

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

(WT/DS334)

**FIRST SUBMISSION OF
THE UNITED STATES OF AMERICA**

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SHORT TITLE	FULL TITLE AND CITATION
<i>Argentina Leather</i>	Panel Report, <i>Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather</i> , WT/DS155/R, adopted 16 February 2001
<i>Canada Autos</i>	Panel Report, <i>Canada – Certain Measures Affecting the Automotive Industry</i> , WT/DS139/R and WT/DS142/R, adopted 19 June 2000
<i>Canada Periodicals</i>	Panel Report, <i>Canada – Certain Measures Concerning Periodicals</i> , WT/DS31/R, adopted 30 July 1997
<i>Canada Wheat</i>	Panel Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/R, adopted 27 September 2004
<i>DR Cigarettes</i>	Panel Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/R, adopted 19 May 2005
<i>EC Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/AB/R, adopted 5 April 2001
<i>EC Asbestos</i>	Panel Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/R, adopted 5 April 2001
<i>EC Bananas</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/R, adopted 25 September 1997
<i>FSC 21.5</i>	Appellate Body Report, <i>United States – Tax Treatment for “Foreign Sales Corporations”</i> : Recourse to Article 21.5 of the DSU by the European Communities, WT/DS108/AB/RW, adopted 29 January 2002
<i>FSC 21.5</i>	Panel Report, <i>United States – Tax Treatment for “Foreign Sales Corporations”</i> : Recourse to Article 21.5 of the DSU by the European Communities, WT/DS108/RW, adopted 29 January 2002
<i>Gasoline</i>	Panel Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/R, adopted 20 May 1996

<i>India Autos</i>	Panel Report, <i>India – Measures Affecting the Automotive Sector</i> , WT/DS146/R and WT/DS175/R, adopted 5 April 2002
<i>India QRs</i>	Panel Report, <i>India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products</i> , WT/DS90/R, adopted 22 September 1999
<i>Japan Semiconductors (GATT)</i>	GATT Panel Report, <i>Japan – Trade in Semi-conductors</i> , L/6309, adopted 4 May 1988
<i>Japan Varietals</i>	Panel Report, <i>Japan – Measures Affecting Agricultural Products</i> , WT/DS76/R, adopted 19 March 1999
<i>Korea Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R and WT/DS169/AB/R, adopted 10 January 2001
<i>Korea Beef</i>	Panel Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/R and WT/DS169/R, adopted 10 January 2001
<i>Shrimp Turtle</i>	Panel Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/R, adopted 6 November 1998
<i>Turkey Textiles</i>	Panel Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/R, adopted 19 November 1999

I. INTRODUCTION

1. Simply put, this dispute is about market access. During the Uruguay Round, Turkey committed itself to permit imports of rice at a bound rate of 45 percent. Instead, Turkey has instituted a non-transparent, discretionary import licensing system to restrict and, at times, eliminate imports of rice. Specifically, since 2003, Turkey has applied a tariff-rate quota (“TRQ”) for rice, and has required licenses in order to import rice both at the in-quota and over-quota rates. With respect to the over-quota rate, Turkey’s Ministry of Agriculture and Rural Affairs (“MARA”) simply fails to issue licenses. With respect to the in-quota quantities, Turkey has made the receipt of licenses from the Turkish Foreign Trade Undersecretariat (“FTU”) contingent upon the purchase of large quantities of domestic rice. Because Turkey fails to issue licenses at the over-quota rate and Turkey closes the TRQ during the annual Turkish rice harvest, there is a complete ban on imports of rice during the August-October time period. Turkey relaxes and strengthens its import licensing measures at will, generally with no advance written notice to importers, and frequently in contravention of what has been published in Turkey’s Official Gazette.

2. Importers who have applied for licenses often wait for months or even years for a response to their applications, and if they do receive a response, their license applications are denied with little reason (e.g., spelling errors) or denied with no reason provided at all. One importer went to court in October 2004 seeking a court order for the government to grant him an import license after his application requests were returned and ultimately denied: as of December 2005, his rice was still sitting in a warehouse while the litigation remained pending. In taking these measures, Turkey has acted inconsistently with several provisions of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”), the *Agreement on Import Licensing Procedures* (“Import Licensing Agreement”), the *Agreement on Agriculture* (“Agriculture Agreement”), and the *Agreement on Trade-Related Investment Measures* (“TRIMs Agreement”).

3. Turkey’s denial of licenses to import rice at or below the bound rate of duty is inconsistent with Article XI:1 of the GATT 1994 because it prohibits or restricts imports at the over-quota rate, and when the TRQ is closed, it acts as a complete ban on rice imports. Turkey’s denial of import licenses also constitutes discretionary import licensing: under Turkish law, MARA is supposed to grant import licenses automatically but in fact it does not issue any licenses at all. Because Turkey’s denial of import licenses outside the TRQ is a WTO-inconsistent quantitative import restriction and also constitutes discretionary import licensing, it has breached Article 4.2 of the Agriculture Agreement. Additionally, Turkey’s import licensing regime for imports outside the TRQ is non-transparent. For example, Turkey has never notified its import licensing regime for rice to the WTO, despite a U.S. request that it do so.¹ Its regime therefore is inconsistent with additional WTO provisions, including Articles 1.4(a) and (b) and 3.5(e) and (f) of the Import Licensing Agreement and Articles X:1 and X:2 of the GATT 1994.

¹ Import Licensing Regime for Rice and Other Agricultural Products: Questions from the United States to Turkey, G/LIC/Q/TUR/3 (25 July 2005).

4. Further, Turkey’s requirement that importers purchase large quantities of domestic rice as a condition for importation under the in-quota quantity of a TRQ is inconsistent with Article III:4 of the GATT 1994 because imported rice is accorded less favorable treatment than domestic rice. The domestic purchase requirement is inconsistent with Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement, because Turkey imposes domestic purchase requirements as a condition for permitting importation at a reduced duty rates. The domestic purchase requirement is also inconsistent with Article XI:1 of the GATT 1994, Article 4.2 of the Agriculture Agreement, and Article 3.5(h) of the Import Licensing Agreement. The eligibility criteria for who may purchase rice under the TRQ also breaches Article III:4, or in the alternative, Article XI:1 of the GATT 1994.

5. Moreover, Turkey’s overall import licensing regime – the TRQ, licenses for which are contingent on domestic purchase, acting in conjunction with the denial of any licenses to import at the over-quota rates – is inconsistent with Article XI:1 of the GATT 1994, Article 4.2 of the Agriculture Agreement, and Articles 3.5(a), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement. The United States therefore respectfully requests the Panel to find that Turkey’s measures are inconsistent with these provisions and recommend that Turkey bring its measures into conformity with its WTO obligations.

6. The United States has sought to avoid dispute settlement on this issue and instead reach a mutually acceptable solution with Turkey. However, U.S. attempts to resolve this issue have not been successful. The United States remains willing to reach such a solution with Turkey.

II. PROCEDURAL BACKGROUND

7. On November 2, 2005, the United States requested consultations with the Government of Turkey pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), Article XXII:1 of GATT 1994, Article 6 of the Import Licensing Agreement, Article 8 of the TRIMs Agreement, and Article 19 of the Agriculture Agreement regarding Turkey’s import restrictions on rice from the United States. This request was circulated to WTO Members on November 7, 2005.² Pursuant to this request, the United States and Turkey held consultations on December 1, 2005. These consultations failed to reach a mutually satisfactory resolution to this dispute.

8. On February 6, 2006, the United States requested the establishment of a panel pursuant to Article 6 of the DSU, Article 6 of the Import Licensing Agreement, Article 8 of the TRIMs Agreement, and Article 19 of the Agriculture Agreement.³ The Dispute Settlement Body

² WT/DS334/1 (7 November 2005).

³ WT/DS334/4 (7 February 2006).

(“DSB”) considered this request at its meetings of February 17 and March 17, 2006, and established the Panel on March 17 with standard terms of reference as follows:

To examine, in the light of the relevant provisions of the covered agreements cited by the United States in document WT/DS334/4, the matter referred to the DSB by the United States in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁴

III. FACTUAL BACKGROUND

A. Rice: Product Description

9. Under the Harmonized System, rice is classified under tariff item 1006. Within item 1006, rice is classified according to the three stages of its production process: rice in the husk, otherwise known as paddy or rough rice (HS 1006.10); husked rice, otherwise known as brown rice (HS 1006.20); and semi-milled or wholly-milled rice, otherwise known as white rice (HS 1006.30).

10. Paddy, or rough, rice is rice as it is harvested from the field. It consists of kernels of rice having a portion or portions of the protective husk (or hull) remaining. Paddy rice can be milled into either brown rice or, if the milling process continues, white rice. Brown rice consists of kernels of rice where the husk have been removed, but the brown layer, or bran (which gives brown rice its name) remains. Milled, or white, rice consists of kernels of rice where the husks and at least the outer bran layers have been removed. Milled rice, and less frequently brown rice, is consumed at the dinner table.⁵

B. Turkey’s Rice Market

11. Since 2003, Turkey’s rice production has expanded considerably. Turkey produced 234,000 metric tons of milled rice in 2003, 270,000 metric tons of milled rice in 2004, and 300,000 metric tons of milled rice in 2005.⁶ The Turkish Grain Board (“TMO”) purchases rice

⁴ WT/DS334/5 (1 August 2006); WT/DS334/5/Rev.1 (1 September 2006).

