As regards milled rice, the corresponding figure for imports of US rice in the third column is negative. According to footnote 2 to the table, the negative sign indicates that the total quantity of import licenses was larger than the actual imports. Does the negative sign also mean that there were no out of quota imports of US milled rice during the period under consideration?

Turkey submits that the negative sign does not necessarily mean that there were no out-of-quota imports. The negative sign indicates that the actual realized imports were less than import licenses issued in that period. So, as a result, actual importation might have been realized either within the tariff quota or out-of-quota. However, if the sign is positive, then we assume that all of the import licenses issued have been fully used (due to the tariff advantage), and the difference between total imports and import licenses issued are definitely realized out of the quota (though, theoretically all of the importation might have been realized out-of-quota since we do not know the actual usage of the import licenses).

Q110. (Turkey) In its question 7 posed to both Parties, the Panel had asked, *inter alia*, for information regarding Turkey's average prices for domestic production of, separately, paddy, brown and milled rice in its market, for the period from July 2003 to the end of 2006 (including estimates, as appropriate). In response to this question, Turkey indicated that "reference should be made to Annex TR-27". However, the data in Exhibit TR-27 seems to refer only to individual purchases by companies in 2005. It does not show monthly averages and specify the type of rice it refers to, nor does it cover the period requested by the Panel. In the absence of such information, can Turkey comment on the data provided by the United States in Exhibit US-54. Can Turkey find a relation between the price data provided in Exhibit TR-27 and that provided in Exhibit TR-29?

In the years 2005 and 2006, the Turkish Grain Board (TMO) was not determining market prices, due to the fact that it made purchases of very little quantities of paddy rice (i.e., approximately 14,000 tonnes), so the prices quoted by TMO cannot represent the price actually paid by the purchasers to the paddy producers. However, as indicated in Annex TR-27, 559,280 tonnes out of 600,000 tonnes of domestically grown paddy rice were purchased from paddy producers by the importing firms that wanted to take advantage of the TRQ system. As a result, Turkey strongly believes that the average purchase price of 0.64 YTL/Kg of domestic paddy rice realized in the transactions between the firms and paddy producers pertaining to 559,280 tonnes of paddy rice is the clear indication of the price of paddy rice in 2005.

The comparison between the data provided in Exhibit US-54 and in Annex TR-29 shows that the purchasing prices declared by the TMO remain lower. The research for price realized by TMO takes as a basis the prices of products that are processed in Edirne, Bandırma, Samsun and Tekirdağ, the regions where paddy rice is cultivated and it is only natural that the price increases in certain amounts in areas that are rather far to these regions because of the transportation cost. The above-noted margin of difference of prices between the United States and Turkish data may also stem from the possibility that the United States may have taken the prices established in certain luxurious shopping centres as average Turkish price for rice. The basis of the data compiled by the USA Rice Federation provided in Exhibit US-54 remains unknown.

Annex TR-27 and Annex TR-29 show that the prices paid by individual companies for paddy rice directly purchased from producers (Annex TR-27) are lower than TMO purchasing prices for paddy rice in general (Annex TR-29). One explanation to this fact is the transportation cost that is necessary in case of TMO purchases, which simply does not exist when producers sell their products directly to the traders. On the other hand, producers may prefer to sell their products to individual companies due to the cash payment advantage. In these cases, those producers deliver their products without further loss of time and receive payment in return, of course also taking into account certain price disadvantage.

Q111. (Turkey) In its reply to question 9 posed by the Panel, Turkey provided Exhibit TR-30 showing overall purchases and sales of milled and paddy rice by the Turkish Grain Board (TMO) during the period 2003 to 16 November 2006. Could Turkey please explain the reasons for the significant difference in the quantities of paddy rice sold by the TMO in 2004, as compared to the quantities sold in 2005 and 2006, respectively?

The differences between the quantities of paddy rice sold by the TMO in 2004 and 2005-2006 are a consequence of the lower amount of purchases of domestic rice made by TMO, for a number of reasons (i.e., the higher world market prices of rice with the related higher degree of competitiveness of Turkish rice, the relative weakness of the Turkish Lira, and last but not least the operation of the TRQ). The lower purchases of domestic rice resulted in lower sales of TMO stocks during the 2005 and 2006 period. With particular respect to the TRQ, it is clear that it provided a great advantage through its preferential tariffs. To fulfil the domestic purchase requirement, traders purchased domestic rice mainly from domestic producers, as it was cheaper than buying it from the TMO. Therefore, the TMO, which acts as an intervention agency, had lower quantities of domestic rice to purchase and, consequently, less domestic rice to sell.

Q112. (Turkey) How does Turkey explain the sudden occurrence of over-quota imports of United States rice in May 2005 shown in Exhibit TR-33?

Turkey strongly objects to the United States' claim in relation to the alleged reasons behind the sudden occurrence of over-quota imports in May 2005. Turkey believes that the explanation rests in the business determinations and commercial decisions made by the individual rice traders on the basis of

the traditional factors that trigger importation of specific consignments of rice from an origin rather than another. The United States is not providing evidence to prove otherwise. Turkey submits that this information is probably easier to be found with the individual importers that made those business determinations and commercial decisions. To this end, Turkey believes that the United States is in a better position to secure this type of information.

Q113 (Turkey): In its reply to question 14 posed by the Panel, Turkey submitted "that the import procedure which applies for imports at both MFN and TRQ rates is described in the scheme provided in Annex TR-32":

(a) In that Exhibit, when referring to "Importation at the MFN rate", Turkey has stated that "[a]fter approval [of the Control Certificate by MARA], importers can start customs procedures". Is this statement compatible with Turkey's assertion in its closing statement during the second substantive meeting with the Panel (para. 12) that "[t]he Certificate of Control is a document used as part of Turkey's customs procedures". Is in Turkey's view the approval of Certificates of Control by MARA part of Turkey's customs procedures or do customs procedures rather begin only after the approval of such Control Certificates?

Turkey submits that the Certificate of Control is a document used as a part of Turkey's customs procedures. In the mentioned statement, the phrase "customs procedures" stands for the procedures at customs points-of-entry. It is not intended to mean that the approval of the Certificates of Control was not a part of customs procedures within the meaning of the Import Licensing Agreement. As already specified in its Oral Statements, importation and customs-clearance in Turkey involve a number of steps, which include 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 element whose procedure starts at MARA and ends at customs. The approval of the Certificate of Control by MARA is, therefore, an integral part of the customs procedures. Article 2 of the Communiqué of Standardization for Foreign Trade No. 2006/5, states that: "*at import stage of the products, which have been included in the annex lists (Annex I, Annex II/A-B, Annex III, Annex IV, Annex V/A-B, Annex VI-A), control certificates approved by the Ministry of Agriculture and Rural Affairs shall be asked for by relevant customs administration.*"

(b) In other sections of its submissions, Turkey has stated that no import licenses are required for imports at MFN rate (see, for example, paras. 3 and 28 of its first submission). If the latter statement is correct, why in the last column on "Documents" required for Importation at MFN rates in Exhibit TR-32, is there a reference to "C. Import license". On the other hand, there seems to be no similar mention of "Import license" under the column on document requirements for "Importation under TRQ". Can Turkey clarify this situation?

Turkey submits that the reference to "C. Import License" under the column on documents for the "*Importation at the MFN Rate*" is due to an error. In this respect, Turkey respectfully requests the Panel to take into consideration the corrected version of Annex TR-32 attached herewith. Indeed that reference should have been inserted under the column on documentation under "*Importation under the TRQ*". Turkey has repeatedly stated that while Certificates of Control, as part of the customs documentation, are required for both TRQ and over-quota imports (including MFN and FTA imports), the import license granted by the UFT is required only for imports under the TRQ.

Q114. (Turkey) In its reply to question 15 posed by the Panel, Turkey refers to Exhibit TR-33.

(a) According to the data in that Exhibit, Certificates of Control would have been regularly issued for imports of US paddy and milled rice throughout the first

eight months of 2003. However, the table shows that from September 2003 to the end of May 2004 there seem to have been no Certificates of Control issued for imports of rice from non-European origin either in or outside the TRQ. In addition, it seems that no Certificates of Control were issued for non-EC out-of-quota rice imports from September 2003 to August 2004. Could Turkey explain the reasons for these changes in trend?

As previously explained, the lack of imports in that particular period was due to the lack of application for Certificates of Control as a consequence of two main factors (i.e., the presence of large stocks of rice in the market due to huge volumes of rice imports occurred in 2003 and the steep increase of the world price for rice in 2004) that caused the fall of competitiveness of imported over domestic rice and resulted in a further decrease in the demand for importation. These factors could have encouraged the importers to resort to stocks and/or withhold their business determinations.

(b) With reference to the data in that same Exhibit, please provide the reasons, other than commercial considerations, which explain why no Certificates of Control for over quota imports for US rice seem to have been issued between September 2003 and April 2005 and consequently no over quota imports of US rice seem to have actually occurred during the same period, with the exception of one shipment of 611 tons of paddy rice (date of Certificate of Control 15.09.2004; importation date 16.09.2004).

Turkey submits that, according to the data provided in Annex TR-33, Certificates of Control have been granted within the mentioned time period for importation of rice originating in countries such as Egypt, China, Vietnam, Thailand and Pakistan, together with the rice from the United States. The relative lack of approved over-quota Certificates of Control for importation of US-origin rice, and consequently the lack of imports thereof, are due to the lack of competitiveness of US-origin rice.

(c) The period mentioned in the preceding paragraph seems to coincide that in which the United States claims that consecutive so-called "Letters of Acceptance" from MARA's General Directorate would have delayed the date for issuing Certificates of Control (see paras. 23 to 26 of the United States first written submission). If, in Turkey's view, the lack of imports and approved Certificates of Control bears no relation with the issuance of Letters of Acceptance, could Turkey then explain what reasons, other than commercial considerations, may explain this apparent coincidence.

Turkey has already explained why, with particular reference to the period going from February to March 2004, no imports of rice occurred in Turkey and refers to the answer to question 114(a). Rather than with the Letters of Acceptance, the lack of imports was connected, in addition to commercial considerations, with world prices, presence of stocks and high volumes of imports in the preceding years.

On the other hand, Turkey has also submitted that the fact that the Letters of Acceptance were not enforced and did not affect market trends is evident from the fact that a considerable amount of Certificates of Control were in fact approved by MARA during the alleged period of operation of the Letters of Acceptance. For example, as indicated by Turkey in previous submissions, despite the existence of a "contrary recommendation" contained in a so-called Letter of Acceptance (i.e., the Letter of Acceptance No. 107, as referred to by the United States in its First Submission), 224 Certificates of Control were, in fact, approved between 10 September 2003 and 30 June 2004. 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. This general trend is confirmed during later periods of

alleged enforcement of the Letters of Acceptance up to September 2006. As a second example, despite the existence of a "contrary recommendation" contained in what the United States describes as the Letter of Acceptance No. 905, 544 Certificates of Control were, in fact, approved between 1 July 2004 and 1 January 2005. The fact that importers chose to import through the FTA and TRQ (when in force) is a result of the advantages conditions and related benefits offered by the preferential rates.

Q115. (Turkey) During the second substantive meeting with the Panel, the United States presented Exhibit US-71, in which the number provided by Turkey of the allegedly approved Certificates of Control of 2,242, was broken down in order to exclude the ones that in its opinion were not relevant, such as those approved during an allegedly "irrelevant time period", as well as those granted for in-quota imports and for rice imports from the EC and the Former Yugoslav Republic of Macedonia (with whom Turkey has preferential trade agreements). The United States thus suggested that, once all these exclusions were made, the final number of relevant Certificates of Control allegedly approved by Turkey was 56. Can Turkey comment on this number and what would it imply. If in Turkey's view, the final number suggested by the United States is not correct, could Turkey provide its reasons, referring to relevant evidence, as appropriate.

In Exhibit US-71, the United States extracts the number of 56 Certificates of Control given for out-of-quota MFN imports, and argues that this should prove the existence of a legal prohibition being imposed on the approval of Certificates of Control. However, Turkey believes that this argument, and the relevance of this number, is based on a wrong assumption. The wrong assumption is that of considering irrelevant imports from the EC and Macedonia, and consequently excluding them, when comparing Certificates of Control approved for in-quota (TRQ) and over-quota trade. Turkey submits that if it had intended to use the Certificates of Control as an instrument to restrict rice imports and protect domestic producers, there would have been no reason to exclude imports under the two FTAs from the alleged denial of approval of Certificates of Control. Certainly imports from the EC and Macedonia might constitute an even greater threat to domestic production because of the greater tariff advantage. Turkey fails to understand why and on which legal basis the United States continues to consider these imports irrelevant in their arguments.

In addition, Turkey believes that, even accepting the exclusion of FTA imports, the calculations elaborated by the United States are still distortive. The United States in fact refers to different time-periods when comparing the total number of approved Certificates of Control (i.e., January 2003 to November 2006) with the total number of Certificates of Control approved for MFN trade (i.e., 10 September 2003 to 17 March 2006). In paragraph 8 of its Oral Statements at the second meeting of the Panel, the United States alleged that the figure of 56 Certificates of Control represents *a mere 2.5 per cent of the 2,242 Certificates of Control figure provided by Turkey*. A correct calculation would result, again given the exclusion of FTA imports and considering the period between 10 September 2003 and 17 March 2006, in a figure of 3.25% (i.e., 56 out of 1,718) of total approved Certificates of Control for importation of MFN rice. On the other hand, Turkey submits that the relevant time period to be considered is between January 2003 and November 2006. The calculations done in relation to this period show that the percentage of the total approved Certificates of Control for importation of MFN rice amounts to 6%. Turkey also submits that the period arbitrarily selected by the United States does not take into account the fact that Certificates of Control have a validity of one year from the date of approval. Therefore, if anything, Turkey submits that the period of reference, for the purposes of actual trade occurring from 10 September 2003 onwards should be, ideally, that starting on 11 September 2002 (with respect to the approval of Certificates of Control).

Q118. (Turkey) Could Turkey clarify whether, in the exhibits it has submitted to the Panel (in particular in Annexes TR-8, TR-23, TR-25 and TR-33), the figures provided for imports of paddy, brown and milled rice are actual data on imported volumes or are rather the volumes of

paddy and brown rice imports shown as milled rice equivalents (i.e., have they been converted to milled rice equivalents)?

Turkey submits that the figures in Annex TR-8 are milled rice equivalents of total imports of paddy rice, brown rice and rice imports. The figures included in Annexes TR-23, TR-25 and TR-33 represent actual data on imported volumes of these products.

Q119. (Turkey) Using the figures provided by Turkey as absolute numbers, and not as milled rice equivalents, the Panel has noted differences in the data concerning import volumes and the number of approved Control Certificates provided by Turkey, particularly between Annexes TR-33 and TR-20 bis and between TR-33 and TR-23.

(a) Can Turkey clarify these divergences.

(b) Can Turkey confirm which of these figures the Panel is to consider as final, providing relevant evidence to support the final figures.

Annex TR-20 covers the period until September 21, 2006; while the more updated data can be found in Annex TR-33, covering until 9 November, 2006. Turkey thus respectfully requests the Panel to take into consideration Annex TR-33.

On the other hand, as previously explained in the answer to Question 107, Turkey requests the Panel to take into consideration Annex TR-25 for data on realized imported quantities.

Q120. (Turkey) Could Turkey clarify the units used in the table in Exhibit TR-28?

The unit used is US$/tonnes.

Q121 (Turkey): During the second meeting with the Panel, Turkey submitted a photocopy from the "FAO Rice Market Monitor – December 2006", with a table entitled "Export Prices for Rice". Could Turkey confirm whether it intends this photocopy to be part of Turkey's exhibits to the Panel?

Yes, the table entitled "Export Prices for Rice" from the FAO Rice Market Monitor should be included in Annex TR-43.

Q122. (Turkey) In its reply to question 13 posed by the Panel (para. 20) the United States argued that "there are no restrictions on EC-origin rice that enters under the EC quota but… importers are required to purchase domestic paddy rice with respect to any imports of EC rice over the 28,000 metric ton annual cap". Could Turkey comment on this assertion? Are imports of EC rice above the 28,000 annual quota subject to a domestic purchase requirement?

Turkey confirms that, as for the rice originating from any other country, there has never been any restriction on rice imported from the EC. EC-origin milled rice benefits of a duty-free quota of 28,000 metric tonnes. Out of the duty-free quota, EC rice can be imported at the MFN or applied rates as well as under the TRQ regime. In this latter case, importers must satisfy the domestic purchase requirement. In any event, whether imported through the duty-free quota, at MFN or applied rates, or under the TRQ tariff advantage, the approval of Certificates of Control is always an element of importation.

Q123. (Turkey) During the second meeting with the Panel, the United States submitted information asserting that that "under the Turkey-Macedonia FTA, Turkey has preferential import possibility within tariff quota (8,000 tonnes, 0% duty)" (Exhibit US-72).

(a) Could Turkey please confirm the information regarding this bilateral tariff quota with zero in-quota duty?

Turkey confirms this information.

(b) Could Turkey also please indicate if rice imports from the Former Yugoslav Republic of Macedonia, either under this tariff quota, or MFN, are subject to obtaining a Certificate of Control or to a domestic purchase requirement?

Rice imports from Macedonia are subject, like rice originating from all other destinations, to approval of Certificates of Control, whether the importation is to be realized under the TRQ regime, the FTA or at the MFN or applied rates. The purchase of domestic rice is required only for the importation under the TRQ regime.

(c) Does Turkey have preferential trade arrangements with any other country for the importation of rice into Turkey? If so, could Turkey please provide information regarding such agreements, indicating their key characteristics with regard to rice imports into Turkey?

At present, there is no preferential trade agreement covering trade in rice other than with the EC and Macedonia.

Q124. (Turkey) Exhibit TR-25 refers to paddy rice imports in June 2004 from "Samsun FTA". Could Turkey explain what is covered by "Samsun FTA"?

Turkey submits that the reference made to "Samsun FTA" should, in fact, read "Samsun FTZ", or "Samsun Free Trade Zone". Free Trade Zones (alternatively also known as Free Economic Zones or Special Economic Zones) are places, in which some incentives are applied so as to promote economic activity and which are accepted as being outside of the Turkish Customs Territory despite being physically located within the borders of Turkey.

Q125. (Turkey) In its reply to question 14 posed by the Panel, Turkey submitted "that the import procedure which applies for imports at both MFN and TRQ rates is described in the scheme provided in Annex TR-32". In that Exhibit, Turkey has identified the legal basis for both the procedure for importation at MFN rate and that for importation at TRQ rate. During the second substantive meeting with the Panel, however, Turkey stated that Communiqué No. 2006/5 on the Standardization in Foreign Trade had been replaced by new legislation.

(a) Can Turkey confirm that Communiqué No. 2006/5 on the Standardization in Foreign Trade has been replaced by new legislation and provide a copy of such new legislation.

Communiqué No. 2006/5 was repealed and replaced by Communiqué No. 2007/21 which was published in the Official Gazette No. 26406 on 17/01/2007.[1] However, Turkey submits that there is no amendment affecting the importation of rice into Turkey.

(b) Can Turkey confirm what is the basis, in Turkish domestic legislation, for the authority that the Turkish Foreign Trade Undersecretariat (FTU) has to issue Communiqués on the Standardization in Foreign Trade. Is it Decree No.

[1] A copy of this Communiqué is attached as Annex TR-44.

2005/9454 on "The Regime for Technical Regulations and Standardization for Foreign Trade" in Exhibit TR-2?

Turkey confirms that Decree No. 2005/9454 on "The Regime for Technical Regulations and Standardization for Foreign Trade", provided in Annex TR-2, is the legal basis for all Standardization Communiqués of UFT, in particular of both Communiqués No. 2006/5 and No. 2007/21.

(c) Can Turkey also confirm what is the basis, in Turkish domestic legislation, for the authority that the Turkish Ministry of Agriculture and Rural Affairs (MARA) has to issue Communiqués, such as Communiqué No. 2006/5.

Turkey would like to clarify that Communiqué No. 2006/5 is promulgated by UFT (and not by MARA) on the basis of Decree No. 2005/9454 on "The Regime for Technical Regulations and Standardization for Foreign Trade". The Communiqué attributes to MARA the task of determining… "*the conformity of the substances which are on the annex lists of this Communiqué and which are subject to the Entry into The Free Circulation Regime, The Internal Process Regime, The Regime On The Process Under The Customs Control and The Temporary Import Regime, in respect of human health and safety, animal and plant existence and health.*"[2]

In general, under the Turkish legal system (like in many other legal systems), the administration has the power to issue implementing legislation laying down rules which are common, abstract, objective, and consistent with primary legislation. For example, Communiqué No. 2003/31,[3] issued by MARA, has been enacted (as stated in Article 3 of the mentioned Communiqué) on the basis of the Decree Having the Force of Law No. 560 concerning the Production, Consumption and Inspection of Foods,[4] Law No. 4128 amending the said Decree Having the Force of Law, and the Decree Having the Force of Law No. 441 on the Establishment and Functions of the Ministry of Agriculture and Rural Affairs, and the provisions related to foodstuffs and other agricultural and fishery products of the Communiqués on the Standardization in Foreign Trade.

As a further example, Communiqués No. 2001/10[5] and No. 2002/11,[6] also issued by MARA, have been prepared on the basis of the Turkish Food Codex Regulation.[7]

(d) Can Turkey confirm whether Communiqué No. 2003/31 on the "Issuance of Control Certification at the Importation of Foodstuffs and Packaging Materials that come into Contact with Foodstuffs and on Control Procedures at Importation Stage" (as amended)", provided in Exhibit TR-21, is still in force?

Turkey confirms that Communiqué No. 2003/31 is still in force.

(e) Can Turkey confirm whether Decree No. 2005/9454 on "The Regime for Technical Regulations and Standardization for Foreign Trade", in Exhibit TR-2, is still in force?

Turkey confirms that the Decree No. 2005/9454 on "The Regime for Technical Regulations and Standardization for Foreign Trade" is still in force.

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[2] See Article 1, Communiqué No. 2006/5 and No. 2007/21 in Annexes TR-1 and TR-44.

[3] See Annex TR-21.

[4] Published in the Official Gazette No. 22327 on 28 June 1995 and amended by Law No. 5179 published in the Official Gazette No. 25483 on 05 June 2004.

[5] See Annex TR- 5.

[6] See Annex TR-6.

[7] Published in the Official Gazette on 16 November 1997.

(f) When was the requirement that importers obtain a Certificate of Control for the importation of rice first introduced? Through which legal instrument?

Turkey submits that the requirement for Certificates of Control has been regulated under different regimes for more than 20 years. Since 1995, it has been regulated through the Communiqués of Standardization for Foreign Trade.

Q126 (Turkey): In its statement during the second substantive meeting with the Panel (para. 6), Turkey asserted that "[t]here is no provision that gives the relevant authority discretion not to approve Certificates of Control." In this regard, Turkey seems to have made the argument that the lack of discretion can be inferred from the absence of any explicit provision that gives such authority to the Turkish Ministry of Agriculture and Rural Affairs (MARA). If this is a proper characterization of Turkey's argument, please provide additional legal basis and/or arguments to support Turkey's assertion regarding MARA's alleged lack of discretion. If not, please explain why, with reference to relevant legal evidence.

Turkey confirms 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 and that there is no provision that gives the relevant authority the discretion not to approve Certificates of Control. In particular, the wording of Article 2 of Communiqué No. 2006/5[8] (as well as Article 2 of Communiqué No. 2007/21[9] which replaced it and Communiqué No. 2005/5[10] which was previously in force) clearly suggests that the approval of the Certificate of Control automatically follows the importer's submission of the duly compiled form, together with the relevant documents, to MARA or to the Provincial Directorates.

According to general principles of Turkish legal system, as in the legal systems of other countries, rights exist unless an exception providing for restrictions and prohibitions expressly applies. Therefore, when the law does not provide for restrictions or prohibition to rights, these are granted, naturally, automatically and totally. Since there is no provision that gives the relevant authority the express discretion not to approve Certificates of Control, it is MARA's legal duty and responsibility to approve the Certificates of Control for importers who meet the requirements established by the relevant legislation under the Turkish legal system.

Moreover, according to the case law of the Council of State, which is the administrative high court of Turkey, public authorities cannot use their authority arbitrarily. There is no margin for any kind of discretion to be exercised by either MARA, any of its Provincial Directorates, or the UFT in the approval of Certificates of Control.

Q127 (Turkey): Does the relevant legislation explicitly grant importers the right to obtain the requested Certificates of Control once they have completed all the legal requirements and submitted all the relevant legal documents?

The relevant Turkish legislation specifies that, in order to obtain Certificates of Control, all that importers must do is submit the duly compiled form and the invoice, together with other documents required according to the nature and kind of the product. As stated above, upon submission of the required documentation, MARA has the legal duty and responsibility to approve Certificates of Control. From this, it follows that importers have the right to obtain approved Certificates of Control.

[8] See Annex TR-1.
[9] See Annex TR-44.
[10] See Annex TR- 22.

Q128. (Turkey) Article 6 of Turkey's Communiqué No. 31 on the Approval of Control Certification at the Importation of Foodstuffs and Packaging Materials that come into Contact with Foodstuffs and on Control Procedures at Importation Stage apparently contains the list of documents required for the issuance of a Certificate of Control for imports into Turkey. In section 6 B) c), this provision lists "other documents that must be presented according to the type of product".

(a) Please clarify which of the documents contained in section 6 B) c) are requested for the issuance of a Certificate of Control for imports of rice.

The "other documents" that must be presented according to the type of product are, in general, requested for processed agricultural products and agricultural products which are composed of more than one component. As rice does not involve more than one component, no other document such as "the component list" is requested for the approval of the Certificate of Control for imports of rice.

(b) In its reply to question 25 posed by the Panel, the United States argued that the language in the 2005 and 2006 MARA Communiqués was "broad enough to provide MARA with the flexibility to 'ask for' other documents on a product-by-product basis". Does Turkey agree with this statement? If the United States' statement is not correct, could Turkey provide its reasons, referring to relevant evidence, as appropriate.

Taking into account the main provisions and the objective of the Communiqués 2005/5 and 2006/5 to allow only safe products to be imported into Turkey, it is clear that the phrase "other documents" refers to the documents intended for the human health and safety, animal and plant existence and health. The term "other documents" is required since different documents may be required for different products according to the characteristics of the products. However, Turkey would like to emphasize that no "other documents" are required for importation of rice under the above-mentioned Communiqués.

Turkey firmly objects to the argument made by the United States that the phrase "...*For obtaining control certificate, it is necessary to apply to the mentioned Ministry or to provincial affiliates (bodies) authorized by the Ministry with control certificate form (Annex VII), pro forma invoice or invoice and other documents which may be asked for, depending on product, by the Ministry*" in Article 2 of Communiqué No. 2006/5 would provide MARA with the flexibility to ask for other documents. The necessary documents required for rice importation are clearly stated in Communiqué No. 2003/31. In this Communiqué, the rationale for requesting additional documents is simply nature of the product (i.e., the degree of processing that the product has been subject to). In particular, for importation of unprocessed products such as milled, brown and paddy rice, no documents other than the Certificate of Control, legal entity form, and the *pro forma* invoice are requested by MARA.

(c) Please confirm whether there is any legal instrument or other published list that specifies all the documents that are requested for the issuance of a Certificate of Control for imports of rice. How are importers informed of the documents required?

Besides the mentioned Communiqués 2005/5, 2006/5, as well as the latest Communiqué 2007/21, importers can access the list that states the necessary documents for the approval of Certificate of Control at: http://www.kkgm.gov.tr/birim/gidakont/Kontrol_Belgesi/liste2.html.

(d) Is the payment of any type of fees required for the approval of Certificates of Control for the importation of rice?

An administrative fee is to be paid to the provincial directorates in return for the services rendered.

(e) Please confirm whether there are any other documents, not contained in section 6 B) c), which are additionally required by MARA for the issuance of a Certificate of Control for imports of rice into Turkey. If this is the case, please provide a copy of the relevant legal instrument or instruments.

(f) Please specify any conditions these documents must comply with in order to be accepted and for the Certificate of Control to be subsequently issued.

No document, other than the duly compiled form, the legal entity form, and the *pro forma* invoice are requested for the approval of Certificates of Control for the importation of rice.

Q129. (Turkey) Turkey has argued that the Certificates of Control act "as an element of trade facilitation ... provid[ing] legal certainty and commercial predictability to importers engaged in rice importation" (Turkey's oral statement during the first substantive meeting with the Panel, para. 6), as well as pursue "*inter alia*, sanitary and phytosanitary objectives" (Turkey's response to question 14 posed by the Panel, page 7).