⁵ See Exhibit US-38. HS 1006.40 covers “broken rice”, which refers to rice where the kernel has been cracked at some point during the production process, is primarily used for industrial purposes (e.g., in the production of beer and dog food).

⁶ www.fas.usda.gov/psdonline/psdHome.aspx (Exhibit US-45).

that Turkish farmers are unable to sell on the open market at prices it announces, and which are well above world prices.⁷

12. Turkish consumption was 545,000 metric tons in 2003, 550,000 metric tons in 2004, and 560,000 metric tons in 2005.⁸ As Turkey's rice industry cannot meet domestic demand, Turkey needs to import rice. The primary exporters of rice to Turkey are the United States, the European Communities, and Egypt.⁹

C. Turkey's Import Licensing Regime for Rice

13. In the Uruguay Round, Turkey agreed to reduce its duty rate under tariff item 1006 from a base rate of 50 percent *ad valorem* to a bound rate of 45 percent *ad valorem*.¹⁰ Separately, Turkey's domestic tariff schedule provides different effective tariff rates for paddy, brown, and milled rice: 34 percent *ad valorem*, 36 percent *ad valorem*, and 45 percent *ad valorem*, respectively.¹¹

14. Turkey began restricting access to its rice market at least as early as 2000 when MARA began implementing an unofficial ban on rice imports.¹² At first, MARA only imposed the ban during the time period approximating the Turkish rice harvest, which begins in August and ends in October. Importers eventually adjusted to the seasonal ban by importing large quantities of rice before the ban went into effect and putting it in storage, which made the ban less effective in protecting domestic producers.

15. In 2003, rice imports were higher than expected, thereby forcing TMO to purchase large quantities of domestic rice at prices high above the world price, which TMO subsequently needed to liquidate. The seasonal ban was no longer working, so a new system was designed. Turkey instituted a tariff-rate quota (TRQ) scheme, coupled with an onerous domestic purchase requirement, while at the same time making the seasonal ban permanent to ensure that there were no over-quota imports. This system provided the Turkish government with a way to expand

⁷ Exhibit US-48.

⁸ www.fas.usda.gov/psdonline/psdHome.aspx (Exhibit US-45).

⁹ Exhibit US-47.

¹⁰ Schedule XXXVII – Turkey. Part I – Most Favoured-Nation Tariff. Section I – Agricultural Products. Section 1 – A Tariffs (Exhibit US-15). As of 2005, this reduction was still not reflected in the tariff schedule published in Turkey's Official Gazette. *See* Turkey's 2005 Tariff Schedule, Official Gazette (29 December 2005) (Exhibit US-16).

¹¹ Turkey's Effective Tariff Rates (31 December 2005) (Exhibit US-17).

¹² *See* G/AG/R/25, paras. 15-16 (21 December 2000).

domestic rice production, reduce the burden on TMO of purchasing and storing large quantities of artificially high-priced rice, and ensure that imports would be tightly controlled so that only enough rice to meet that year's shortfall in domestic demand was imported. The domestic purchase requirement – which required importers to purchase large quantities of domestic rice as a condition of importation – further distorted trade by ensuring that primarily importers with milling capacity would import rice, thereby effectively giving the large Turkish millers control over the importation of rice into Turkey.

16. The following three subsections explain in detail the legal instruments employed by Turkey to restrict trade in rice. Subsection (1) describes the instrument used by Turkey to ensure that over-quota imports were prevented – namely, the transformation of the seasonal import ban into a permanent one, which was enforced by MARA's decision not to grant import licenses for rice. Subsection (2) describes the legal mechanism used by Turkey to regulate in-quota trade in rice – in sum, establishment by FTU of a TRQ, coupled with a domestic purchase requirement, that could be activated, de-activated, and re-activated at will, depending on the state of the domestic industry and projected consumption in the current year. Subsection (3) describes how the TRQ regime, acting in conjunction with MARA's denial of import licenses outside the TRQ, operate to restrict imports of rice into Turkey and distort the Turkish rice market.

1. Importation Outside the TRQ Scheme: Turkey Fails to Grant Import Licenses

17. On February 2, 1996, Turkey published “The General Assessment of the Regime for Technical Regulations and Standardization in Foreign Trade” in the Official Gazette.”¹³ This document, which was issued by FTU and remains in force, provides the legal basis for Turkey to require that importers of rice and other agricultural commodities obtain import licenses, or “Certificates of Control”, as a condition upon importation.

18. Article 1 of the 1996 General Assessment lists the objectives of the import regime, including “to make the foreign suppliers . . . prefer our products.” But the key provision is subparagraph (g) of Article 2, which provides:

2. In the frame of this decree, the Foreign Trade Undersecretariat has the authority to:
 - (g) In the frame of the authorities left by the legislation to the other Ministries and Institutions, the adoption of the published technical legislation to the

¹³ Decree No. 96/7794 related to the General Assessment of the Regime Regarding Technical Regulations and Standardization for Foreign Trade (Official Gazette, No. 22541, 1 February 1996, Repeated) (hereinafter “the 1996 General Assessment”) (Exhibit US-1). The English versions of the Turkish documents cited in the brief were produced by the Office of Language Services, Translating Division, United States Department of State, or Turkish-speaking personnel in the U.S. Embassy, Ankara.

system of . . . foreign trade, to determine the implementation principles on import and export.”

As its most recent communiqué (described below) makes clear, FTU interprets this provision as providing it authority under Turkish law to adopt legislation regulating imports. The provision also makes provision for other Ministries to be involved in the regulation of foreign trade.

19. Pursuant to the 1996 General Assessment, FTU issued a series of communiqués on standardization in foreign trade, the most recent of which was Communiqué No. 2005/5, which entered into force on January 1, 2005.¹⁴ According to the Communiqué, which notes that it was promulgated pursuant to subparagraph 2(g) of the 1996 General Assessment, the importation of certain agricultural products is subject to MARA’s approval. According to Article 1 of the Communiqué, MARA determines the “fitness and compatibility” of certain products with respect to human health and safety and other concerns. Rice is listed in Annex VI-A to the Communiqué,¹⁵ which means that rice importers must present a Certificate of Control¹⁶ from MARA to Turkish Customs as a condition upon importation.

20. In order to obtain a Certificate of Control, an importer must submit certain documents to MARA prior to importation, in particular the pro forma invoice or invoice and “other documents that may be required.” A summary of the Communiqué on the FTU website states that the Certificate of Control will be issued by MARA “if the product to be imported is found to meet the criteria required” by MARA.¹⁷ If issued, the Certificate remains valid for a non-extendable period of four months and the importer who obtains the Certificate must effect the importation in one shipment. Thus, an importer must obtain a Certificate for each shipment of rice.¹⁸ The Communiqué also provides that FTU retains authority “to take measures and to make necessary arrangements for implementation” related to the Communiqué¹⁹ and further notes that

¹⁴ A communiqué on Standardization in Foreign Trade, Communiqué No. 2005/05 (Official Gazette, No. 25687, 31 December 2004) (hereinafter “the Communiqué”) (Exhibit US-7).

¹⁵ Annex VI-A to the Communiqué (Exhibit US-18).

¹⁶ Certificate of Control form, Republic of Turkey, Ministry of Agriculture and Rural Affairs (Exhibit US-19).

¹⁷ General Assessment of the Regime Regarding Technical Regulations and Standardisation for Foreign Trade (27 May 2005) (www.dtm.gov.tr) (Exhibit US-43). It is unclear from the description whether “other criteria” refers to the materials necessary to complete the Certificate of Control application, other materials, or both.

¹⁸ Article 9(c) of the Communiqué.

¹⁹ Article 10 of the Communiqué.

“[p]rovisions of other applicable ordinances shall prevail on all other matters not treated in the present Communiqué.”²⁰ There is no mention of the TRQ scheme in the Communiqué.

21. Turkey long maintained that there were no restrictions on the importation of rice outside the TRQ scheme, because the communiqués issued under the authority of the 1996 General Assessment provided that importation would be permitted, subject to MARA’s determination on “fitness and compatibility.” At the July 16, 2004 meeting of the WTO Committee on Agriculture (COA), in response to a U.S. statement that Turkey was restricting imports outside the TRQ, Turkey maintained that “rice . . . can be imported freely at Turkey’s bound out-of-quota tariff rates.”²¹ Similarly, at the September 28, 2005 WTO Import Licensing Committee meeting, in response to questions submitted by the United States,²² Turkey asserted that it “did not foresee any prior condition for the importation of rice at MFN rate.”²³ Turkey denied that it maintained an import licensing procedure at all.²⁴ Turkey took the same position at the 22 September 2005 COA meeting. In discussing the TRQ, Turkey noted that “for MFN imports outside the tariff quota regime, the bound rates would be applied as usual (34%, 36% and 45%, respectively). Importation on the basis of MFN tariffs was ongoing and not subject to import licences.”²⁵

22. In fact, contrary to Turkey’s public assurances, MARA was not issuing Certificates of Control at the bound tariff rates, thereby effectively preventing any out-of-quota imports. Beginning in September 2003, MARA had transformed the seasonal ban on rice imports into a permanent one. As previously mentioned, rice imports in 2003 had been higher than expected, forcing TMO to purchase large quantities of domestic rice at prices high above the world price, which TMO subsequently needed to liquidate. In order to liquidate its excess rice stocks, MARA decided not to lift the unofficial ban in November 2003, as it had in previous years; instead, it continued its policy of failing to issue Certificates of Control indefinitely. Importers, who had expected to begin selling rice that had been shipped to Turkey prior to the start of the ban, were forced to keep their rice in storage in bonded warehouses for months while waiting for the ban to be lifted. The mechanism through which MARA imposed the permanent ban was the issuance of so-called “Letters of Acceptance.”