(a) Please explain how these sanitary and phytosanitary purposes are achieved through the Certificate of Control, and how can MARA and Turkish Customs Officials verify the products compliance with relevant standards and technical regulations, without having either seen the appropriate sanitary and phytosanitary certificate or having made the relevant physical inspection of the good to be imported.

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. It 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. Turkey has already explained that, in relation to certain products (i.e., foodstuffs and other sensitive commodities imported for human or animal consumption), the level of development of its post-entry market surveillance does not allow a satisfactory achievement of sanitary and phytosanitary objectives. For this very reason, a strict and rigorous process of product pre-approval and early certification (by MARA, which is the competent ministry for rice) is still needed.

The Certificate of Control achieves these objectives by centralizing 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. With particular respect to the SPS function of the Certificate of Control, ahead of the actual inspection that occurs at customs point-of-entry, an element of particular relevance is the importers' early guarantee that the products comply with the applicable standards.[11] Turkey believes that 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.

(b) Can Turkey also explain why an importer would be required to submit, in addition to a Certificate of Control, a customs declaration and a sanitary and phytosanitary certificate if MARA and Turkish Customs Officials are able to

[11] For rice, the ones included in points A and E of the Certificate of Control (see Annex TR-4).

verify "all required customs information, including the product's compliance with relevant standards and technical regulations" through the Certificate of Control?

As indicated in previous submissions, this system mirrors the various phases that characterize the process of importation. The Government of Turkey needs to be made aware as early as possible about the planned importation of certain SPS-sensitive products such as rice. While it is true that "all required customs information, including the product's compliance with relevant standards and technical regulations" may be verified by MARA ahead of actual importation through the approval of the Certificate of Control, an important phase occurs at customs level, where SPS inspections are actually conducted on the specific consignments.

(c) Please provide supported arguments, making reference to relevant evidence, as appropriate, that can counter the United States' assertion (in its response to question 14 posed by the Panel, footnote 11 to para. 23) that, according to Turkish importers, the Ministry of Agriculture and Rural Affairs (MARA) "does not request the phytosanitary certificate at the stage when it decides whether or not to grant the Control Certificate. Rather, MARA does not require the presentation of a phytosanitary certificate until the Provincial Agricultural Directorate that has jurisdiction over the port where the importation is to be realized asks for it. But this step only takes place after MARA has already granted the Control Certificate."

The assertion made by the United States corresponds to reality. However, what the United States continues to misunderstand is the SPS information and commitments that MARA requires from the rice importers at time of application for a Certificate of Control. The SPS certificate for the specific consignment of rice intended for importation is not asked by MARA during the stage of the approval of Certificate of Control as the latter can be utilized within a 12 month time period. Actual SPS inspection and certification can only be made at customs point-of-entry. What is relevant and requested at the time of application for a Certificate of Control is the indication by the importer of the future compliance of the imported rice with the relevant Turkish SPS measures and the importer's commitment that the actual consignment will match the information provided when applying for the Certificate of Control. As strange as this may seem or appear on the basis of the complaint brought by the United States, this process actually enhances the commercial predictability of the process of importation and has proved a powerful instrument of trade facilitation in that it offers an early guarantee that the products comply with the applicable SPS requirements. As indicated by Turkey in previous submissions, this is an element of trade and administrative facilitation for both the traders involved and the Turkish administration.

(d) Please also provide more information regarding the process of risk assessment, mentioned by Turkey in its response to question 14 posed by the Panel, for the importation of rice. At what stage of the importation are products examined, including through laboratory analyses, if that were the case, in order to assess their safety? Do these laboratory analyses and quarantine procedures take place at random, at the discretion of the customs or agriculture authorities, or do they follow certain guidelines? Please provide, as appropriate, copy of the relevant documents laying down such guidelines or setting out the discretion to decide in which cases to conduct such laboratory analysis.

If the product is found proper after the document and identity checks, the next stage is the physical inspection. Physical inspection is the stage of control that, when necessary, includes laboratory analyses. With respect to the importation of unprocessed agricultural products such as rice, laboratory analysis is in most cases found to be necessary. During the analyses, the issues that are essential for

food safety and can pose risk to human health (such as pesticides, microbiological criteria, contaminants, heavy metals) are primarily considered.

Q130. (Turkey) In paragraph 22 of Turkey's oral statement during the second meeting of the parties, Turkey states that "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".

(a) How does the Certificate of Control "guarantee ... that all elements and requirements needed to clear customs are present" when MARA has not, at this stage, seen a sanitary and phytosanitary certificate, which according to Turkey's response to question number 14 posed by the Panel, is to be submitted to the provincial directorate of MARA after the approval of the Certificate of Control?

Turkey refers to the replies provided under question 129.

(b) Provided that the product is found to pass the necessary sanitary and phytosanitary requirements on importation, in what way, if any, would Turkish Customs deny the importation of a product?

Turkey submits that if the product meets the necessary sanitary and phytosanitary requirements, Turkish customs authorities cannot deny the importation.

Q131. (Both Parties) In its response to question 40 (d) posed by the Panel, Turkey submits that Certificates of Control provide importers with "trade facilitation benefits", such as "guaranteeing consistency and uniformity in the customs clearance procedures ... provid[ing] greater commercial predictability and legal certainty to importers (in relation to what they can expect to happen at border control), and ... reduc[ing] the possibility for goods to be blocked at customs with the potential for costly and time-consuming customs litigation."

(a) Are Certificates of Control in their current form the only instruments by which Turkey can achieve those "trade-facilitation benefits" or would there be any other way of achieving these same benefits? Please justify your answer, making reference to relevant evidence, as appropriate.

Turkey believes that the Certificates of Control currently meet the traditional test of reasonableness and necessity used to determine the degree of their trade-facilitation. In particular, with respect to the SPS functions of the Certificate of Control, Turkey considers that this instrument perfectly complies with Article 8 of the SPS Agreement and every single provision of Annex C to the SPS Agreement on "Control, Inspection and Approval Procedures". The information provided by Turkey throughout the panel proceedings should clearly allow for a positive review on the basis of the requirements of Annex C.

Turkey remains willing, however, to look at other possibilities to enhance the degree of trade-facilitation of its Certificate of Control. One such possibility, under Article 4 of the SPS Agreement, could be that of negotiating an equivalence or mutual recognition agreement between Turkey and the United States (or other interested countries). In this case, the United States would have to objectively demonstrate to Turkey that its measures achieve Turkey's appropriate level of SPS protection. The United States has never requested consultations with the aim of achieving such bilateral agreement.

(b) Does the fact that Certificates of Controls allegedly provide importers with trade facilitation benefits mean that, in the absence of the requirement to obtain Certificates of Controls, the importation of rice would in some way be more

cumbersome? If so, please describe in what manner the importation of rice would be more cumbersome in the absence of such requirement, justifying your answer with appropriate arguments and evidence.

In the absence of Certificates of Control, the importation would not necessarily be more cumbersome, but more lengthy, costly, unpredictable and less commercially certain. As indicated by Turkey in previous submissions, these are all elements that, ultimately, do not facilitate trade. Long procedures at customs level are costs. The unpredictability of compliance with SPS requirements is, ultimately, a cost to traders and a strain to the already scarce administrative resources of Turkey. A low degree of commercial predictability discourages trade. Turkey genuinely believes that the Certificate of Control provides an element of trade-facilitation with respect to all these possible costs.

Q132 (Turkey): In its response to question 39 posed by the Panel, Turkey asserted that "[t]he process of early certification by MARA and the actual verifications and inspections at customs level are the *only effective instruments* for Turkey to guarantee that the products placed in free circulation on its market are safe and fit for consumption" (emphasis added). Turkey has further stated that Certificates of Control serve, inter alia, the purpose of determining compliance with relevant specifications, standards and technical regulations (including for the protection of human health and safety, animal or plant life or health, environmental protection, fitness for use, etc.) (see, for example, paras. 54, 64 and 67 of Turkey's first submission).

(a) The Panel notes, however, that controls take place after the Certificates of Control have been actually approved and there seems to be no mention of that purpose in the appropriate legislation. Can Turkey provide the legal basis or arguments to support its assertion regarding this point.

The Certificates of Control include the importers' declarations that the products comply with the applicable standards and are intended to provide pre-advice of the planned customs clearance at particular points-of-entry of individual consignments. Importers must declare that the rice they wish to import *conforms to provisions of the Law on Adoption of KHK (Statutory Law) by amending respecting the Law No. 5179 on Production, Consumption and Inspection of Foodstuffs* and *to provisions of the Law No. 6968 respecting Agricultural Pest Control and Agricultural Quarantine.*[12] Turkey has already repeatedly stated that Turkish customs procedures take place both at central level (i.e., with MARA's approval of Certificates of Control) and 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). Turkey believes that the fact that physical inspections take place upon importation and after the Certificates of Control have been approved does not affect the fundamental role the Certificates of Control carry-out in their assessment and early-screening of whether the products are fit for consumption.

Turkey also wishes to clarify that Article 1(d) of Decree No. 2005/9454, which provides for the legal basis of Communiqué No. 2006/5 (and Communiqué No. 2007/31), provides that one of the objectives sought is "*to secure that the imported products are in conformity with the technical regulations and/or are safe without discriminating between import products and domestic products, to protect the health and safety of persons, the existence of animals and plants and the environment and to fulfil the requirements for public morality, public policy and public security;*"[13]

It is, in fact, pursuant to the objectives listed under Article 1(d) of Decree No. 2005/9454, and in full exercise of the competences granted by such Decree, that the UFT issued Communiqué No. 2006/5,

[12] See Annex TR-4, points A and E.
[13] See Annex TR-2.

which confers MARA the responsibility of determining the conformity of the products (listed in the Annexes; Annex VI-A for rice) with respect to human health and safety, animal and plant health and safety.[14]

Turkey therefore believes that the legitimate objectives of, *inter alia*, the protection of human health and safety, animal or plant life or health, pursued by the Certificate of Control, are clearly enshrined in Turkey's legislation providing for the Certificate of Control.

(b) Are Certificates of Control in their current form the only instruments by which Turkey can achieve these objectives or would there be any other way of achieving them? If so, please describe how, justifying your answer with sufficient arguments and evidence.

Turkey believes that the Certificate of Control represents the best-suited instrument to ensure a safe, uniform and consistent application of the requirements envisaged by the relevant legislation for food products. As Turkey has already submitted, the effectiveness of its post-entry market surveillance in relation to certain products (i.e., foodstuffs and other sensitive commodities imported for human or animal consumption) is still in the process of development. This explains why 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 cannot be conducted solely after importation and cannot be left entirely to customs authorities. In this respect, the Certificate of Control is meant 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, both at a central and at a border level, and which will ultimately be liable for the products' safety.

Q133. (Turkey) In its question 44 (e) posed by the Panel after the first substantive meeting with the parties, the Panel asked Turkey to "provide a copy of each of the 2,223 Certificates of Control approved between 2003 and September 2006". In its response, Turkey stated that photocopies of such Certificates of Control were available; that the relevant Ministries were not, however, authorized to provide all the copies to the Panel; and that, in any event, Turkey would be able to provide to the Panel in strict confidence copies of any individual Certificate of Control listed in Annex TR-33 upon its request.

(a) Can Turkey elaborate on the legal reasons why, under Turkish domestic legislation, the government would not be authorized to provide the copies requested by the Panel.

(b) If Turkey cannot provide a photocopy of each of the 2,223 Certificates of Control approved between 2003 and September 2006, can it then at least provide a photocopy of each of the 56 approved Certificates of Control characterized as "relevant" by the United States during the second substantive meeting with the Panel (see para. 8 of the United States statement during the second substantive meeting with the Panel and Exhibit US-71).

(c) Can Turkey indicate how many of the 2,223 Certificates of Control approved between 2003 and September 2006 were the result of the applicant resubmitting their application after it had been rejected by the Turkish authorities and provide a photocopy of each one of these Certificates of Control.

[14] See Article 1 of Communiqué No. 2006/5, Annex TR-1.

(d) Please provide statistics regarding the total number of resubmissions of applications for Certificates of Control for the importation of rice and subsequent approval or rejection of these, together with the time taken to respond to the applications by the Ministry of Agriculture and Rural Affairs (MARA). Could any of the rejected applications listed in Annexes TR-35 and TR-36 have been resubmitted and later approved, and would therefore appear in Exhibit TR-33?

(e) In its reply to question 44 posed by the Panel, Turkey refers to Exhibit TR-36, with a list of rejected Certificates of Control, including the reasons for denial, until 21 September 2006. Can Turkey provide a photocopy of each of the rejected applications as well as of the corresponding letters by which it notified the requesting companies of the rejection of a requested Certificate of Control, for the importation of rice corresponding to each of the cases cited in Exhibit TR-36.

(f) If Turkey cannot provide the full photocopies requested in paragraphs (b), (c), (d) and (e) above out of concerns for the privacy of the companies involved, can it at least provide those same photocopies after having blacked out the names of the companies.

Reply to question 133(a):

According to Article 13 of the Turkish Statistical Law, the confidential data acquired, processed and kept for official statistics cannot be passed-on to any administrative, judicial or military office, authority or person, and cannot be utilized except for statistical purposes or be utilized as a tool for proof. Public officials or other authorities that gather the information have to abide by this rule. Article 53 of the same law provides that public officials violating the prohibitions embodied in Article 13 will be punished in accordance with Article 258 of the Turkish Criminal Code No. 5237.

Reply to question 133(b) and (f):

Turkey has already provided a consolidation of the relevant information in Annex TR-33. With respect to the actual Certificates of Control, Turkey understands that the documents provided to the Panel would have to be made available also to the United States. Given the strict confidentiality requirements provided by Turkish law (see reply to question 133(a) above) and the well-established communications and information-exchanges between the United States and a number of Turkish rice traders, the Turkish officials involved in this Panel proceeding do not feel comfortable in risking information leaks and possible criminal accusations of violation of Turkish law on confidentiality. The Panel will understand that possession of copies of the actual Certificates of Control (including importers' data, imported/exported quantities, customs values, approving officials, etc.) may give rise to instances of domestic litigation in commercial, fiscal or criminal courts.

Turkey stands firm in relation to the truthfulness, completeness and usefulness of the information that it provided earlier by means of its Annex TR-33 consolidation. However, Turkey is not in a position to provide copies of the actual Certificates of Control for circulation. Exceptionally, Turkey would be willing to provide "blacked-out" copies of the 56 "relevant" Certificates of Control only to the Panel and after a clear understanding with the Panel and between the parties to this dispute that these documents would not be made available to the United States nor to any other entity beside the Panel and the WTO Secretariat. Needless to say that Turkey would have no objection to the United States making available to the Panel, for purposes of these proceedings, copies of the actual Certificates of Control obtained by individual importers which may be in the United States' possession.

Reply to question 133(c) and (e):

Turkey submits that this information and documentation is not available in the records kept by MARA.

Reply to question 133(d):

It is possible that the rejected applications have been re-submitted and later approved, but this information is not recorded by MARA. Importers are free to re-apply for the same amounts or different amounts with new applications.

Q134. (Turkey): In response to question 44 (f) posed by the Panel, regarding the denial of Certificates of Control, Turkey provided the Panel with Exhibit TR-36, listing the application date, origin, quantity and quality of the rice for which each Certificate of Control was requested during the years 2003 to 2006. As reasons for denial, the list states the following: "Missing documents not completed", "Upon the demand of the Company" and "Incomplete Administrative Requirements".

(a) What should be understood from these reasons?

Turkey submits that the expression "*Incomplete Administrative Requirements*" refers to applications that are incomplete or missing the documents which are required together with the Certificate of Control form, or to applications where the Certificates of Control form is either incomplete or contains wrong information. For example:

(i) The wrong customs classification of the imported good;

(ii) The choice of a customs point-of-entry which is not available for importation of foodstuffs; and

(iii) The missing information on the origin of the imported good.

Another instance of application of the expression "*Incomplete Administrative Requirements*" may occur when the information included in the documents and related to, *inter alia*, the name of the firm, the address, the name of the product, the country of origin, is inconsistent. Similarly, an application will be deemed incomplete if the relevant letters under the heading "*According to the feature of the Commodity to be imported please mark the following related heading with circle*" (i.e., the importer's SPS declaration) are not selected.

The expression "*Upon the Demand of the Company*" refers to cases where the applicant company withdraws its application. The expression "*Missing Documents not Completed*" refers to cases in which the applicant company is informed of the "incomplete administrative requirements" regarding its application and is given additional time to complete and/or correct the missing/wrong information, but fails to complete or correct those missing elements or mistakes in the application.

(b) Can Turkey provide further detail regarding the reasons for denial of the listed applications for Certificates of Control?

Turkey submits that, as all the applications have been returned to the applicant firms, detailed information cannot be submitted.

(c) Are detailed reasons for denial provided in writing to the requesting companies in the document of rejection or are these reasons communicated to applicants in a similarly succinct manner as what is indicated in Exhibit TR-36?

As explained in detail in the answer to Question 134(a), the reasons for denial of approval of Certificates of Control are normally straightforward and communicated verbally to applicants in the normal course of business. In fact, MARA always makes sure that the representatives of applicant companies are promptly informed of the missing or wrong parts of the applications.

Q135. (Turkey) The United States has submitted, as Exhibit US-29, photocopy of an application for a Certificate of Control for the importation of 10,000 tons of rice, allegedly "returned due to spelling errors". The Panel notes that "spelling errors" were not listed as "reasons for denial" of Certificates of Control in Exhibit TR-36.

(a) Can Turkey confirm whether spelling errors would be grounds for the rejection of an application for a Certificate of Control? If so, under which of the three categories ("Missing documents not completed", "Upon the demand of the Company" or "Incomplete Administrative Requirements") would a spelling error fall? What is the legal basis for rejecting applications owing to "spelling errors"?

(b) Can Turkey confirm whether the specific photocopy submitted by the United States as Exhibit US-29 corresponds to the application identified as number 3 in the list of "Denied Control Certificates Applications and Reasons for Denial in 2003", provided by Turkey in Exhibit TR-36?

Turkey submits that it cannot provide an answer to this question as the mentioned application cannot be found among MARA's records. In general terms, it is not MARA's policy to systematically deny applications on the basis of minor spelling mistakes. This would be disproportionate and defeat basic principles of reasonableness and trade-facilitation. However, in certain instances, spelling errors may insist on crucial elements of the application (such as the HS code number) and the process of importation. In those instances, confusion may lead to individual rejections. To this end, however, Turkey would like to underline that these rare occurrences must also be seen in light of the extreme simplicity of application and/or re-application. Importers work closely with MARA and have generally developed long-standing and personal relations with MARA's officials. It does not take much or a long time to re-apply making a small (but possibly important) correction that will avoid later problems or misunderstandings. Again, Turkey regrets that the United States would use an individual episode to imply or suggest a pattern of systematic rejection of applications for futile reasons. This has never occurred and the large volumes of trade and low percentages of rejections stand as clear and powerful testimony to the contrary. Turkey also submits that the specific photocopy submitted by the United States in Exhibit US-29 does not correspond to the application identified as number 3 in the list of "Denied Control Certificates Applications and Reasons for Denial in 2003" provided by Turkey in Annex TR-36 since the dates of application do not match.

Q136. (Both Parties) According to Turkey's statements (see, for example, para. 25 of its first submission), Certificates of Control for the importation of rice are valid for periods of 12 months.

(a) If this is the case, why would importers not import rice during periods in which Certificates of Control are allegedly not being approved, but some Certificates of Control are presumably still valid?

(b) During periods when the TRQ was not open, why would imports of rice not occur under Certificates of Control that were presumably still valid?

(c) Is there any difference between the Certificates of Control issued to import at the MFN rate, under preferential trade agreements and under the TRQ? If so, please specify the differences between them. If not, does this mean that a same Certificate of Control could have been equally used to import under the different rates? Did an importer have to specify whether the intended import was to be in-quota or over-quota when applying for a Certificate of Control? Please make reference to relevant evidence, as appropriate.

(d) Would a Certificate of Control still be valid for twelve months, even during a period when a TRQ was in place? Would an in-quota Control Certificate maintain its validity of 12 months, and therefore still allow imports to take place at the preferential in-quota tariff rate, despite the tariff quota period closing?

(e) Does the amount permitted to be imported under the Certificate of Control hold any relation with the amount permitted to import when applying for an import license to the Turkish Foreign Trade Undersecretariat (FTU)?

Reply to question 136(a) and (b):

Turkey submits that there was no period in which the Certificates of Control were not approved, but applications were at times simply not submitted due to importers' commercial considerations relating to the profitability of the importation and other commercial factors. The reason why importers might not have used validly approved Certificates of Control in certain period is related to a number of factors, including the presence of domestic stocks which satisfied the internal demand of rice and that may have made importation of rice simply less profitable in certain periods. Turkey would also like to draw the attention of the Panel that importers traditionally apply for Certificates of Control in relation to quantities greater than the ones that they actually intend to import. Turkey has never regarded this as a problem and has never conditioned the approval of Certificates of Control to the importation of the exact amounts stated on the Certificates of Control. Certificates of Control are not and never were import licenses and, unlike import licenses, are not quantity-specific.

Reply to question 136(c):

There is no difference between the Certificates of Control approved for importation of rice under the MFN or applied rates, the TRQ regime, or the FTA preferential rates. The importer did not have to specify under which of the three possibilities it intended to import. However, as also shown in Annex TR-32, an import licence from the UFT General Directorate of Imports was necessary for the approval of Certificates of Control by MARA for those importers who wished to import under the TRQ regime or the FTA in-quota volumes of trade.

Reply to question 136(d):

The right to import at preferential tariff rates within the TRQ system is granted by means of import licenses issued by the UFT. Certificates of Control do not grant the right to import at the TRQ preferential rates. There are no in-quota or out-of-quota Certificates of Control. Certificates of Control are, at times, approved in relation to importation of rice within a preferential quota (TRQ or FTA). In these cases, the validity of the Certificates of Control is, as mandated by law, 12 months, but an importer would no longer be able to import within the preferential quota if the TRQ has closed or if the quota has been filled. This is the traditional operation of a TRQ system and it works in this way in all WTO Member countries. This is, however, an academic case, in that all importers will

want to quickly import the rice within the quota to benefit of the tariff advantage. In any event, should they not be able to import within the quota before the expiry of the TRQ or before the exhaustion of the quota, the Certificate of Control will remain valid and will allow them to import at the MFN or applied rates of duty.

Reply to question 136(e):

No. When applying for a Certificate of Control, importers are free to apply for the quantity they wish, regardless of the quantity indicated in the import licenses issued by the FTU. Only the quantity for which they have obtained an UFT import license may, however, enter under the preferential rates.

Q137 (Turkey): In its reply to question 49 posed by the Panel, (para. 79) the United States argues that

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

Can Turkey provide arguments to respond to these assertions, making reference to relevant evidence, as appropriate.

Turkey strongly disagrees with the allegations put forward by the United States. First, Turkey rejects the idea of the existence of any import restriction on rice. Turkey has already submitted relevant evidence against the allegations of the United States. In particular, Turkey has shown that a total of 2,242 Certificates of Control (59.5% of which for out-of-quota trade) were approved between 2003 and 9 November 2006, despite the existence of the so-called "Letters of Acceptance" and this alone stands as clear and irrefutable evidence against the idea that Turkey was maintaining prohibitions or restrictions on the importation of rice.

Turkey also submits that rice imports were never "prohibited for nearly four months." When Certificates of Control were not approved this was merely a result of both the absence of applications for approval and/or the existence of considerable "left-over" approved volumes in the hands of the importers. Turkey has already pointed-out that, in its view, the applications for approval of Certificates of Control were submitted by the importers solely on the basis of business considerations and commercial calculations. These business considerations may be dictated, *inter alia*, by profit margins, the fall in competitiveness of imported over domestic rice as a consequence of the steep increase of the world price for rice, speculative positions, currency fluctuations, and the presence of large quantities of stocked rice among business operators.

Secondly, Turkey submits that it sees no relation between the alleged existence of import prohibitions or restrictions and the differential between the quantities stated in the Certificates of Control and the ones realized as actual imports. Once importers obtained approval of Certificates of Control, actual importation depended exclusively on their evaluation of the profitability of the commercial operation (see the factors listed above). When Certificates of Control are approved (and the administration has carried-out its early review on the safety of the imports through the approval of the Certificates of Control), the decision on actual importation exclusively depends on the importers' business determinations. In this respect, Turkey submits that, even if import restrictions had really been in place through the alleged denial of approval of Certificates of Control, this would still have had no influence on the choice of an importer as to whether or not the importation should have been realized. On the contrary, if restrictions had really been in place, importers would have had an even greater interest to realize the importation through Certificate of Control so hardly obtained.

Thirdly, the fact that realization rates were high under the TRQ does not prove anything. In fact, importers had a far greater interest in realizing all of the licensed imports under the TRQ in order to take full advantage of the preferential rates (and the quota rents). Certificates of Control for MFN trade, which remained always available, were requested in greater quantities so that importers could manage and decide when and how importation should take place with the necessary margin of discretion. With particular regard to the 2006 figures, it is clear that the *ratio* of approved Certificates of Control is "grossly out of line with actual imports through September 2006" for the very simple fact, which apparently the United States keeps forgetting, that Certificates of Control remain valid for 12 months after approval. If anything, such calculation and clever manipulation of the data can only be conducted *a posteriori*, once importers will have autonomously decided whether or not to realize the imports for which Certificates of Control have been approved.

Turkey simply does not understand on what basis and for what purposes the United States is trying to establish a connection between the alleged restriction and the difference between the realization rates, between 2003 and 2006. In any event, as explained above, Turkey believes that this architecture is of no relevance for purposes of this proceeding.

Q138 (Turkey): The United States has submitted, as Exhibit US-35, a letter dated 24 March 2006, by which the Turkish Minister of State informs the United States Trade Representative that the Control Certificates "will be issued as of April 1, 2006".

(a) Does this letter imply that Certificates of Control were not being issued at the time when the letter was issued?

(b) What relation, if any, does the date of 1 April 2006, mentioned in the Turkish Minister of State's letter, bear with the end of the TRQ on 31 July 2006 (please make reference to relevant evidence, as appropriate.)? Was the adoption of any new or modified measure necessary to achieve the results indicated in the Minister's letter? If so, has any such measure been adopted as a result of the Minister's letter? What is the factual and legal relationship between the letter in Exhibit US-35 and any measure adopted to put that into effect, on the one hand, and, on the other hand, the Letter of Acceptance signed by the Minister of Agriculture and reproduced in Exhibit US-36?

(c) Can Turkey also elaborate on its closing statement during the second substantive meeting with the Panel (para. 3), that the letter "was designed to reassure the United States that, with the phasing-out of the TRQ, traders would likely resume trading on MFN terms" and that "[i]t was not an implicit confirmation of any systematic denial of the approval of Certificates of Control".

Reply to question 138(a) and (c):

Turkey confirms that the diplomatic Letter to Ambassador Portman was designed to reassure the United States that, with the phasing-out of the TRQ, traders would have likely resumed trading on MFN terms. It was not an implicit confirmation of any systematic denial of the approval of Certificates of Control. The Letter does not imply that Certificates of Control were not being issued.

Reply to question 138(b)

Turkey submits that there is no relation between the diplomatic Letter, dated 1 April 2006 and the expiry of the TRQ regime on the 31 July 2006. In particular, the expiry date of the TRQ regime was already established by Decree No. 2005/9315,[15] which was adopted on 10 August 2005 and published on 13 September 2005 and which provided the legal framework for the last TRQ opening. Turkey also submits that no measure was either adopted or modified following the Minister's letter.

In addition, Turkey firmly rejects the idea that there would be a relation between the diplomatic Letter of 1 April 2006 and the Letter of Acceptance included in Exhibit US-36. The first Letter must be considered as an official and formal diplomatic act of the Minister, aimed at addressing the United States' concerns and at facilitating a diplomatic solution. The Letters of Acceptance are, instead, mere instruments of internal communication among Turkish administrators and public officials, unofficial policy recommendations that were never enforced. With particular reference to the letter contained in Exhibit US-36, Turkey would like to draw the Panel's attention to the fact that, contrary to the policy recommendation contained therein, Certificates of Control were granted in great quantities before, during and after the period between 1 April 2006 and 1 August 2006.

Q141. (Turkey) In its statement during the second substantive meeting with the Panel (para. 6), Turkey asserted that "[t]here is no provision that gives the relevant authority discretion not to approve Certificates of Control." In other submissions (see, for example, para. 78 of its first submission and reply to question 23 from the Panel), Turkey has stated that the so-called "Letters of Acceptance" are internal communications aimed at developing policy recommendations.