23. MARA began utilizing these Letters at least from September 2003. Such letters are never published in the Official Gazette, but it is widely known in the importing community that they

²⁰ Article 11 of the Communiqué.

²¹ G/AG/R/39, paras. 14-18 (16 July 2004).

²² G/LIC/Q/TUR/3 (25 July 2005).

²³ G/LIC/M/22, para. 1.8 (1 November 2005).

²⁴ G/LIC/M/22, para. 1.8 (1 November 2005).

²⁵ G/AG/R/44, para. 11 (25 November 2005).

exist and copies are included with this submission. The Letters follow a standard template, in which Turkey's Minister of Agriculture accepts recommendations from MARA's General Directorate of Protection and Control to "delay" the start date for the period in which Certificates of Control will be granted.

24. For instance, Letter of Acceptance 107, dated January 23, 2004, recalls previous Letter of Acceptance 964, dated September 10, 2003, providing that Certificates of Control for importing paddy rice would not be granted until the March 1 - September 1, 2004 period²⁶ and Certificates of Control for importing milled rice would only be granted between August 1 and September 1, 2004. The letter then recommends that the MARA once again "delay" the period for issuing Certificates of Control until July 1, 2004, because current rice stocks appeared to meet Turkey's domestic needs through June 30, 2004. The letter is signed by both the Director General of MARA's General Directorate and the Minister of Agriculture.

25. On June 28, 2004 – three days before the previous Letter of Acceptance was due to expire – MARA's General Directorate issued another Letter of Acceptance.²⁷ This letter contained another recommendation to "delay" the period for issuance of Certificates of Control for both paddy and milled rice until January 1, 2005. (The period for granting Certificates of Control for paddy rice would run from January 1 - September 1, 2005; the period for granting Certificates of Control for milled rice would run one month less and close on August 1, 2005.) Among the reasons provided for this "delay" were the need "to protect the national growers" and "to redress their grievances." This letter is also signed by both the Director General of the General Directorate and the Minister of Agriculture.

26. On December 30, 2004 – only two days before Certificates of Control were to be granted – MARA's General Directorate issued yet another Letter of Acceptance which recommends yet another "delay" in the opening date for issuing Certificates of Control until August 1, 2005.²⁸ The letter provides:

[I]t is stated that the practice of not issuing Inspection Document for the persons and corporations who do not purchase paddy rice from the growers controlled by TMO and directly from TMO is deemed appropriate to be extended until 07.31.2005.

27. On July 29, 2005 – only two days before Certificates of Control were to be granted – MARA's General Directorate apparently issued yet another Letter of Acceptance in which the

²⁶ Exhibit US-12.

²⁷ Letter of Acceptance 905 (Exhibit US-13).

²⁸ Letter of Acceptance 1795 (Exhibit US-14).

Minister of Agriculture agreed with the Director General’s recommendation to “delay” issuance of any Certificates of Control indefinitely until a new rice policy was put in place.²⁹

28. Again, these Letters were never published in the Official Gazette, so while many importers were aware of the ban by word-of-mouth, others were not. One Turkish importer, Torunlar, has been trying, without success, to import rice – and to get previously-imported rice out of warehouse – on the strength of a Certificate of Control since 2003. On October 10, 2003, MARA returned Torunlar’s August 29, 2003 application for a Certificate, because several items were allegedly missing.³⁰ On November 3, 2003, MARA returned Torunlar’s October 23, 2003 application for a Certificate due to spelling errors.³¹ MARA officials told Torunlar to re-apply again, stating that the application forms had been modified before Torunlar’s petition was processed.³² In January 2004, Torunlar re-applied for the Certificate, in order to import as of March 1, 2004 (the start date for issuance of Certificates of Control under Letter of Acceptance 964).³³ However, on 23 January 2004, the Minister of Agriculture signed Letter of Acceptance 107, which delayed the issuance of Certificates of Control until July 1, 2004. As a result, MARA did not reply to Torunlar’s application and did not issue a Certificate of Control.

29. Consequently, Torunlar sued the Government of Turkey in the 1st Administrative Court of Ankara and requested a stay of MARA’s implicit rejection of its Certificate of Control application. In its motion for a stay, counsel for Torunlar noted that contracts had been signed and rice had been sitting in the warehouse in Turkey while Torunlar waited for word from MARA as to the status of its application.³⁴ Torunlar asserted that MARA had violated Turkish law by not implementing the regulations that had been in effect when Torunlar filed its applications, and MARA’s implicit excuse for the delay – namely, that the regulations had been modified since Torunlar filed its application – was a “neglect of duty,” violated Torunlar’s legitimate expectations, and caused it serious economic harm.³⁵

²⁹ Letter of Acceptance 1304. The United States was unable to obtain a copy of this document, but it is referenced in Letter of Acceptance 390 (Exhibit US-36).

³⁰ Exhibit US-28.

³¹ Exhibit US-29.

³² Exhibit US-30, para.4.

³³ Exhibit US-23.

³⁴ Exhibit US-30.

³⁵ Exhibit US-30.

30. In its response, MARA requested the Court to dismiss Torunlar’s motion on procedural grounds.³⁶ However, it described the Letters of Acceptance system in detail, which it attached as exhibits, and explained that it had delayed the issuance of Certificates of Control “keeping in mind the goals of protecting our national producer, to redress their grievances and to prevent unnecessary stock build up.”³⁷ In a subsequent filing, Torunlar argued that the Letters of Acceptance are not a valid legal basis for denying issuance of Certificates of Control, and that the “Ministry is presently engaged in a power grab through the [] letter it issued, and changing the import regime or re-arrang[ing] it on its own.”³⁸ Counsel for Torunlar noted that previously there had not been any problem obtaining a Certificate of Control but that now it was “virtually impossible” to get this document.³⁹ While Torunlar was unaware of any subsequent Letters of Acceptance, it was clear that “a new arrangement must have been made because we have still not [been] granted the Inspection Document.”⁴⁰

31. MARA formally rejected Torunlar’s third application on 9 September 2004 – almost eight months after it had applied – although the lawsuit is still pending.⁴¹ On 12 December 2005, Torunlar made yet another plea to the Provincial Directorate of Agriculture. It noted that the already-imported rice was being left to rot in warehouse and warned that if it loses the litigation and is not compensated for its losses, it would take the dispute to the European Court of Human Rights.⁴²

32. The ban on imports of rice outside the TRQ scheme was still in place on March 17, 2006 – the date the DSB established this Panel – and continues to this day. In his March 24, 2006 letter to then-USTR Rob Portman, which was prompted by the establishment of this Panel, Turkish Minister of State Kursad Tuzmen confirmed that Turkey had not been granting Certificates of Control when he gave Ambassador Portman his “solemn commitment” that “the control certificate will be issued *as of* April 1, 2006.”⁴³

³⁶ Exhibit US-31.

³⁷ Exhibit US-31.

³⁸ Exhibit US-32.

³⁹ Exhibit US-32.

⁴⁰ Exhibit US-32.

⁴¹ Exhibit US-33.

⁴² Exhibit US-34.

⁴³ Exhibit US-35 (emphasis added).

33. Unfortunately, this did not occur. On March 24, in another unpublished Letter of Acceptance, the Minister of Agriculture agreed with another recommendation of MARA's General Directorate of Protection and Control that directly contradicted the statement made by Minister Tuzmen in his letter to Ambassador Portman.⁴⁴ The Letter first recalled that a ban on the issuance of Certificates of Control had been in place since the issuance of Letter of Acceptance 1304 on July 29, 2005, and that the ban would not be removed until the Turkish government decided on a new rice policy in response to the WTO dispute. It recommends that Certificates of Control be issued as of April 1, 2006, although only one at a time and with strict quantitative limits: 10,000 metric tons of milled rice and 15,000 metric tons of paddy rice. This appears to be consistent with Minister Tuzmen's letter to Ambassador Portman. However, the Director General also recommended that the granting of Certificates of Control cease once again (to the extent that they were being issued in the interim) on August 1, 2006 – in other words, MARA would again stop granting Certificates of Control at the start of the Turkish rice harvest. The Minister of Agriculture concurred in the Director General's recommendations.

34. The March 24th Letter also recalled two more recent Letters of Acceptance that were issued by the Director General after the first U.S. request for the establishment of a panel in this dispute. Those Letters of Acceptance, dated March 3, 2006⁴⁵ and March 14, 2006⁴⁶ recommended that “the temporary ban of issuance of control certificates during harvest season will be suitable to be kept in place” and that in lieu of the domestic purchase requirement, “our producers should be supported through paying the price difference to close the gap with world prices.” The existence of the ban was further confirmed by the General Manager of TMO, Mr. Sukru Yildiz, in a July 13, 2006 Turkish newspaper article in which he stated that “they are not planning to import at present since the domestic rice market seems quite stable and that they are planning to provide reasonably priced rice during Ramadan but keeping this license on hand to import in case rice prices increase during Ramadan.” He further stated that “he does not think either imports or interfering with the market are necessary at this time.”⁴⁷

35. In reality, it is not clear that the ban was ever lifted, either fully or partially, even during the April through August period. In early April, forty rice producers visited MARA to protest that one company (Mehmetoglu Domestic and Foreign Trade) had allegedly received a Certificate of Control without procuring domestic rice, which as the article points out, is the only way to import rice into Turkey.⁴⁸ The company denied the allegation, and indeed, MARA has

⁴⁴ Exhibit US-36.

⁴⁵ Letter of Acceptance 531. The United States has been unable to obtain a copy of this unpublished letter.

⁴⁶ Letter of Acceptance 603 (Exhibit US-37).

⁴⁷ “TMO is given priority to import rice to prevent extra high prices,” *GNToruner*, 13 July 2006 (Exhibit US-20).

⁴⁸ “Clean the rice from the stones”, *Milliyet*, 7 April 2006 (Exhibit US-21)

not granted it a Certificate of Control. Mehmetoglu submitted its request for a Certificate on April 10, 2006,⁴⁹ in response to the government’s announcement that it would begin issuing Certificates as of April 1. When the company did not receive a response to its request, Ammas Yasar, the company’s General Director, sent several letters to MARA to complain about the delay and request an explanation.

36. In the April 25, 2006 letter, which discusses this dispute extensively, he notes:

“Provincial Agricultural Directorate officials are claiming that they cannot provide any control certificate since they were orally instructed not to do so even though there is an urgent case and a written Ministerial approval.”⁵⁰

He further notes his understanding from government officials that under a new Ministerial approval, paddy rice imports would be permitted, but imports of milled rice would continue to be banned.⁵¹ After receiving a short letter from the Provincial Agriculture Directorate on April 27, 2006 stating that Mehmetoglu’s application was being assessed,⁵² Yasar sent another letter to MARA urging that a control certificate be provided or if not, that an explanation for the rejection be provided.⁵³ On April 28, 2006, Yasar sent a third letter, this time to the General Directorate of Protection and Control, in which he complains that his company’s application for a Certificate of Control has not been approved, despite “your letter,” by which he was apparently referring to the March 24th Letter.⁵⁴ Finally, on May 1, 2005, a Provincial Agriculture Directorate denied Mehmetoglu’s April 25, 2006 request for a Certificate of Control to import medium grain milled rice from the United States:

[S]ince it is not possible to prepare a control certificate according to our laws and regulations.⁵⁵

⁴⁹ Exhibit US-40.

⁵⁰ Exhibit US-39.

⁵¹ Exhibit US-39.

⁵² Exhibit US-40.

⁵³ Exhibit US-41.

⁵⁴ Exhibit US-42.

⁵⁵ Letter from Provincial Agriculture Directorate, Republic of Turkey, to Mehmetoglu Domestic and Foreign Trade A.S., B.12.4.ILM.0.06.00.061868/9338 (1 May 2006) (Exhibit US-22).

37. Another Turkish importer, ETM, had a similar experience with MARA, as it documents in an undated letter to the Chair of MARA’s Undersecretariat.⁵⁶ In anticipation of the ban on the issuance of Certificates of Control being lifted on April 1, 2006, ETM applied for a Certificate on March 28, 2006. On April 6, 2006, the company was informed that “based on the verbal instructions of the Ministry’s Undersecretariat, the preparation of documents was stopped” as mentioned in the *Milliyet* article.⁵⁷ The letter goes on to threaten legal action if the Certificates of Control were not issued within 10 days of the date on which ETM filed its application.

2. Importation Under the TRQ: Domestic Purchase Required

38. As previously discussed, Turkey does not produce enough rice to meet domestic demand. FTU therefore created a regime whereby Turkey could open a tariff-rate quota (TRQ), coupled with a requirement to purchase domestic rice to obtain the licenses necessary to import under that TRQ, that would be in force throughout much of the year, with the exception of in and around the time of the Turkish rice harvest. Given Turkey’s decision that MARA would not issue Certificates of Control to import rice, there would be no way to import rice outside the TRQ while the TRQ was open, and no way to import rice at all in the August-October period when the TRQ was closed.

39. FTU applied the TRQ when it published a decree in the Official Gazette in April 2004.⁵⁸ Article 1 of the April 2004 Decree noted that the legal basis for imposing this requirement was the Decree Related to the Supervision and Protection Precautions and Quota Management and Tariff Quota on Import,⁵⁹ and then set forth the basic elements of the system. Importers would be able to import a limited quantity of rice at reduced tariff levels under the TRQ, provided that they purchased an unspecified quantity of domestic rice. Thus, instead of paying the rates set out in Turkey’s domestic tariff schedule (i.e., of 34, 36, and 45 percent *ad valorem* on imports of paddy, brown, and milled rice, respectively), importers would have their tariff rates reduced to 32, 34, and 43 percent *ad valorem* for paddy, brown, and milled rice. The amount of rice that could be imported under this system was 72,000 tons of “milled rice equivalent.”

40. In other words, imports could be comprised entirely of paddy rice, brown rice, or milled rice, or by some combination thereof, that equaled 72,000 tons of milled rice under the conversion factor employed in the regulation. For example, if importers decided to import only

⁵⁶ Exhibit US-44.

⁵⁷ Exhibit US-44.

⁵⁸ Decision of the board of ministers: Decree No. 2004/7135 related to the implementation of a tariff quota for certain types of paddy rice and rice types imports (Official Gazette, No. 25439, 20 April 2004) (hereinafter “the April 2004 Decree”) (Exhibit US-3).

⁵⁹ Official Gazette, No. 6814 (30 April 1995) (hereinafter “the 1995 Decree”). The United States was unable to obtain a copy of this document.

paddy rice, they could import 120,000 tons of rice, because under the conversion factor, the volume of a ton of paddy rice was only equal to 60 percent of the volume of a ton of milled rice. Article 3 of the April 2004 Decree further required importers to obtain a special import license from FTU; it did not require that an importer obtain a Certificate of Control from MARA.

41. On April 27, 2004, FTU published a second document – the Notification Related to Implementation of Tariff Quotas for Some Types of Paddy Rice and Rice Imports – in the Official Gazette that provided further information about the TRQ.⁶⁰ The 2004 Notification specified that the sources of the rice that had to be purchased in order to benefit from the reduced tariff rates under the TRQ were TMO, Turkish producers, or Turkish producer associations, and rice imports would be allocated according to the amount of rice one wanted to import.⁶¹ Items VIII and IX of the application form provided that an importer was required to submit proof of domestic purchase, in the form of an original invoice prepared by the General Directorate of TMO, when applying for the import license from FTU. Thus, the amount of rice an importer would need to purchase in order to import rice was entirely within the discretion of TMO. The import licenses were only valid through August 31, 2004⁶² and were non-transferrable.⁶³ Because MARA was not issuing Certificates of Control, which was a requirement to import rice outside the TRQ, there would be no way to import rice into Turkey once FTU closed the TRQ at the end of August.

42. In May 2004, FTU published a Decree about the Management of Quota and Tariff Contingent on Import in the Official Gazette.⁶⁴ This document supercedes the 1995 Decree in terms of providing FTU with legal authority to institute and manage a TRQ. When FTU has subsequently re-opened the TRQ, it has made reference to the May 2004 Decree, rather than the 1995 Decree, although the 1995 Decree appears to remain in effect.⁶⁵ Article 3 of the May 2004 Decree authorizes FTU to determine the rules governing the TRQ apparatus and defines key terms. For instance, the term “tariff contingents” is defined in Article 2(c) as “the amount of value of the import realized with an exemption on the customs duty and/or other financial

⁶⁰ A notification related to implementation of tariff quotas for certain types of paddy and rice imports, from the Foreign Trade Undersecretariat (Official Gazette, No. 25445, 27 April 2004) (hereinafter “the April 2004 Notification”) (Exhibit US-3).

⁶¹ See Article 2 of the April 2004 Notification.

⁶² See Article 3 of the April 2004 Notification.

⁶³ See Article 5 of the April 2004 Notification.

⁶⁴ Decision of the board of ministers: Decree No. 2004/7333 related to the management of quota and tariff contingent on import (Official Gazette, No. 25473, 26 May 2004) (hereinafter “the May 2004 Decree”) (Exhibit US-4).

⁶⁵ See Temporary Articles 1 and 2 of the May 2004 Decree.

discount or exemption on import done during a certain period of time.” Article 2(e) defines “import license” as “the document given by the General Directorate [of FTU] for the import of the products related to the application of a tariff contingent or quota.” Article 4 lists several methods by which FTU can distribute quota shares under the TRQ, including traditional trade flows, “first come, first serve,” a quantity- or value-based allocation, or any other method determined by FTU, including a consideration of what is an “economic amount.”