(a) If the Minister of Agriculture and Rural Affairs has no discretion not to approve Certificates of Control, under what legal basis have then officers from the same ministry submitted internal communications to the Minister recommending that Certificates of Control not be approved? What could explain a Director General of MARA repeatedly making a recommendation to the Minister to adopt a policy if the Minister had no discretion to adopt such policy?

The Directorate General only makes recommendations to the office of the Minister. It is then the responsibility of the Minister to consider or not these internal recommendations for purposes of defining an internal policy which may or may not become a general policy. For a general policy to be adopted, independently of whether or not it is within the competence of a Minister and in line with Turkish law, many other policy recommendations will be considered, coming from the same administration or other relevant ministries.

(b) What legal basis, if any, would give the Director General of MARA the authority to issue these so-called "Letters of Acceptance". Please also specify under what basis these letters could extend to the subject of the issuance of Certificates of Control.

[15] See Annex TR-9.

There is no legal basis in that the Letters of Acceptance are internal documents to any Turkish administration that are customary for officials to interact and put forward or discuss policy recommendations.

(c) What factors or events would trigger these recommendations from the Director General of MARA?

Demands of interest groups and general policy decisions may trigger these recommendations within a part of the administration.

(d) Would one of the reasons that could trigger such a recommendations from the Director General of MARA be that there is a sufficient level of domestic production or a high level of imports?

Yes, this could be the case.

(e) Could the Minister refuse the recommendation made by a Director General of MARA through a so-called "Letter of Acceptance"? Please provide documentary evidence in support of your response.

Yes, the Minister may refuse the recommendation made by a Director General of MARA.

Q142. (Turkey) Can Turkey provide evidence of so-called "Letters of Acceptance" containing policy recommendations that the Minister of Agriculture and Rural Affairs did not approve?

There is no such document that Turkey is in the position to circulate given the privileged natured of the communications internal to the Administration and the confidential nature of the information contained therein.

Q143. (Both Parties) Were so-called "Letters of Acceptance" issued prior to the ones identified by the United States in its submissions. If so, can you provide any evidence as to the existence of these earlier Letters of Acceptance?

No. Letters of Acceptance relevant to this proceeding were ever circulated within the Administration prior to the ones identified by the United States in its submission.

Q144. (Turkey) Please describe the procedure that follows the issuance of a so-called "Letter of Acceptance". Would such a letter, after being accepted by the Minister, be communicated to the provincial MARA offices, and if so, how?

There is no standard procedure within the Turkish Administration for purposes of what may happen following the issuance of a Letter of Acceptance. It is possible that such a letter, after having been endorsed by a Minister, could be circulated within the provincial level of the administration through the normal channels of communication.

Q145 (Both Parties) In its statement during the second substantive meeting with the Panel (para. 12), the United States argued that Turkish courts have attributed legal effect to the so-called "Letters of Acceptance" and upheld MARA's enforcement of such Letters. In response, in its closing statement during the same meeting (para. 9), Turkey argued that, in a specific case cited, a "Court of first instance appears to have given effect to an ultra vires act [from the Minister of Agriculture and Rural Affairs]". What should be the appropriate value given by the Panel, if any, to interpretations of domestic law developed by local courts? What should be the appropriate value given by the Panel, if any, to interpretations of domestic law advanced by

the administration of a Member before a local court? Was the allegedly erroneous interpretation of Turkish domestic law developed by the local court appealed by the Turkish administration? Should interpretations of domestic law developed by local courts be accorded a different value by the Panel if they were issued by higher courts?

Turkey preliminarily submits that the Letters of Acceptance cannot be defined, according to the Turkish legal system, as "domestic law", but rather as policy recommendations, falling outside the very competence of the Minister, to which the domestic courts appear to have given effect. Turkey believes that no value should be given to the rulings issued by the Administrative Courts of Ankara by this Panel and for purposes of this proceeding. This follows both from past Panels' and other international tribunals' rulings and from factual considerations.

Turkey notes that the International Court of Justice (ICJ) and the Permanent Court of International Justice (PCIJ) made *independent* reviews of jurisprudence of domestic courts. In *Brazilian Loans*,[16] the PCIJ stated that: "*The Court will endeavour to make a just appreciation of the jurisprudence of municipal courts. If this is uncertain or divided, it will rest with the Court to select the interpretation which it considers most in conformity with the law*".[17] In *Elettronica Sicula S.p.A (ELSI)*,[18] the ICJ stated that the ruling of a domestic court shall not automatically be accepted by an international tribunal.

Turkey also notes that the Panel in *US – 1916 Act*[19] specifically refers to the case law of the PCIJ and ICJ and thereafter conducts an independent review of the jurisprudence issued by domestic courts. Turkey believes that the Panel should follow this approach. In line with the case law from the ICJ and PCIJ, as well as the *US – 1916 Act*, this Panel should conduct an independent review of the jurisprudence refraining from automatically accepting the rulings issued by domestic courts. This means that this Panel should:

(i) Be able to select jurisprudence that reflects the interpretation which is most in conformity with Turkish law;
(ii) Take into account the quality of the reasoning on what it perceives to be the dominant interpretation; and

(iii) Respect the hierarchy of the national court system.

Turkey believes that in following this approach, the Panel should not take into consideration the rulings issued by the Administrative Court of Ankara.

First, Turkey believes that this Panel should keep in mind that there are ongoing lawsuits that, in accordance with Turkish law, challenge the legality of the *ultra vires* act and, implicitly, the legality of the Letters of Acceptance.

Second, there is not sufficient case law available and the Panel will not be able to have a satisfactory view of the jurisprudence, at least before the ongoing cases have been decided.

Third, there is no review from a higher court.

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[16] *Brazilian Loans*, PCIJ, Ser. A. nos. 20-1.
[17] Ibid, p. 124.
[18] *Elettronica Sicula S.p.A* (ELSI) (*United States of America v. Italy*), ICJ Reports 1989, p 15, at p. 47.
[19] *United States- Anti-dumping Act of 1916* (Japan), WT/DS162/R and *United States- Anti-dumping Act of 1916* (EC), WTDS136/R.

With particular reference as to whether a different value should be given to rulings issued by courts of different ranking, Turkey submits that the weight of the interpretation should follow the hierarchy of the national court system. This is also in accordance with the approach adopted by the Panel in the *US – 1916 Act*. In this dispute, the Panel took into account the fact that the United States' Supreme Court had yet to address the issue. When there is established practice from a higher court, a decision from a lower court does naturally not have any value. However, even when there is no jurisprudence from a higher court, an international tribunal should be careful in attributing any value to a lower court's decision. In finding the right balance between the principle of sovereignty and the assessment of domestic law, this Panel should take into account the legal system of the WTO Member.

In light of these considerations, and taking in particular account the uncertainty created by the ongoing lawsuits, the lack of sufficient available jurisprudence, as well as the fact that the decisions are issued by a domestic lower court, Turkey believes that this Panel should not give any value to interpretations of domestic law developed by the Administrative Court of Ankara for purposes of this proceeding. Furthermore, in line with this reasoning, the arguments of a national administration should not be attributed any value in the Panel's review of what constitutes domestic legislation and whether Turkey has acted consistently with the WTO Agreements.

Finally, it should be noted that the "allegedly erroneous interpretation of Turkish domestic law developed by the local court" was not appealed by the Turkish administration for reasons of judicial expediency.

Q146. (Turkey) Could Turkey please confirm, making reference to relevant evidence, as appropriate, the dates during which the tariff quota for the various types of rice imports (paddy, brown, milled) was opened and closed. Could Turkey also please confirm whether or not there was a domestic purchase requirement at all periods and if so, whether or not there were specific domestic purchase ratios to imported paddy, brown and milled rice to which importers could determine how much domestic rice needed to be purchased to be able to import a certain volume of paddy, brown or milled rice.

The first TRQ was opened on 20/04/2004 through Decree No. 2004/7135 and expired on 31/8/2004 with the following domestic purchase requirement ratios[20]:

PURCHASED FROM TGB	**TO BE ALLOCATED BASED ON THE PURCHASE FROM TGB**		
	HS CODE	**ITEM NAME**	**QUANTITY**
Per 1.000 Kg Paddy Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	1.000 Kg
Per 1.000 Kg Paddy Rice	1006.20	Husked (brown) rice	800 Kg
Per 1.000 Kg Paddy Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	600 Kg
Per 1.000 Kg Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	1.666 Kg
Per 1.000 Kg Rice	1006.20	Husked (brown) rice	1.333 Kg
Per 1.000 Kg Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	1.000 Kg

[20] See Annexes TR-11 and TR-12.

The second TRQ was established by Decree No. 2004/7756 and was in place from 01/11/2004 until 31/7/2005, with the following domestic purchase requirement ratios[21]:

		THE ITEM TO BE ALLOCATED		
		HS CODE	**ITEM NAME**	**QUANTITY**
For the Items purchased from paddy producers having permission to plant paddy rice or from their cooperatives and unions *	Per 1.000 Kg Paddy Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	1.000 Kg (1)
	Per 1.000 Kg Paddy Rice	1006.20	Husked (brown) rice	800 Kg (2)
	Per 1.000 Kg Paddy Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	600 Kg (3)
For the Items purchased from Turkish Grain Board	Per 1.000 Kg Paddy Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	500 Kg
	Per 1.000 Kg Paddy Rice	1006.20	Husked (brown) rice	400 Kg
	Per 1.000 Kg Paddy Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	300 Kg
	Per 1.000 Kg Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	833 Kg
	Per 1.000 Kg Rice	1006.20	Husked (brown) rice	666 Kg
	Per 1.000 Kg Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	500 Kg

*: Applied as (1): 700 Kg, (2): 560 Kg, (3): 420 Kg if purchased from the paddy producers having permission to plant paddy rice or from their cooperatives and unions located in Balıkesir, Bursa, Çanakkale, Edirne, Kırklareli, Sakarya and Tekirdağ.

[21] See Annexes TR-16 and TR-17.

The last TRQ was opened on 01/11/2005 and closed on 31/7/2006 with the following domestic purchase requirement ratios[22]:

		THE ITEM TO BE ALLOCATED		
		HS CODE	**ITEM NAME**	**QUANTITY**
For the Items purchased from paddy producers having permission to plant paddy rice or from their cooperatives and unions *	Per 1.000 Kg Paddy Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	800 Kg (1)
	Per 1.000 Kg Paddy Rice	1006.20	Husked (brown) rice	640 Kg (2)
	Per 1.000 Kg Paddy Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	480 Kg (3)
For the Items purchased from Turkish Grain Board	Per 1.000 Kg Paddy Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	500 Kg
	Per 1.000 Kg Paddy Rice	1006.20	Husked (brown) rice	400 Kg
	Per 1.000 Kg Paddy Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	300 Kg
	Per 1.000 Kg Rice	1006.10 (Exc. 1006.10.10)	Rice in the husk (paddy or rough) (Not for sowing)	833 Kg
	Per 1.000 Kg Rice	1006.20	Husked (brown) rice	666 Kg
	Per 1.000 Kg Rice	1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed	500 Kg

*Applied as (1): 600 Kg, (2): 480 Kg, (3): 360 Kg if purchased from the paddy producers having permission to plant paddy rice or from their cooperatives and unions located in Balıkesir, Bursa, Çanakkale, Edirne, İstanbul, Kırklareli, Sakarya and Tekirdağ.

Q147. (Turkey) Could Turkey please explain why data from Exhibit TR-33 seem to indicate that in-quota imports of non-EC origin rice occurred during periods in which the Panel understands the TRQ was not in place (January, September and October 2004; August and September 2005; and August 2006)?

In accordance with Turkey's reply to question 136(d), these imports took place at MFN rates, with Certificates of Control that were approved for importation within the TRQ but that, for whatever business determination, importers may have decided not to import. Given the one-year validity of the Certificates of Control, it is clear that importers would have retained the ability to import at a later stage and under MFN conditions.

[22] See Annexes TR-9 and TR-13.

Q148. (Turkey) In its response to question 18 posed by the Panel, Turkey responds that "no change was introduced into its import regime for rice in November 2005 or as a consequence of the initiation of WTO dispute settlement proceedings". The only change would have been that the TRQ lapsed on 31 July 2006, without being renewed.

(a) Please explain why the TRQ has not been reopened since?

As indicated in its response to question 79, Turkey applied the TRQ system for enhancing greater market supply and market stabilization. A new TRQ has not been introduced after the expiration of the last TRQ in 2006 because there is no longer need for such an instrument to achieve the objectives of greater market supply and market stabilization. In particular, Turkey will confess that TRQ systems are costly to administer and it prefers market forces to freely interact.

(b) In its response to question 79 posed by the Panel, Turkey stated in turn that the TRQ regime "pursued, at the same time, two legitimate objectives, i.e., that of a greater market supply and that of market stabilization". Can Turkey explain how these two objectives could now be guaranteed in the absence of the TRQ regime.

Turkey refers to the answer provided to question 82. In particular, Turkey submits that the domestic and international economic indicators lead Turkey to the assumption that there will not be, at least for the foreseeable future, needs for market intervention and stabilization of the types that the TRQ helped address. The only real market stabilization instruments will remain the action of the TMO coupled with the use of appropriate MFN and applied rates of duty.

(c) In its response to question 82 posed by the Panel, Turkey stated that "[t]he domestic and international economic indicators also lead Turkey to the assumption that there will not be, at least for the foreseeable future, needs for market intervention and stabilization of the types that the TRQ helped address." Is the Panel then right in concluding that if any of those domestic and international economic indicators were to change, Turkey could then reevaluate the convenience of reintroducing a TRQ regime for the importation of rice? If this is not the case, please explain making reference to relevant evidence, as appropriate.

No. Turkey has already indicated, both during the consultations with the United States and before this Panel, that it will no longer have recourse to the TRQ system. Turkey believes that, despite the theoretical possibility that "domestic and international economic indicators" may change in the future, the TRQ system is an instrument that Turkey considers too costly and administrative burdensome to achieve the intended objectives of market intervention and stabilization. Other less complicated trade policies (i.e., the action of the TMO as an intervention agency, the appropriate and legitimate use of MFN and applied rates of duty) stand-out as sufficient mechanisms to manage the market in a WTO consistent fashion.

(d) Explaining the domestic and international indicators that lead Turkey to the assumption that there will not be, at least for the foreseeable future, needs for market intervention and stabilization of the types that the TRQ helped to address, Turkey mentions that the domestic rice remains competitive with predictable production forecasts. Can Turkey please explain if this means that domestic rice was not competitive before the introduction of the TRQ?