43. In August/September 2004, pursuant to the May 2004 Decree, Turkey re-opened the TRQ for rice to cover the November 1, 2004 - July 31, 2005 period. The reduced duty rates were the same as the last time the TRQ was open, but the quantity of rice that allegedly could be imported was larger (although the period of coverage was longer). Article 1 of the Application of a Tariff Contingent on the Import of Some Rough Rice and Rice (the August 2004 Decision) provided an alleged cap of 300,000 tons of milled rice equivalent, while Article 2 provided TMO with the discretion to permit the importation of an additional 50,000 tons of milled rice if necessary.⁶⁶ Article 5 further provided that only three categories of persons could import rice under the TRQ: Turkish paddy rice producers, persons who purchased paddy rice from Turkish producer associations of which they are members and who can provide TMO with documentation of such purchase, and persons who purchased paddy or milled rice from TMO.

44. A second document – About the Application of a Tariff Contingent on Some Paddy Rice and Rice Types – published in the Official Gazette on September 8, 2004 provided the specifics with respect to domestic purchase.⁶⁷ Article 1 specified that the TRQ would be distributed on a “first come, first serve” basis, provided that importers purchased a specified amount of domestic rice. The September 2004 Regulation clarified that, although the August 2004 Decision provided that the TRQ would open on November 1, 2004, importers could begin purchasing domestic rice for use in the TRQ scheme on September 1 – two months prior to the opening date of the TRQ and, perhaps not coincidentally, towards the start of the Turkish rice harvest.⁶⁸ The amount of rice that importers were required to purchase in order to import was contingent on three factors: (1) the type of rice to be imported (paddy, brown, or milled); (2) the source of the purchased domestic rice (TMO, on the one hand, or Turkish producers or producer associations on the other); and (3) if purchased from Turkish paddy rice producers or producer associations, the region where the rice originates.⁶⁹

⁶⁶ Decision of the board of ministers: Decree No. 2004/7756 related to the implementation of a tariff contingent on the import of certain paddy rice and rice types (Official Gazette, No. 25566, 27 August 2004) (hereinafter “the August 2004 Decision”) (Exhibit US-5).

⁶⁷ A notification about the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25577, 8 September 2004) (hereinafter “the September 2004 Regulation”) (Exhibit US-6).

⁶⁸ See Article 1 of the September 2004 Regulation.

⁶⁹ See Article 1 of the September 2004 Regulation.

45. At the 16 March 2005 meeting of the COA, Turkey stated that “importers received import licences equal to the quantity of rice bought on the domestic market.”⁷⁰ As a result of this complicated system, however, the ratio of imported-to-purchased domestic rice varied greatly, depending on the interaction among the three variables, and with one exception, an importer had to purchase a larger quantity of domestic rice than the quantity of rice it wished to import.⁷¹ For example, for every 1,000 Kg of paddy rice purchased from TMO, an importer could import only 500 Kg of paddy rice, 400 Kg of brown rice, or 300 Kg of milled rice. For every 1,000 Kg of paddy rice purchased from Turkish producers or producer associations, the formula was even more complex. In some circumstances, an importer could import 1,000 Kg of paddy rice, 800 Kg of brown rice, or 600 Kg of milled rice for every 1,000 Kg of paddy rice purchased domestically; however, if the importer purchased such rice from a paddy rice producer located in the regions of Balikesir, Bursa, Canakkale, Edirne, Kirklareli, Sakarya, and Tekirdag, it could only import 700 Kg of paddy rice, 560 Kg of brown rice, or 420 Kg of milled rice.⁷² An importer seeking to import milled rice into Turkey was required to purchase (at prices well above the world price), in some instances, over three times the amount of rice it wanted to import before FTU would grant an import license entitling it to a 2 percent discount off the bound rate.

46. In addition, Article 2 of the September 2004 Regulation provided that an importer was required to file its application for a portion of the quota by January 31, 2005, a full six months prior to the end of the importation period. FTU left itself room to amend the TRQ after February 1, 2005 if there was unused quota.⁷³ Pursuant to this authority, FTU extended the application period twice, once until April 29, 2005⁷⁴ and a second time until June 15, 2005.⁷⁵

47. At the 18 November 2004 COA meeting, Turkey stated that once “the implementation of the tariff quota regime was to expire on 31 July 2005 . . . rice importation would continue

⁷⁰ G/AG/R/42, para.22 (25 May 2005).

⁷¹ The one exception was the case of an importer of paddy rice who purchased paddy rice from Turkish rice producers or producer associations. In that scenario, the ratio of imported to domestically-procured rice was 1:1.

⁷² If an importer split its purchases between the named provinces and other provinces, that would add yet another layer of complexity to the importer’s calculations.

⁷³ See Article 2 of the September 2004 Regulation.

⁷⁴ A notification about the amendment of the notification related to the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25767, 26 March 2005) (hereinafter “the March 2005 Modification”) (Exhibit US-8).

⁷⁵ A notification about the amendment of the notification related to the implementation of a tariff contingent (customs duty) on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25812, 11 May 2005) (hereinafter “the May 2005 Modification”) (Exhibit US-9).

thereafter at MFN rates.”⁷⁶ This did not occur, however. As previously discussed, on July 29, 2005, the Minister of Agriculture approved a recommendation to continue denying the issuance of Certificates of Control indefinitely. Thus, once the TRQ was closed at the end of July, there was no way to import rice into Turkey until FTU decided to re-open it.

48. In September 2005, FTU again re-opened the TRQ, pursuant to the May 2004 Decree, to cover the period November 1, 2005 through July 31, 2006, which comprised the same basic elements: in order to receive an import license from FTU, importers had to provide proof of domestic purchase;⁷⁷ the licenses were granted to importers based on the order in which the importers submitted their applications;⁷⁸ the licenses were only valid until the end of the period (July 31, 2006)⁷⁹ and were non-transferrable;⁸⁰ and there was a deadline within the period (in this case, March 31, 2006) by which an import license had to be obtained (i.e., domestic purchase certified by TMO and presented to FTU) in order to import during the period, a deadline which FTU reserved the right to extend through a new notification if there was any unused quota remaining.⁸¹

49. FTU did make two modifications to the TRQ. First, FTU reduced the tariff rates for importing paddy and brown rice from 32 and 34 percent *ad valorem* to 20 and 25 percent *ad valorem*, respectively.⁸² However, as previously discussed, the tariff rates under the TRQ are only a small portion of the equation. The domestic purchase requirement is the primary problem with respect to distorting trade under the TRQ, and in that regard, the TRQ was now more distortive than previously was the case. Under the September 2005 Notification and Decree, the domestic purchase requirement when purchasing rice from Turkish paddy rice producers or Turkish producer associations was more onerous than had previously been the case: for each 1,000 Kg of paddy rice purchased domestically, an importer could only import 800 Kg of paddy rice, 640 Kg of brown rice, or 480 Kg of milled rice. If, however, the rice to be purchased originated in the provinces of Balikesir, Bursa, Canakkale, Edirne, Istanbul, Kirklareli, Sakarya,

⁷⁶ G/AG/R/41, para. 23 (17 February 2005).

⁷⁷ Decision of the board of ministers: Decree No. 2005/9315 related to the implementation of a tariff contingent on the import of certain types of paddy rice and rice types (Official Gazette, No. 25935, 13 September 2005) (hereinafter “the September 2005 Decree”), Article 5 (Exhibit US-10).

⁷⁸ A notification related to the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25943, 21 September 2005) (hereinafter “the September 2005 Notification”), Article 1 (Exhibit US-11).

⁷⁹ Article 3 of the September 2005 Notification.

⁸⁰ Article 5 of the September 2005 Notification.

⁸¹ Article 2 of the September 2005 Notification.

⁸² Exhibit US-10.

or Tekirdag, the importer could only import 600 Kg of paddy rice, 480 Kg of brown rice, and 360 Kg of milled rice.⁸³ Once again, an importer had to purchase a larger quantity of domestic rice than the quantity of rice it wished to import. Given the high procurement prices for this rice, an importer seeking to import paddy rice into Turkey under the TRQ was required to pay, in some instances, more than four times as much to import rice as it would have if it could obtain a Certificate of Control to import outside the TRQ at the bound rate.

3. Joint Operation of Turkey's TRQ Regime and Denial of Import Licenses at the Over-Quota Rates of Duty

50. The TRQ regime and MARA's denial of Certificates of Control outside the TRQ regime work in tandem to control the quantity and timing of rice imports. Because MARA refuses to grant Certificates of Control, importers are required to purchase domestic rice from TMO, Turkish producers, or Turkish producer associations as a condition for importing rice under the TRQ. The TRQ is closed during the annual rice harvest, blocking all imports during this time so as to drive up prices for Turkish rice. After the harvest is over, Turkey re-opens the TRQ with a domestic purchase requirement that has been adjusted to ensure that all domestically-produced rice is purchased and imports are effectively capped at the difference between projected domestic consumption and projected domestic production. In the event that MARA overestimates the size of the domestic harvest or underestimates domestic consumption, TMO retains the authority to import additional amounts to make up the shortfall and ensure that prices do not escalate.