In its response to question 82, Turkey stated that the "domestic rice remains competitive". Turkey simply meant that domestic rice used to be competitive and it will still be competitive, at least for the foreseeable future.

(e) Were Turkey to reintroduce a TRQ regime for the importation of rice, would any change need to be introduced in the current domestic legislation? Is the legislation that allowed for the establishment of the TRQ still in force?

Turkey submits that, with respect to rice-specific legislation, the reintroduction of a new TRQ system for rice imports, of the kind that is the object of these proceedings, would require the adoption of a new set of legislation. In particular, it would require the adoption of a new Decree fixing the quota openings, quantities and coefficients, together with its implementing Communiqué, providing, *inter alia*, for the quantities of domestic rice to be purchased and for the deadlines for the relevant applications. All the legislation which is specifically related to the establishment of tariff quotas for rice has expired and a new set of rules would therefore need to be adopted, promulgated and published.

With respect to its general trade legislation, Turkey submits that Decree No. 2004/7333 is still in force. This Decree, however, provides the legal basis for the management of all types of quotas and tariff quotas, irrespectively of the product, of the nature and the trade measure allowing for the adoption of the quotas. This legislation is not rice-specific. For example, it provides the legal basis for the management of quotas and tariff quotas stemming from free trade agreements, or applied as a result of safeguard measures.

Q149. (Turkey) In paragraph 50 of Turkey's rebuttal, Turkey argued that "[i]t is clear that a TRQ system without the domestic purchase requirement would have resulted in too great an advantage in favour of imported products. This outcome would have also carried negative consequences in terms of the viability and affordability of Turkey's market intervention mechanisms and its ability to comply with WTO obligations in relation to its committed levels of Aggregate Measurement of Support." Could Turkey please explain how, in its view, it would have failed to comply with WTO obligations in relation to its committed levels of Aggregate Measurement of Support without the domestic purchase requirement as a part of its tariff quota mechanism?

Turkey submits that it has consistently complied with WTO obligations in relation to its committed levels of Aggregate Measurement of Support for agricultural production (i.e., the *de minimis* level of support), but that a TRQ system without the domestic purchase requirement would have likely resulted in too great an advantage in favour of imported products and it would have carried negative consequences in terms of the viability and affordability of Turkey's market intervention mechanisms. The calculations in relation to the amounts of domestic support that could have resulted are difficult to make, but Turkey considered this an issue that it had to factor when designing the TRQ, foreseeing the market-stabilization effects, and anticipating its trade and budgetary consequences.

Q150. (Both Parties) In paragraph 37 of its response to question 18 (c) posed by the Panel, the United States asserts that it "has been informed by the trade (sic) that MARA is orally informing importers that the MFN tariffs will henceforth be calculated based upon government-determined reference prices for paddy, brown, and milled rice, respectively, rather than on the actual customs value of the merchandise." Could the United States provide further information and evidence to support this assertion. Could Turkey provide any further information on this regard, making reference to relevant evidence, as appropriate.

The authorities at customs points-of-entry are notified by the central administration of the reference prices for paddy rice, brown rice and rice simply in order for the customs authorities to be aware of

the average prices for these commodities and to detect instances of unfair trade and tax loss that might occur due to the importer's under-valued customs declarations. In this way, Turkey aims at ensuring that its customs authorities act vigilantly in cases of suspiciously out-standing margins of difference between the notified price and the (average) reference price.

Q151 (Turkey): In its reply to question 75 posed by the Panel, Turkey asserted that the correct methodology for interpretation of the TRIMs Agreement should require a preliminary assessment of the existence of both the trade and the investment elements of an alleged TRIM. Turkey also stated that, in order to establish the existence of a violation of the TRIMs Agreement, its domestic purchase requirement must first be found to be inconsistent with the provisions of GATT Article III. Finally, Turkey invited the Panel to reject the United States claims regarding an alleged violation of the TRIMs Agreement because the United States has not proved how Turkey's domestic purchase requirement would result in a trade-related investment measure and if so whether it would violate GATT Article III. Please clarify the implications of the above statements in relation to the "order of examination" of the US claims:

(a) Does Turkey propose that the Panel first examine US claims under GATT Article III:4 and then consider the claims under the TRIMs Agreement separately?

(b) In the negative, can Turkey explain why would the United States be required to prove how Turkey's domestic purchase requirement would result in a trade-related investment measure in the first place?

(c) Alternatively, does Turkey believe that once the Panel has made a ruling under GATT Article III:4, it should resort to judicial economy and refrain from making a finding under the TRIMs Agreement?

Turkey believes that, in the first place, the Panel should refrain from making any finding or recommendation on the United States' claims of an alleged violation of either GATT Article III:4 and the TRIMs Agreement due to the expiry of the TRQ regime. Turkey refers to its previous arguments on this issue as submitted in the written pleadings.[23]

Should the Panel decide to review those claims despite the TRQ regime's expiry, Turkey submits that the Panel should first examine the United States' claims under GATT Article III:4 and then resort to judicial economy and refrain from making a finding under the TRIMs Agreement.

Alternatively, in the event that the Panel should review previously or anyway separately the claims under the TRIMs Agreement, Turkey considers that the correct methodology for the interpretation of the TRIMs Agreement would require the Panel to preliminarily assess the existence of both the trade and the investment elements of the alleged TRIM (i.e., the domestic purchase requirement). This appears to be reinforced by the reading of Article 1 of the TRIMs Agreement, according to which "*[t]his Agreement applies to investment measures related to trade in goods*", as well as by past panel practice. In this respect, Turkey simply believes that the United States has yet failed to prove that the domestic purchase requirement is an investment measure.

There is no set definition of what an investment measure is.[24] The Panel in *Indonesia – Autos* found the measures to meet the 'investment requirement' as the review of the legislative provisions related to

[23] See, in particular, paras. 136-139 of Turkey's First Submission and paras. 37-44 of Turkey's Rebuttals.

[24] Korea, in its oral statement, for example, suggested that the "financial movement across the border" could be understood as an essential element of any investment measure.

those measures revealed "*investment objectives and investment features and which refer to investment programmes*."[25] Should this Panel follow the reasoning of the *Indonesia – Autos* Panel,[26] it would find that Turkey's domestic purchase requirement is not an investment measure. 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). It 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. Turkey has done so providing an advantage to imported rice, while other import options (i.e., MFN and FTA) remained always available. There is no investment element in the domestic purchase requirement, nor is there one in the legislative framework providing for the TRQ.

In this respect, it is misleading and incorrect to state, as the United States does, that the increase in domestic production of rice is a direct result of the domestic purchase requirement and that this should be in itself evidence of the existence of an investment intent. Turkey wishes to draw the Panel's attention to the following factors:

(i) The renewal and modernization of farming systems and technologies in rice production (*inter alia,* more efficient irrigation systems, the utilization of high-quality seeds, and the rehabilitation of the cultivated lands);

(ii) The change in the methods of estimation of production as a consequence of the new farmers' registration system and agricultural policies of MARA; and

(iii) The increase in the harvested area, as also shown in Exhibit US-45.

These are all factors that better explain the increase in Turkey's rice production, which is rather the result of an increase in the *productivity*. This productivity improvement cannot be considered, by itself, as convincing evidence of the existence of an investment element. Turkey also wishes to point-out that imports of rice have equally increased. As already submitted by Turkey,[27] in the period between 2004 and 2006, in which the TRQ regime was in force, rice equivalent imports have increased from 146,458 tonnes to 253,436 tonnes, while the rice equivalent production has increased from 294,000 tonnes to 390,000 tonnes.

Turkey therefore believes that, if the Panel were to engage in a review under the TRIMs Agreement, its domestic purchase requirement should not be considered a trade-related investment measure.

[25] *Indonesia – Certain Measures Affecting the Automobile Industry*, Panel Report, para. 14.80
[26] *Indonesia – Certain Measures Affecting the Automobile Industry*, Panel Report.
[27] See Turkey's Replies to Questions posed by the Panel, question No. 49(c).

ANNEX F-5

COMMENTS BY TURKEY ON THE REPLIES BY THE UNITED STATES TO THE QUESTIONS POSED BY THE PANEL AND TURKEY AFTER THE SECOND SUBSTANTIVE MEETING
(20 February 2007)

Q99. (Both Parties) The Panel has examined the data provided by each of the parties. Certain data contained in some of the Exhibits provided by the Parties show significant discrepancies. For example:

(a) Figures in Exhibits US-45 and TR-23 for rice imports from 2001 to 2006;

(b) Figures in Exhibits US-53 and TR-25 for paddy rice imports in January and December 2004 and January to May 2006; for brown rice imports in March 2003 and January to September 2006; and for milled rice imports in July 2004 and January to July 2006.

(c) Figures in Exhibits US-55 and TR-28 for landed CIF prices of paddy rice in December 2004; of brown rice in March 2003, March to June 2004, September to December 2004 and June 2006; and of milled rice in December 2005.

On the other hand, some figures provided by the United States and Turkey show a high degree of similarity. For example:

(a) Figures in Exhibits US-45 and TR-24 for milled rice consumption from 2001 to 2005.

(b) Figures in Exhibits US-53 and TR-25 for paddy rice imports throughout 2003, February to November 2004, throughout 2005, June and July 2006; for brown rice imports in January, February and April to December 2003, throughout 2004 and 2005; and for milled rice imports throughout 2003 (except for May), throughout 2004 (except for July), and throughout 2005.

(c) Figures in Exhibits US-55 and TR-28 for landed CIF prices of paddy rice throughout 2003, April to November 2004, throughout 2005 and June to August 2006; of brown rice throughout 2003 (except for March), throughout 2005, and April to June 2006; and of milled rice throughout 2003, throughout 2004, throughout 2005 (except for December) and from January to July 2005.

Please explain why, in your view, this is the case, referring to relevant evidence, as appropriate.

Turkey reaffirms its understanding of the possible cause for the discrepancies as indicated in its Reply to Question 99. In particular, Turkey used realized import data collected by the Undersecretariat for Customs and processed by the Turkish Statistics Institute (TUIK). While Turkey and the United States appear to have taken these figures from the same source (i.e., TUIK), Turkey insists that it acquired the relevant statistics officially from TUIK. On the other hand, the United States did not get its figures and trade data directly from TUIK, but obtained them from the Global Trade Information Service (GTIS), a private operator that draws its information from TUIK. GTIS receives monthly data from TUIK organized by item and country basis. However, TUIK regularly and progressively updates the information/data which it has previously provided on the basis of the adjustments needed to reflect trade flow corrections of information updates. Turkey believes that GTIS may not have

updated its records for the products under examination, hence the occasional discrepancies. It is clear that this process of occasional adjustment of statistics is more likely in relation to more recent figures.

Q100. (Both Parties) The Panel has considered the information provided by Turkey on "Monthly landed CIF values" in Exhibit TR-28, and noted a sharp increase in paddy rice prices in June 2003, January and November 2004, February 2005 and March 2006. Likewise, it has noted a sharp increase in milled rice prices in September 2003, January and August 2004 and September 2005. It has also noted a significant fall in the price for milled rice in December 2003. Please explain why, in your view, these sharp increases and this significant fall in prices occurred, referring to relevant evidence, as appropriate.

See Turkey's Comments to the Reply by the United States to Question 99 above.

Q116. (United States) According to the information contained in Exhibit TR-33, since 1 May 2006, 27 Certificates of Control have been approved for MFN rice imports from the United States. However, 25 of these approved Certificates of Control do not appear to have, as yet, been utilised. Although these Certificates of Control have been approved after the date when the panel was established, could the United States comment on this.

Turkey confirms that 27 Certificates of Control have been applied for and approved between 1 May 2006 and 9 November 2006 in relation to imports of rice from the United States at MFN rates. As indicated in Turkey's reply to question 133(b) and (f), Turkey stands firm in relation to the truthfulness, completeness and usefulness of the information that it provided earlier by means of its Annex TR-33 consolidation. The statement made by the United States that "*(I)n response, Turkey asserted that it was less a matter of what Turkey could provide than what it was choosing to provide to the Panel*" does not correspond to reality. Turkey has never used these words. Turkey has diligently and willingly provided the Panel with all information that it is not covered by confidentiality requirements under Turkish law. To suggest or imply the opposite is, yet again, an unacceptable stand taken by the United States. As indicated in Turkey's reply to question 133(b) and (f) in relation to the '*56 "relevant" Certificates of Control*', Turkey would be willing to provide, exceptionally, "blacked-out" copies of these 27 Certificates of Control only to the Panel and after a clear understanding with the Panel and between the parties to this dispute that these documents would not be made available to the United States nor to any other entity beside the Panel and the WTO Secretariat.

In fact, as pointed-out by Turkey in its reply to question 133, Turkey understands that the documents provided to the Panel would have to be made available also to the United States. Given the strict confidentiality requirements provided by Turkish law and the well-established communications and information-exchanges between the United States and a number of Turkish rice traders, the Turkish officials involved in this Panel proceeding do not feel comfortable in risking information leaks and possible criminal accusations of violation of Turkish law on confidentiality. The Panel will understand that possession of copies of the actual Certificates of Control (including importers' data, imported/exported quantities, customs values, approving officials, etc.) may give rise to instances of domestic litigation in commercial, fiscal or criminal courts. According to Article 13 of the Turkish Statistical Law, the confidential data acquired, processed and kept for official statistics cannot be passed-on to any administrative, judicial or military office, authority or person, and cannot be utilized except for statistical purposes or be utilized as a tool for proof. Public officials or other authorities that gather the information have to abide by this rule. Article 53 of the same law provides that public officials violating the prohibitions embodied in Article 13 will be punished in accordance with Article 258 of the Turkish Criminal Code No. 5237.

In any event, and independently from the Turkish confidentiality requirements, Turkey notes that it is unfortunate and unacceptable for the United States to systematically make allegations in relation to

assumptions or theories for which they have no evidence, shifting the burden of proof onto Turkey. Turkey believes that the burden of proof rests on the United States to prove its complex and creative theories such as the one according to which the 27 Certificates of Control would not, in fact, have been approved or that they were requested for approval by importers without a reason since large quantities of previously approved, but un-imported, rice was stocked in bonded warehouses and available for release on the Turkish market. Something in this imaginary story is clearly wrong and Turkey reiterates its belief that the burden of proof to substantiate its allegations must stand squarely on the United States. The United States has not proven its case.

As a final comment, Turkey would like to stress that, ultimately, the picture painted by the United States confirms the general reality of rice trade. Rice importation is, to a large extent, dictated and shaped by the business determinations and commercial decisions of traders. Turkey cannot explain (and the United States is, presumably, in the same position) why importers would have requested approval for 27 Certificates of Control in relation to rice from the United States while, as alleged by the United States, they had large quantities of ready-to-be-customs-cleared rice available in bonded warehouses. Assuming that the allegation made by the United States is correct, Turkey would submit that, maybe, the real reason for this seemingly erratic behaviour by importers must be found in their business calculations and decisions. It is possible, for example, that those importers would have (voluntarily!) left certain amounts of rice in bonded warehouses waiting for the appropriate moment to release it on the Turkish market in order to maximize the economic returns. It is also possible that those importers would have (voluntarily!) applied for 27 Certificates of Control in order to import rice in the future (the Certificates of Control have a validity of one year from date of approval) and for purposes of planning future importation or even just to re-stock those bonded warehouses about to be emptied as a consequence of their business determinations.

It strikes as a bit odd that every single move or trade pattern related to rice importation would be seen by the United States as part of a broader and far-reaching conspiracy by Turkey with trade-distortive and protectionist objectives. Furthermore, it appears a bit curious that the United States would not be able to prove their allegations in relation to the "theory" surrounding the 27 Certificates of Control and the large quantities of rice released from bonded warehouses by collecting evidence from those very importers of US rice that have traditionally been the primary source of evidence for the many allegations made by the United States.

Q131. (Both Parties) In its response to question 40 (d) posed by the Panel, Turkey submits that Certificates of Control provide importers with "trade facilitation benefits", such as "guaranteeing consistency and uniformity in the customs clearance procedures ... provid[ing] greater commercial predictability and legal certainty to importers (in relation to what they can expect to happen at border control), and ... reduc[ing] the possibility for goods to be blocked at customs with the potential for costly and time-consuming customs litigation."

(a) Are Certificates of Control in their current form the only instruments by which Turkey can achieve those "trade-facilitation benefits" or would there be any other way of achieving these same benefits? Please justify your answer, making reference to relevant evidence, as appropriate.

Turkey believes that the United States either did not understand or did not provide an adequate answer to question 131(a) by the Panel. In particular, the United States stated, in relevant part, that it "*fails to see how denying these Control Certificates facilitates trade in rice*". The question by the Panel was aimed at identifying other ways, if any, through which Turkey could achieve the same "trade facilitation" objectives that it currently seeks through the Certificate of Control. Turkey has already

provided considerable arguments in its previous submissions[1] as to the functions of the Certificate of Control and its "trade facilitation" objectives of proportionality, legal certainty, commercial predictability, etc. Therefore, Turkey does not wish to enter again into this debate.

Turkey simply submits that the apparent misunderstanding of the question by the Panel, which is shown by the United States in its reply, emphasizes the continued confusion that the United States makes between the review of the Certificate of Control as a perfectly legitimate legal instrument available to Turkey (i.e., a *de jure* review) and the scrutiny of its alleged effects, which may be based on factual allegations of denial (i.e., a *de facto* review). Turkey believes that, *de jure*, the legal instrument Certificate of Control easily meets any "trade facilitation" test. *De facto*, a "trade facilitation" and proportionality test cannot be diminished by a review that focuses only on a few individual instances of rejection and related domestic litigation. These instances would have to be seen against the background of large volumes of rice importation, very high approval rates for Certificates of Control, and very small percentages of domestic litigation. International trade is not a perfect world. There will always be instances of disappointment between traders and administrations. Turkey believes that its importation regime, as it applies to rice, is by no means less inductive of trade and more cumbersome than other WTO Members' trading environments.

(b) Does the fact that Certificates of Controls allegedly provide importers with trade facilitation benefits mean that, in the absence of the requirement to obtain Certificates of Controls, the importation of rice would in some way be more cumbersome? If so, please describe in what manner the importation of rice would be more cumbersome in the absence of such requirement, justifying your answer with appropriate arguments and evidence.

Turkey notes that once again the United States has not answered the question put forward by the Panel in question 131(b). In particular, the United States has failed to indicate how the process of importation could be carried-out by Turkey, while preserving its ability to pursue all legitimate customs purposes and product certification objectives, without Certificates of Control.

However, in relation to the non-pertinent information provided by the United States in its answer, Turkey recalls that the Certificate of Control is a different legal instrument from the UFT import license necessary to import at the more advantageous rates of duty provided within the TRQ. Contrary to what professed by the United States, it is not true that four agencies are involved in the process of approval of the Certificates of Control. The approval of Certificates of Control, in relation to both over-quota and in-quota trade, only requires cooperation between two Turkish authorities (i.e., MARA and customs). Turkey also wishes to reiterate that, since the Certificate of Control is not an import license, no provision of the Agreement on Import Licensing Procedures applies to it.

Q134. (Both Parties): In response to question 44 (f) posed by the Panel, regarding the denial of Certificates of Control, Turkey provided the Panel with Exhibit TR-36, listing the application date, origin, quantity and quality of the rice for which each Certificate of Control was requested during the years 2003 to 2006. As reasons for denial, the list states the following: "Missing documents not completed", "Upon the demand of the Company" and "Incomplete Administrative Requirements".

(a) What should be understood from these reasons?

(b) Can Turkey provide further detail regarding the reasons for denial of the listed applications for Certificates of Control?

[1] See, in particular, Turkey's Rebuttals, paras. 10, 11 and 12 and Turkey's Oral Statements at the Second Hearing, paras. 15 to 22.

(c) Are detailed reasons for denial provided in writing to the requesting companies in the document of rejection or are these reasons communicated to applicants in a similarly succinct manner as what is indicated in Exhibit TR-36?

Turkey was not aware that this issue resulted in dissatisfaction and/or lack of transparency vis-à-vis traders that had seen their requests rejected. As Turkey indicated in its reply to question 134, the reasons for rejection of individual applications for Certificates of Control have always been promptly communicated, informally or verbally, by MARA. In fact, MARA always makes sure that the representatives of applicant companies are promptly informed of the missing or wrong parts of the applications. This is a process of information exchange that Turkey was convinced to have always worked well and to the full satisfaction of traders. However, Turkey is willing to consider introducing a more formal system of notification of the reasons for individual rejections should this better guarantee the rights and expectations of traders. With respect to the specific reasons for denial of approval of Certificates of Control, Turkey refers to what already stated in its reply to question 134(a).

Q136. (Both Parties) According to Turkey's statements (see, for example, para. 25 of its first submission), Certificates of Control for the importation of rice are valid for periods of 12 months.

(a) If this is the case, why would importers not import rice during periods in which Certificates of Control are allegedly not being approved, but some Certificates of Control are presumably still valid?

(b) During periods when the TRQ was not open, why would imports of rice not occur under Certificates of Control that were presumably still valid?

(c) Is there any difference between the Certificates of Control issued to import at the MFN rate, under preferential trade agreements and under the TRQ? If so, please specify the differences between them. If not, does this mean that a same Certificate of Control could have been equally used to import under the different rates? Did an importer have to specify whether the intended import was to be in-quota or over-quota when applying for a Certificate of Control? Please make reference to relevant evidence, as appropriate.

(d) Would a Certificate of Control still be valid for twelve months, even during a period when a TRQ was in place? Would an in-quota Control Certificate maintain its validity of 12 months, and therefore still allow imports to take place at the preferential in-quota tariff rate, despite the tariff quota period closing?

(e) Does the amount permitted to be imported under the Certificate of Control hold any relation with the amount permitted to import when applying for an import license to the Turkish Foreign Trade Undersecretariat (FTU)?

The answers provided by the United States appear to indicate, at best, a continued misunderstanding of the functioning of the Certificate of Control system. In particular, Turkey wishes to clarify that there is no different types of Certificates of Control applying to different types of rice trade (i.e., MFN, TRQ, and/or FTA). There is only one form of Certificates of Control that applies to all types of rice imports. It is only when traders seek to import rice within the TRQ or FTA allocations that an import license will be needed in addition to a Certificate of Control.

Turkey would also like to remark that Certificates of Control are stand-alone documents. Even when approved in relation to applications for imports under the TRQ or FTA arrangements, they remain valid for a year from approval, and may be used by traders to import any type of rice (i.e., including "MFN rice" if, meanwhile, the TRQ has been fully allocated, has lapsed, or the importer has made the business determination not to import within the preferential trade volume). This appears to be a simple and straight-forward concept to understand and Turkey is surprised that the United States keeps neglecting it or intentionally misunderstanding it.

Q140. (United States) In paragraph 26 of its first written submission, the United States claims that on 30 December 2004, MARA's General Directorate would have issued a Letter of Acceptance which recommended "yet another 'delay' in the opening date for issuing Certificates of Control until August 1, 2005". How can this statement be reconciled with the figures in Annex TR-33 that show that Certificates of Control for imports of US rice would have been issued in April and May 2005 and that imports over the quota took place during these two months?

Turkey would like to comment on the statement made by the United States in relation to the alleged "*temporary relaxation of the legal prohibition for US imports*".

Firstly, Turkey strongly denies the implied idea of the existence of a discriminatory intent vis-à-vis imports of rice from the United States. Turkey has systematically administered its import regime in a non-discriminatory fashion (both in relation to MFN and TRQ rice imports).

Secondly, Turkey reaffirms that there has never been a "*legal prohibition*" to import rice. Here the United States seems to reiterate its wrong assumption that this "*legal prohibition*" was adopted by means of the so-called Letters of Acceptance. Turkey has already thoroughly argued and proved that the Letters of Acceptance are not, under the Turkish legal system, legislative measures of the type that would result in a *de jure* prohibition. In any event, it appears curious that the United States, while indicating the existence of a "*legal prohibition*", would introduce the concept of a "*temporary relaxation*" which is not grounded in any legal provision and appears to be of a *de facto* nature. Presumably, a "*temporary relaxation*" of the type that the United States is referring to would need to be embodied in a legal provision able to override the "*legal prohibition*" of the Letters of Acceptance. This argument is flawed. The apparent reduction of imports is used by the United States as evidence of a "*legal prohibition*".

Lastly, Turkey provided evidence that, in fact, imports of MFN rice were occurring in that same period from sources other then just the United States (for instance, Bulgaria). Therefore, the claim made by the United States that Turkey's alleged "*temporary relaxation*" was targeted to imports from the United States is unfounded and misleading.

Q145. (Both Parties): In its statement during the second substantive meeting with the Panel (para. 12), the United States argued that Turkish courts have attributed legal effect to the so-called "Letters of Acceptance" and upheld MARA's enforcement of such Letters. In response, in its closing statement during the same meeting (para. 9), Turkey argued that, in a specific case cited, a "Court of first instance appears to have given effect to an ultra vires act [from the Minister of Agriculture and Rural Affairs]". What should be the appropriate value given by the Panel, if any, to interpretations of domestic law developed by local courts? What should be the appropriate value given by the Panel, if any, to interpretations of domestic law advanced by the administration of a Member before a local court? Was the allegedly erroneous interpretation of Turkish domestic law developed by the local court appealed by the Turkish administration? Should interpretations of domestic law developed by local courts be accorded a different value by the Panel if they were issued by higher courts?

Turkey maintains that the Letters of Acceptance were internal communications aimed at developing policies and cannot be defined, according to the Turkish legal system, as "domestic law." 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 may support a *de jure* complaint. The fact that these Letters of Acceptance have been used in open Court proceedings by MARA and have been used by Turkish Court to discharge MARA from the accusations of the plaintiff, cannot legally turn the Letters of Acceptance into measures equivalent to laws or regulations. Turkey believes that the legal status of the Letters of Acceptance does not change merely because a domestic Court of First Instance has upheld MARA's defence in domestic proceedings. This must be taken into account by the Panel when assessing the evidentiary weight and value of such judgments.

Turkey also believes that the amount of Certificates of Control approved in relation to applications made for all types of rice imports (i.e., MFN, FTA and TRQ) between the alleged periods of operation of the Letters of Acceptance stands as clear evidence that, despite their existence and the informal circulation within the administration, these Letters of Acceptance were never enforced and cannot be consider as satisfactory evidence of the existence of a "denial."

Turkey confirms its argument that the domestic courts appear to have given effect to an *ultra vires* act of the Minister. It is essential to underline that the relevant Turkish legislation does not grant to MARA any discretion in relation to the approval of Certificates of Control for which applications have been duly compiled and submitted. Nor it is provided, contrary to what the United States repeatedly alleges, that proof of domestic purchase is required for the approval. The United States appears to once again misinterpret reality and maliciously confusing the approval of Certificates of Control with the issuance of import licenses required for importation at advantageous rates (i.e., TRQ trade, which was subject to a domestic purchase requirement).

Turkish law grants to MARA the authority and the competence, but not the discretion, to approve Certificates of Control for the importation, *inter alia*, of rice. In this respect, any instance of denial by MARA of the approval of Certificates of Control, which is not based on the incompleteness or incorrectness of the applications, is to be considered an *ultra vires* act. In relation to this, Turkey refers to its Reply to Questions 126 and 127 in order to reiterate that there is no provision that gives the discretion not to approve Certificates of Control. It is MARA's legal duty and responsibility to approve the Certificates of Control in relation to all importers' applications that meet the requirements established by the relevant legislation under the Turkish legal system. Any individual decision that contradicts this legal requirement would be an *ultra vires* act.

With respect to the individual administrative decision, the ruling of the domestic Court appears to have discharged MARA by finding that the Provincial Directorate was acting within the confines of its ministerial hierarchy. Turkey submits that the apparent legal value given by a Turkish Court of First Instance to a Letter of Acceptance is not relevant for purposes of the WTO proceeding at stake. The Turkish Court did not rule on the legality of the Letter of Acceptance. 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 specific case cited by the United States is not relevant because the Turkish Courts have simply not decided on this issue of legality. As indicated in Turkey's Reply to Question 145, in assessing the value of relevant domestic jurisprudence, the Panel should select jurisprudence that reflects the interpretation which is most in conformity with Turkish law, take into account the quality of the reasoning on what it perceives to be the dominant interpretation, and respect the hierarchy of the national court system. Turkey believes that the application of these criteria should lead the Panel to disregard the evidentiary value of the domestic judgement.