51. For example, Turkey's alleged decision to allow the importation of rice as of April 1, 2006 may have resulted from the combination of the filing of this dispute and the March 2006 flood in Edirne, Turkey's largest rice producing province, normally producing approximately 45 percent of domestic production, which partially destroyed local rice production and created a short supply of rice. Indeed, a 31 March 2006 article in *Referans* stated that the government previously had not planned on opening the market to imports until July but re-evaluated that position as a result of the flood.⁸⁴ The article said that with domestic consumption estimated at 580 thousand tons annually, and domestic production at 380 thousand tons annually,

Turkey was planning to stop the annual rice import of 200 thousand tons. . . . In this case, the annual deficit is then 200 thousand tons. Turkey planned to decrease this deficit in 2006 by an increase of 10% local production and therefore decided to limit the imports. However, this decision resulted in a crisis between the USA and Turkey and the matter was brought up to the World Trade Organization by the USA.

⁸³ Exhibit US-11.

⁸⁴ *Referans*, 31 March 2006, pps. 1 and 9 (Exhibit US-24).

Although Turkey allegedly relaxed the domestic purchase requirement, importers seeking to import after April 1, 2006 had already purchased domestic rice. Given that this was no longer necessary, Turgay Yetis, the President of the Rice Millers Association, speculated that importers would no longer purchase domestic rice because they did not trust the government's "floating rice policy." And Semsi Bayraktar, President of the Turkish Agricultural Chambers Union, said that it would object to the removal of quotas, as it "will ruin the paddy rice production in Turkey."

52. The mere fact that importers shipped under the TRQ at all further demonstrates the existence of a ban on the granting of Certificates of Control, inasmuch as purchasing rice at the out-of-quota MFN rate would be more economical. The cost of importing rice at the out-of-quota bound rates is much less expensive than importing rice at the lower in-quota rates, due to the domestic purchase requirement. For example, using prices prevailing in 2005, assuming that the price of U.S. paddy rice is \$295 per metric ton (FOB price), the cost of importing 1,000 Kg of U.S. paddy rice at the out-of-quota bound rate would be \$395 per metric ton (\$295 per metric ton multiplied by a 34 percent duty). The cost of the same transaction under the TRQ is \$1,654 per metric ton, or more than four times greater. The preferential duty rate under the TRQ might save the importer \$41 (\$295 per metric ton multiplied by a 20 percent duty equals \$354 per metric ton), but the cost of procuring 2,000 Kg of paddy rice from TMO at a price of \$650 per metric ton, a condition upon importation under the TRQ, is \$1,300 per metric ton.⁸⁵ Faced with the choice of importing at a lower tariff rate but being required to pay inflated prices for large quantities of domestic rice, or paying the rate in Turkey's domestic tariff schedule or in its WTO schedule without domestic purchase, no importer would choose the option requiring domestic purchase unless the latter option was unavailable.

53. The lack of transparency in the import licensing regime is also illustrated by the misleading cap number with respect to the in-quota volume under the TRQ. The alleged cap for the last two periods when Turkey re-opened the TRQ was 500,000 metric tons of paddy rice; prior to that, the cap was only 120,000 metric tons. In reality, it was impossible for importers to reach that cap due to the domestic purchase requirement. In order to import rice, FTU required an importer to purchase an equal or, in most instances, greater quantity of domestic rice than the quantity of rice it wanted to import. Yet Turkey's domestic production of paddy rice was only 360,000 metric tons in 2003, 415,000 metric tons in 2004, and 500,000 metric tons in 2005. Thus, importers would run out of domestic paddy rice to purchase long before they reached the alleged 500,000 metric ton ceiling on paddy rice imports.

54. Turkey has been very clear in its public statements that the purpose of the TRQ regime is to manage the domestic rice market, and it is clear from the context of those statements that imports were not permitted outside the TRQ. At the 17 June 2004 COA meeting, Turkey said that the TRQ was established "to meet the domestic needs" and that "the objectives of these

⁸⁵ Exhibits US-49 and 50.

measures were to help stabilise and balance the domestic market. When the U.S. delegate then inquired as to why requests for out-of-quota imports were not being approved, Turkey did not answer. Rather, it responded “that it was ready to pursue this issue bilaterally with the United States.”⁸⁶

55. It is also clear from Turkey’s employment of the Certificate of Control that its purpose is to act as an import license. FTU will grant an import license to import under the TRQ – the only method of rice importation into Turkey – without requiring that an importer obtain a Certificate of Control. All the importer needs to do is present proof of domestic purchase from TMO.

IV. LEGAL ARGUMENT

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

A. Turkey’s Denial of Import Licenses to Import Rice At or Below the Bound Rate of Duty Constitutes a Prohibition or Restriction on Imports Other Than in the Form of Duties, Taxes, or Other Charges and Thus is Inconsistent With Article XI:1 of the GATT 1994

1. The Range of Measures that Members May not Institute or Maintain Under Article XI:1 of the GATT 1994 is Broad

56. Article XI:1 of the GATT 1994 states, in relevant part:

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

57. Thus, the range of measures that Members may not institute or maintain under Article XI:1 is quite broad. The provision encompasses all prohibitions or restrictions on importation other than those enumerated,⁸⁷ regardless of whether a Member utilizes a quota, an import or export licensing regime, “or other measures” to effect the prohibition or restriction. Several previous panels have characterized the scope of this provision as “broad” and “comprehensive.”⁸⁸

⁸⁶ G/AG/R/39, paras. 15 and 17-18 (16 July 2004).

⁸⁷ The only caveat contained in Article XI:1 is that “duties, taxes or other charges” are exempted from coverage, but this caveat is not applicable here.

⁸⁸ See *India Autos*, paras. 7.246 (noting that the term “other measures” is a “broad residual category” that is meant to suggest a broad scope of measures that could be subject to Article XI:1 disciplines) and 7.264 (noting that “the text of Article XI:1 is very broad in scope, providing for a general ban on import or export restrictions or

As stated by the panel in *Turkey Textiles*, which found that Turkey’s quantitative restrictions on imports of certain textile and clothing products from India were inconsistent with Article XI:1:

The prohibition on the use of quantitative restrictions forms one of the cornerstones of the GATT system. . . . In contrast to MFN tariffs which permit the most efficient competitor to supply imports, quantitative restrictions usually have a trade distorting effect, their allocation can be problematic and their administration may not be transparent.⁸⁹

58. In the following subsections, the United States will demonstrate that Turkey’s denial of import licenses outside the TRQ is inconsistent with Article XI:1. The United States will show that Certificates of Control constitute “import . . . licences or other measures” for purposes of Article XI:1; that Turkey institutes or maintains a prohibition on imports through its failure to issue Certificates of Control to importers; and that Turkey institutes or maintains a restriction on imports through its failure to issue Certificates of Control to importers.⁹⁰

2. The Certificate of Control Is an Import License or Other Measure Within the Meaning of Article XI:1

59. The Certificate of Control is an import license for purposes of Article XI:1, because MARA requires importers to complete an application for a Certificate, and that application must be granted in order for the importation to take place.

60. The term “import license” is undefined in Article XI. One source defines “licence” as:

[f]ormal, usu. printed or written permission from an authority to do something (esp. . . . carry on some trade . . .); a document giving such permission; a permit.⁹¹

That source defines the word “import” as:

prohibitions ‘other than duties, taxes or other charges’”), *citing India QRs*, para. 5.128; *Turkey Textiles*, para. 9.61 (noting that the title of Article XI – General Elimination of Quantitative Restrictions” – makes clear the general rule that Members shall not utilize quantitative restrictions against imports); and *India QRs*, para. 5.142 (noting that Article XI:1 is “‘comprehensive’ in that it prohibits import restrictions ‘made effective through quotas, import or export licences or other measures’”). Other panels that have found Article XI:1’s coverage to be “comprehensive” include: Panel Report, *Korea Beef*, para. 749; *Japan Varietals*, para. 5.2.2.2; and *Japan Semi-conductors*, para. 104.

⁸⁹ *Turkey Textiles*, para. 9.63.

⁹⁰ Further, even if Turkey did issue Certificates of Control, the conditions of use associated with such Certificates would constitute a “restriction” on importation for purposes of Article XI:1.

⁹¹ *The New Shorter Oxford English Dictionary*, Volume I, p. 1578 (Exhibit US-25).

[to b]ring or introduce from an external source or from one use etc. to another; *spec.* bring in (goods etc.) from another country.⁹²

Thus, according to the ordinary meaning of the terms, an import license is formal permission from an authority to bring in goods from another country. A Certificate of Control from MARA constitutes formal written permission from the Government of Turkey to import goods from another country. Thus, a Certificate of Control is an “import license” within the ordinary meaning of those terms.

61. As relevant context, Article 1 of the Import Licensing Agreement defines the term “import licensing” as:

[a]dministrative procedures¹ used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.