Q150. (Both Parties) In paragraph 37 of its response to question 18 (c) posed by the Panel, the United States asserts that it "has been informed by the trade (sic) that MARA is orally

informing importers that the MFN tariffs will henceforth be calculated based upon government-determined reference prices for paddy, brown, and milled rice, respectively, rather than on the actual customs value of the merchandise." Could the United States provide further information and evidence to support this assertion. Could Turkey provide any further information on this regard, making reference to relevant evidence, as appropriate.

Turkey wishes to reaffirm that the alleged "reference price" system, which falls in any event outside of the Terms of Reference of this Panel proceeding, is another element of confusion brought by the United States into this dispute. The alleged "reference price" system does not exist. There is, on the other hand, a "reference price" which is used by Turkey to provide its customs authorities with a benchmark in order to monitor trade flows and systematically identify possible instances of customs valuation abuse by traders.

In particular, as indicated by Turkey in its reply to question 150, the Turkish authorities at customs points-of-entry are periodically notified by the central administration of the reference prices for paddy rice, brown rice and rice simply in order for the customs authorities to be aware of the average prices for these commodities and to detect instances of unfair trade and tax loss that might occur due to the importers' under-valued customs declarations. Turkey believes that, contrary to what is being claimed by the United States, nothing in the language of Exhibit US-68 and US-76 proves the trade-distortive nature of this Turkish instrument to avoid tax evasion and customs valuation fraud.

Furthermore, Turkey submits that the United States is again basing its allegations and its interpretation of this system on a number of manipulated translations from Turkish into English. In particular, the Turkish Minister of Agriculture has never referred to the Certificate of Control as an "*import license*", but rather as a "*control document*" (i.e., the Turkish "*Kontrol Belgesi*"). This may seem as only a minor linguistic correction, but it is one that Turkey considers important in that it further indicates the constant attempt made by the United States to turn every single detail or occurrence as a cornerstone of its theory of a systematic pattern of trade distortion and discrimination allegedly enforced by Turkey. This is simply not the case and a careful reading of the system proves the opposite.

Q152. (United States) In its statement during the second substantive meeting with the Panel (para. 21), the United States argued that it would be necessary for the Panel to make a finding and recommendation regarding the so-called "domestic purchase requirement", in order to resolve the dispute between the parties.

(a) Could the United States explain why this would be the case, in its view.

Turkey believes that that the United States is wrong in considering that a finding and recommendation on its domestic purchase requirement is necessary in order to solve this dispute. Turkey wishes to recall that the TRQ regime together with its domestic purchase requirement, are no longer in force. Turkey has not re-opened the TRQ since its expiry on 31 July 2006 and it has indicated that it considers this expiry definitive.

As Turkey has already explained, in order to re-open another TRQ with a domestic purchase requirement, Turkey would have to adopt a new Decree, fixing the quota openings, quantities and coefficients, together with its implementing Communiqué, providing, *inter alia*, for the quantities of domestic rice to be purchased and for the deadlines for the relevant applications. All the legislation which is specifically related to the establishment of tariff quotas for rice has expired and a new set of rules would therefore need to be adopted, promulgated and published. Turkey has committed not to adopt a new TRQ with a domestic purchase requirement. On the other side, Turkey does not understand what other evidence would the United States need in order to consider the TRQ regime and its domestic purchase requirement expired.

The mere theoretical possibility that new legislation be enacted in the future cannot be considered as an indication that Turkey may re-introduce a TRQ regime. It is also not sufficient evidence that the TRQ regime had not expired, the fact that Decree No. 2004/7333 is still in force. In relation to this, Turkey has already noted that this Decree provides the legal basis for the management of all types of quotas and tariff quotas, irrespectively of the product, of the nature and the trade measure allowing for the adoption of the quotas. This legislation is not rice-specific. Moreover, contrary to what the United States suggested, there is no mention of the domestic purchase requirement in this Decree, and the fact that the Decree does not specify whether the UFT can or cannot impose a domestic purchase requirement in connection with tariff-rate quotas is not, in itself, proof of the continued existence of the TRQ regime nor of a WTO-inconsistency of the Decree in itself. Finally, the United States has failed to indicate which provisions of Decree No. 2004/7333 would be WTO-inconsistent and would justify its repeal or amendment.

Turkey has maintained that the TRQ regime provided beneficial import conditions of which importers took full advantage. Turkey understands, however, that this has caused a great degree of discontent in the United States. Turkey has repeatedly assured the United States during bilateral consultations and in the course of these proceedings that it does not intend to resort again to the TRQ regime and that, should the need arise, it will address its objectives of market intervention and stabilization through other WTO-consistent trade policies which are less administratively burdensome (i.e., the action of the TMO as an intervention agency, the appropriate and legitimate use of MFN and applied rates of duty).

Turkey considers this to be a commitment that, ultimately, the United States and the Panel should take into serious account. In this respect, Turkey notes that in a similar instance the Panel in *Argentina – Footwear* had this to say in relation to expired measures and the threat of their recurrence: "*We must assume that WTO Members will perform their treaty obligations in good faith, as they are required to do by the WTO Agreement and by international law. We consider, therefore, that there is no evidence that the minimum specific import duties on footwear will be reintroduced*".[2]

(b) In paragraph 20 of its statement, the United States also argued that its request that the Panel make findings and recommendations regarding the TRQ regime would be supported by the interpretation contained in the Appellate Body report in the Dominican Republic – Import and Sale of Cigarettes case. Could the United States elaborate on this assertion, explaining in what manner does the Appellate Body's decision in that case support its request. Please refer to specific sections of the report, as appropriate, and their relevance to the present case.

Turkey wishes once again to briefly comment on the United States' assertions in relation to the expiry of Turkey's domestic purchase requirement and this Panel's role under Article 19.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

First, Turkey would like to re-illustrate to the United States the correct interpretation of WTO case law with respect to the Panel's authority in issuing recommendations with respect to measures expired before or in the course of the proceedings. Turkey already noted that while Article 19.1 of the DSU entrusts panels to issue recommendations with respect to measures found inconsistent with the covered agreements, the extent of this authority may be objectively limited by the expiry of the measures, both before and in the course of the panels' proceedings. In this respect, Turkey recalls that in light of WTO jurisprudence, Article 19.1 of the DSU requires a panel to make recommendations to

[2] See *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, para. 6.14.

bring a measure found inconsistent into conformity 'provided that' such measure is still in force. Turkey quoted *United States - Certain EC Products* where the Appellate Body stated that the Panel "*erred in recommending the Dispute Settlement Body to request the United States to bring into conformity a measure which the Panel has found no longer to exist*",[3] *Chile - Price Band*, where the Panel stated that it would not make recommendations with respect to expired measures,[4] and *Dominican Republic - Cigarettes*, where the Panel did not find it appropriate to recommend to the Dispute Settlement Body that it make any request to the Dominican Republic regarding a measure (i.e., the Selective Consumption Tax) since it was no longer in force.[5]

With particular respect to the Appellate Body's report in *Dominican Republic- Cigarettes*, Turkey believes that it is wrong and misleading for the United States to consider that this report supports its assertions. In that case, the Panel had decided not to make a recommendation with respect to the Dominican Republic's Selective Consumption Tax, which was modified in the course of the panel's proceedings. The Appellate Body did not disagree with the Panel's decision of not making a recommendation on the issue, nor did the Parties to the dispute. The broad recommendation included in paragraph 130 of that Appellate Body's report in no way can be interpreted so as to include the Appellate Body's disagreement on the Panel's conduct, while this conduct was not even raised in the appeal. This interpretation is also upheld by the Panel in *EC-Biotech*, which stated that: "*Similarly, in Dominican Republic - Import and Sale of Cigarettes, the panel did not find it "appropriate" to make a recommendation in relation to a WTO-inconsistent measure concerning the determination of the tax base for cigarettes because that measure was "no longer in force" as a result of amendments which were made after the panel was established […]*".[6]

In relation to the tax stamp requirement, which was amended shortly after the issuance of the Panel report, the reason why the Appellate Body issued a ruling is because both Parties requested so, even though they both agreed that the new legislation had changed the tax regime. As the Appellate Body explained in paragraph 129 of its report, "*At the oral hearing, the participants agreed that the tax stamp regime as a whole had been altered by a new decree in October 2004. Both participants nevertheless requested the Appellate Body to rule on the WTO-consistency of the original measure. In view of the above, the Appellate Body recommends that the Dispute Settlement Body request the Dominican Republic to bring the tax stamp requirement, found in this Report and in the Panel Report as modified by this Report to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement if, and to the extent that, the said modifications to the tax stamp regime have not already done so*".[7]

Turkey fails to understand how the two instances of the Appellate Body's report in *Dominican Republic - Cigarettes* could be of any relevance to the present dispute and how they would support the United States' arguments. In particular, Turkey notes that the Appellate Body did not disagree with the Panel's decision not to issue a recommendation on the Selective Consumption Tax and that the Appellate Body issued a ruling on the tax stamp requirement (i.e., on a measure that was changed soon after the issuance of the Panel report) only because the parties to the dispute expressly requested so.

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

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

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

[6] See, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, para. 7.1314.

[7] See, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, Appellate Body Report, para. 130.

Second, Turkey also believes that the United States again refuses to understand that under WTO case law the date of the establishment of the panel may affect the Panel's discretion in making findings, whereas in all instances of measures expired before and after the commencement of the Panel proceedings, if a finding is made, no recommendation is due. The relevant parts of the *EC - Biotech* report quoted by the United States fully support this view. In that case, the Panel made a finding with respect to the *de facto* moratorium enforced by the EC, but did not issue a recommendation. The *de facto* moratorium expired prior to the Panel's establishment.

In relation to this, Turkey would like to make two observations. First, the Panel considered the *de facto* nature of the measure as decisive in order for it to make a finding. This appears to be a significant difference with Turkey's domestic purchase requirement, which was not a *de facto* measure. In fact, with respect to other measures expired before the commencement of the proceedings, the same Panel did refrain from making findings as it did not consider making those findings necessary for the solution of the dispute.[8] Second, the Panel acknowledged the value and importance of WTO case law on issuing recommendations on expired measures and recognized that "*the foregoing WTO jurisprudence supports the inference that panels are to avoid making recommendations which would apply to measures that are no longer in existence or have been amended*".[9] The Panel therefore limited its recommendations on the *de facto* moratorium by requesting the European Communities to bring its measures into conformity "*if, and to the extent that, that measure has not already ceased to exist*".[10]

In the light of these considerations, Turkey respectfully invites this Panel not to make a finding on any of the measures establishing the domestic purchase requirement, including the ones expired soon after the commencement of Panel proceedings. Turkey believes that no finding is necessary to secure a positive solution to the dispute. As previously stated, 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 once again 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.

Questions from Turkey

Question TR-1: Could the United States indicate which specific provision of the Turkish law on Certificates of Control (i.e., Communiqué of Standardization for Foreign Trade No. 2005/5, 2006/5 and 2007/21) defines, de jure, a Certificate of Control as an import license?

Turkey believes that, rather than being "*irrelevant*", it is quite revealing that the United States has not been able to find a *de jure* definition of the Certificate of Control as an "*import licence*". In fact, *de jure*, Turkey's Certificate of Control is not an "*import licence*" and no legal provision in the Turkish legal system and relevant sets of laws assimilates the Certificate of Control to an "*import licence*". Turkey indicated what are, *de jure*, the roles and functions of the Certificate of Control.

[8] See, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, paras. 7.1651-7.1654.

[9] See, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, para. 7.1316.

[10] See, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, para. 8.16.

In addition, and as systematically argued and evidenced by Turkey in the course of these proceedings, the Certificate of Control has also never acted or operated as a *de facto* "*import licence*". Certificates of Control were always approved, throughout the entire period under examination, on the basis of the applications lodged by traders, provided that all legal requirements for approval were duly met.

Finally, with respect to the assertion made by the United States on the relevance of the characterization allegedly made by Turkey's Minister of Agriculture, Turkey recalls it strong rejection made in its Comments to the Reply by the United States to Question 150 above. In particular, the Turkish Minister of Agriculture has never referred to the Certificate of Control as an "*import license*", but rather as a "*control document*" (i.e., the Turkish "*Kontrol Belgesi*").

Question TR-2: Could the United States identify which specific provisions of Turkish law provide the Turkish Ministry of Agriculture and Rural Affairs, (i.e., MARA) with the discretion necessary to deny the approval of applications for Certificates of Control which otherwise comply with the requirements of the law?

Turkey believes that the answer provided by the United States in its Reply to Question TR-2 is simply incorrect and not based on any legal and factual evidence. As already indicated by Turkey in its Replies to Questions 126 and 127, upon submission of the required documentation, MARA has the legal duty and responsibility to approve Certificates of Control. From this, it follows that importers have the right to obtain approved Certificates of Control. MARA has no discretion in approving Certificates of Control, provided that all legal requirements are met.

The United States also continues to confuse between Certificates of Control and import licences for in-quota imports (TRQ or FTA). Certificates of Control are "neutral" instruments that are needed independently of the type of rice importation (i.e., MFN, TRQ or FTA imports). On the other hand, import licences were needed only for TRQ imports and are still needed for FTA rice imports. Import licences were issued, in relation to TRQ imports, behind proof of the domestic purchase requirement. Certificates of Control have never required proof of domestic purchase. This continues to be an area of confusion that Turkey believes the United States willingly pretends not to understand.

Question TR-3: What leads the United States to argue that there should be an a priori exclusion of the Certificates of Control approved in relation to out-of-quota FTA trade from the alleged application of the "blanket denial" for all out-of-quota requests for approval?

Turkey notes that "*whether Certificates are required for non-MFN, out-of-quota trade*" is not "*irrelevant*" as the United States argues. Turkey never enforced a "*blanket denial*" (i.e., a total prohibition) and it continued to approve Certificates of Control throughout the period under examination on the sole basis of the applications lodged by traders and the compliance of those applications with legal requirements. The United States has not shown (in fact, it has not even claimed) that all applications there were put forward by rice traders during certain times were systematically not approved.

The United States has merely based its overall claim on a limited number of individual rejections. Turkey believes that this *modus operandi* cannot be considered as sufficient to establish a *prima facie* case. In any event, it certainly appears not to be sufficient evidence of a "*blanket denial*" in Turkey's approval of Certificates of Control. At best, it may prove the lack of applications by traders during certain times for Certificates of Control in relation to MFN trade. Turkey has explained this in its previous submissions on the basis of traders' business determinations and commercial considerations linked to a variety of economic factors, including the existence of considerable tariff advantages for importing within the TRQ.