Footnote 1 to Article 1 elaborates that ‘administrative procedures include “[t]hose procedures referred to as ‘licensing’ as well as other similar administrative procedures.’” The footnote lends additional clarity to the analysis of whether particular administrative procedures constitute “import licensing.” In particular, the provision 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. The Article 1 definition corresponds to the ordinary meaning of “import license”, and thus provides contextual support for an interpretation that the Certificate of Control is an “import license” for purposes of Article XI:1.

62. The administrative procedures set by MARA for obtaining the Certificate of Control perfectly match those described in Article 1 of the Import Licensing Agreement. Specifically, in order to import rice into Turkey outside the TRQ regime, an importer has to obtain a Certificate of Control from MARA. To obtain the Certificate, an importer must follow certain procedures, including completing an application form and attaching relevant documents, such as an invoice and the applicable health certificates. Further, the 2005 Communiqué is clear that the Certificate is a document that MARA requires as a condition for permitting importation; there is no mention of Turkish customs in the Communiqué. Thus, MARA’s requirement that importers obtain a Certificate of Control for imports outside the TRQ is consistent with the definition of “import licensing” for purposes of Article 1 of the Agreement on Import Licensing, and the Certificate of

⁹² *The New Shorter Oxford English Dictionary*, Volume I, p. 1324 (Exhibit US-26).

Control should also be considered an “import licence” which makes effective a prohibition or restriction on importation for purposes of Article XI:1.

63. Furthermore, the Certificate of Control would in any event be a prohibition or restriction on importation that is made effective by an “other measure.” As the panel in *India Autos* found, Article XI:1 conveys “an intention to cover any type of measures restricting the entry of goods into the territory of a Member, other than those specifically excluded, namely, duties, taxes or other charges.”⁹³ Turkey’s failure to issue Certificates of Control not only restricts the entry of rice into Turkey: in fact, it *prohibits* entry other than the in-quota quantity of the TRQ.

3. Turkey’s Denial of Certificates of Control to Import Rice At or Below the Bound Rate of Duty Constitutes a Prohibition on Imports Other Than a “Duty, Tax or Other Charge”

64. Turkey’s denial of import licenses except for the in-quota quantity under the TRQ constitutes a “prohibition” on importation for purposes of Article XI:1 of the GATT 1994. The term “prohibition” in the trade context has been defined as:

[t]he legal ban on the trade or importation of a specified commodity.⁹⁴

Therefore, a “prohibition” exists when it is legally impermissible to trade or bring in a particular good from another country.

65. As previously discussed in Section III, Turkey’s ban on the importation of rice outside its TRQ regime is effected through MARA’s denial of Certificates of Control to importers. An importer who wants to import rice outside the TRQ regime is required to obtain a Certificate of Control from MARA as a condition of importation. The 2004 Communiqué, which was published in the Official Gazette, provides that MARA will grant such Certificates to importers if MARA determines that the product is suitable for human health and safety, as well as animal and plant life and health. However, through a series of unpublished Letters of Acceptance, the Minister of Agriculture decided, starting in September 2003, that MARA would “delay” the issuance of Certificates of Control.⁹⁵

66. The wording of the Letters demonstrates that Turkey imposes a “prohibition” on imports of rice within the meaning of Article XI:1, because it is clear on their face that the Minister of Agriculture instructs officials in his Ministry not to issue the Certificate of Control document to importers, and without such documents, importation cannot occur (unless Turkey has re-opened

⁹³ Para. 7.264.

⁹⁴ *The New Shorter Oxford English Dictionary*, Volume II, p. 2372 (Exhibit US-46).

⁹⁵ Turkey’s denial of import licenses outside the TRQ regime is clearly not a “duty, tax or other charge.”

its distortive TRQ). Specifically, in each Letter, the General Directorate recommends that there be a “delay” in the issuance of Certificates of Control over a certain period of time, and the Minister of Agriculture signs the Letter to indicate his acceptance of the recommendation. When the time period covered by a Letter is about to expire, the General Directorate issues a new Letter in which it recommends a further “delay” in the start date for issuing Certificates. Without a Certificate of Control from MARA, an importer cannot import rice into Turkey, unless Turkey has re-opened its TRQ and the importer purchases suitable quantities of domestic rice. In sum, Turkey, through its decision not to issue Certificates of Control, effectively prohibits all imports of rice at its WTO bound rate (the minimum market access to which it has committed). It is only when Turkey decides to re-open its distortive TRQ that imports may occur at all. And during the times when that TRQ is closed – generally from August through October, a period which tracks the Turkish rice harvest – there is no mechanism to import rice into Turkey at all, a total ban on imports of rice.

67. Minister Tuzmen acknowledged that Certificates of Control were not being granted in his March 24, 2006 letter to Ambassador Portman. In the letter, Minister Tuzmen confirmed that Turkey had not been issuing Certificates of Control up to that point in time when he gave Ambassador Portman a commitment that:

the control certificate will be issued *as of April 1, 2006*.⁹⁶

In other words, while Turkey had been imposing a ban on rice imports outside the distortive TRQ regime, it would begin granting Certificates of Control to requesting importers as of that date.⁹⁷

68. This situation is not unlike that in *Turkey Textiles*, in which the panel found that India had made out a *prima facie* case that Article XI:1 had been breached by showing that Turkey’s measures, “on their face,” imposed quantitative restrictions on imports.⁹⁸ The *Canada Periodicals* panel likewise found that, because the importation of certain foreign products into Canada was completely banned under the relevant Canadian measure, “it appeared that this provision by its terms is inconsistent with Article XI:1 . . .”⁹⁹ And in the *Shrimp Turtle* dispute, in which U.S. law specifically provided that the importation of shrimp or shrimp products that were harvested with fishing technology that could adversely affect sea turtles would be prohibited as of a date certain, the panel found that the wording of the relevant statute, along with

⁹⁶ Exhibit US-35.

⁹⁷ The United States has been informed by traders that MARA may have allowed some imports of rice in the spring to make up for the domestic shortfall caused by the flooding in Edirne; however, the United States cannot confirm that. In any event, as recommended in the latest Letter of Acceptance, the import ban is now firmly back in place.

⁹⁸ Para. 9.66.

⁹⁹ Para. 5.5.

the way the statute had been interpreted by a U.S. court, provided sufficient evidence that the United States was imposing a prohibition on imports in breach of Article XI:1.¹⁰⁰

69. Similarly, in the instant dispute, the wording of the Letters of Acceptance is clear: the Minister of Agriculture gave a series of orders that no Certificates of Control shall be granted. Without such Certificates, no importation can occur. And that is exactly how MARA officials interpreted those documents, as evidenced by a May 1, 2005 letter from a Provincial Agriculture Directorate to a Turkish importer of U.S. rice. As previously mentioned, the Directorate denied the importer’s April 25, 2006 request for a Certificate of Control to import medium grain milled rice from the United States “since it is not possible to prepare a control certificate according to our laws and regulations.”¹⁰¹

70. In sum, Turkey’s denial of Certificates of Control constitutes a prohibition on imports within the meaning of Article XI:1 and therefore, is inconsistent with Turkey’s WTO obligations.

4. Turkey’s Denial of Import Licenses to Import Rice At or Below the Bound Rate of Duty Constitutes a Restriction on Imports Other Than a “Duty, Tax or Other Charge”

71. Turkey’s ban on the issuance of Certificates of Control, which ensured that importation of rice could not take place outside the TRQ regime, also constitutes a “restriction . . . on importation” contrary to Article XI:1. The ordinary meaning of the word “restriction” is a “limitation on action, a limiting condition or regulation.”¹⁰² The *India Autos* panel, citing with approval this definition of “restriction” and recalling the broad reach of Article XI:1, stated that “any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1.”¹⁰³ Turkey’s failure to grant Certificates of Control to importers – indeed, Turkey did not grant them at all for a period of over 2 ½ years and is still not granting them – clearly places a limitation on imports.

72. Turkey’s decision not to issue Certificates of Control also demonstrates that it maintains discretionary, or non-automatic, import licensing, through which it makes effective restrictions on importation. In *India QRs*, the panel found that two aspects of India’s import licensing system constituted discretionary import licensing, because licenses were granted in some, but not in all

¹⁰⁰ Paras. 7.16-7.17.

¹⁰¹ See Exhibit US-22.

¹⁰² *India QRs*, para. 5.128, citing the *New Shorter Oxford Dictionary*, Lesley Brown (ed.) (Clarendon Press, 1993), Volume II, p. 2569.

¹⁰³ Para. 7.265.

cases, and as a result, found Article XI:1 breaches in both instances.¹⁰⁴ Here, Turkey fails to grant Certificates of Control 100 percent of the time, demonstrating that Turkey utilizes its discretion to impose restrictions on importation. In *Japan Semiconductors*, the panel found that Japan’s export licensing practices, which delayed the issuance of some licenses for up to three months, were non-automatic and constituted a restriction on exports that was inconsistent with Article XI:1.¹⁰⁵ Moreover, the *Korea Beef* panel found that the refusal of the Korean state-trading agency for beef to discharge imported beef into the market between the end of October 1997 and the end of May 1998 was an import restriction that breached Article XI:1.¹⁰⁶ Here, Turkey never grants Certificates of Control. As discussed in Section III, one importer who attempted to obtain a Certificate back in 2003 is still waiting for a response from MARA, as its rice decays in a warehouse.

73. Thus, Turkey’s denial of Certificates of Control constitutes a restriction on importation that is inconsistent with Article XI:1.

B. Turkey’s Denial of Import Licenses to Import Rice At or Below the Bound Rate of Duty Constitutes “Measures of the Kind Which Have Been Required to be Converted Into Ordinary Customs Duties,” Such as Quantitative Import Restrictions and Discretionary Import Licensing, Which Members May Not Resort to or Maintain Under the Agriculture Agreement and Thus is Inconsistent With Article 4.2 of That Agreement

74. Turkey’s denial of import licenses (i.e., Certificates of Control) to import rice outside the TRQ regime also constitutes a breach of Article 4.2 of the Agriculture Agreement, a provision which deals specifically with certain measures that could affect market access for agricultural products.¹⁰⁷ Article 4.2 of the Agriculture Agreement provides that:

Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties¹, except as otherwise provided for in Article 5 and Annex 5.¹⁰⁶

Footnote 1 to Article 4.2 further states, in relevant part, that:

¹⁰⁴ Paras. 5.130-5.131 and 5.139.

¹⁰⁵ Para. 118.

¹⁰⁶ Para. 767.

¹⁰⁷ Indeed, Article 4 of the Agriculture Agreement is entitled “*Market Access*.”

¹⁰⁶ Neither Article 5 nor Annex 5 are applicable with respect to this dispute.

These measures include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties¹⁰⁷

75. Other panels have found, in similar circumstances, that where a measure with respect to agricultural products¹⁰⁸ is inconsistent with Article XI:1 of the GATT 1994, it is necessarily inconsistent with Article 4.2 of the Agriculture Agreement, which provides in footnote 1 that, *inter alia*, “quantitative import restrictions” and “discretionary import licensing” are measures that Members may not maintain, resort to, or revert to.¹⁰⁹

76. In this dispute, the United States has demonstrated that Turkey’s denial of import licenses constitutes a prohibition and restriction on importation and that, as a result, Turkey has acted inconsistently with Article XI:1 of the GATT 1994. Similarly, Turkey is acting inconsistently with Article 4.2 of the Agriculture Agreement. In the Uruguay Round, Turkey committed to permit imports of rice automatically at a rate no greater than 45 percent *ad valorem*. As previously described, MARA has refused to grant import licenses to importers. This total ban on imports outside the TRQ constitutes a quantitative import restriction. This is a measure set out in footnote 1 to Article 4.2 as a measure “of the kind” that Turkey may not maintain, resort to, or revert to.

77. Turkey’s denial of import licenses also amounts to discretionary import licensing, because MARA does not grant licenses automatically. That is, the denial of licenses demonstrates that Turkey has the discretion to grant or not to grant them, and without these licenses, importation cannot occur. Thus, the Certificate of Control requirement is a form of “discretionary import licensing” and Turkey maintains a measure set out in footnote 1 to Article 4.2 of the Agriculture Agreement as a measure “of the kind” that Turkey may not maintain, resort to, or revert to. As discussed in Section III of this submission, one Turkish importer has been waiting since September 2003 to obtain such a license, as its rice rots in a warehouse. Despite

¹⁰⁷ The rest of footnote 1 is inapplicable to this dispute, as Turkey does not maintain its denial of import licenses on over-quota imports of rice under a Turkey-specific provision of the GATT 1947, nor under balance-of-payments provisions, nor under any other non-agriculture specific provisions of either GATT 1994 or the other Multilateral Trade Agreements in Annex 1A to the WTO Agreement.

¹⁰⁸ As noted above, under the Harmonized System, rice is classified under tariff item 1006. Annex 1, paragraph 1, of the Agriculture Agreement states that “[t]his Agreement shall cover the following products”: “(i) HS Chapters 1 to 24 less fish and fish products.”

¹⁰⁹ See *India QRs*, paras. 5.238-5.242, and *Korea Beef*, para. 768 (“Since the panel has already reached the conclusion that the above measures are inconsistent with Article XI and the Ad Note to Articles XI, XII, XIII, XIV and XVIII relating to state-trading enterprises, the same measures are necessarily inconsistent with Article 4.2 of the *Agreement on Agriculture* and its footnote referring to non-tariff measures maintained through state-trading enterprises”).

Minister Tuzmen’s April 1, 2006 announcement that Certificates of Control would henceforth be granted, at least two importers recently have found that MARA is still not granting the Certificates.¹¹⁰

78. The United States already has shown that Turkey’s denial of import licenses constitutes a prohibition and restriction on importation and, as such, the measure is inconsistent with Article XI:1 of the GATT 1994. For the reasons set out above, Turkey’s maintenance of such measures is also in breach of Article 4.2 of the Agriculture Agreement.

C. Turkey Has Acted Inconsistently With Articles 1.4(a) and (b) of the Import Licensing Agreement and Articles X:1 and X:2 of the GATT 1994 Because It Has Not Published Its Denial of, or Failure to Grant, Import Licenses At or Below the Bound Rate of Duty and, Thus, Has Neither Provided an Opportunity for Governments and Importers to Become Acquainted With it Nor Has it Provided Members With the Opportunity to Provide Written Comments and to Discuss Those Comments Upon Request

79. Turkey has acted inconsistently with Articles X:1 and X:2 of the GATT 1994 because it fails to publish its blanket denial of import licenses. Article X:1 provides that:

[L]aws, regulations, judicial decisions, and administrative rulings of general application, made effective by any contracting party, pertaining to . . . requirements, restrictions or prohibitions on imports, . . . or affecting their sale, distribution, transportation, insurance, warehousing inspection exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them

Article X:2 of the GATT 1994 provides, in relevant part:

No measure of general application taken by any contracting party . . . imposing a new or more burdensome requirement, restriction or prohibition on imports . . . shall be enforced before such measure has been officially published.

80. The Letters of Acceptance, which apply to all importers seeking a Certificate of Control from MARA in order to import rice, are Ministerial Decisions taken by the Turkish Minister of Agriculture and are binding under Turkish law. As previously discussed, Turkey does not publish the Letters of Acceptance in the Official Gazette. This obscures from importers and other WTO Members that MARA is not issuing Certificates of Control, thereby blocking all imports of rice outside the TRQ regime. Turkey’s failure to issue Certificates of Control is inconsistent with Articles X:1 and X:2 of the GATT 1994.

¹¹⁰ See letters from Mehmetoglu (Exhibits US-39, US-41, and US-42) and ETM (Exhibit US-44).

81. Because Turkey does not publish the Letters of Acceptance, it also necessarily breaches Articles 1.4(a) and 1.4(b) of the Import Licensing Agreement, which provide as follows:

- (a) The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published, in the sources notified to the Committee on Import Licensing provided for in Article 4 (referred to in this Agreement as "the Committee"), in such a manner as to enable governments and traders to become acquainted with them. Such publication shall take place, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the Secretariat.
- (b) Members which wish to make comments in writing shall be provided the opportunity to discuss these comments upon request. The concerned Member shall give due consideration to these comments and results of discussion.

82. The 2005 Communiqué provides that MARA will grant Certificates of Control to importers that have completed the application form and submitted any other documentation that is required. Turkey's failure to publish the fact that it is denying the issuance of Certificates of Control means that it has failed to publish an "exception, derogation[], or change[] in or from the rules concerning licensing procedures." Further, WTO Members do not have an opportunity to comment on the "delays" in issuance of the Certificates of Control nor do they have a chance to discuss those comments with the Turkish government when Ministerial Decisions are not published. Accordingly, Turkey has breached its commitments in Articles 1.4(a) and 1.4(b) of the Import Licensing Agreement.

D. Turkey Has Acted Inconsistently With Articles 3.5(e) and (f) of the Import Licensing Agreement Because Turkey Does Not Specify a Time Frame Within Which Import License Applications That Are Submitted Will Be Approved or Rejected and Does Not Provide Applicants With the Reasons for Rejection

83. Turkey also has acted inconsistently with Articles 3.5(e) and (f) of the Import Licensing Agreement, which state that:

- (e) . . . If the licence application is not approved, the applicant shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing Member;
- (f) the period for processing applications shall, except when not possible for reasons outside the control of the Member, not be longer than 30 days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than 60 days if all applications are considered simultaneously. . .

84. Turkey has decided not to process Certificate of Control applications within the periods specified in subparagraph (f). This is evident from the 2005 Communiqué, which does not provide a time frame in which MARA will accept or reject applications, and from importer experiences with the application process. If importers do apply for certificates, they may wait for weeks, months, or even years – as Torunlar can attest – and still not know whether their application was approved or rejected. Nor has Turkey ever asserted that it is “not possible for reasons outside [its] control” to process applications within the periods set out in Article 3.5(f).

85. Further, although Turkey does not approve any license applications, it does not provide the applicant “the reason therefor” – that is, as demonstrated above and set out explicitly in the Letters of Acceptance, that Turkey has decided not to approve *any* license applications. Therefore, Turkey is in breach of its commitments under Articles 3.5(e) and (f) of the Import Licensing Agreement.

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

E. Turkey Has Acted Inconsistently With Article III:4 of the GATT 1994 Because Turkey Accords Imported Rice Less Favorable Treatment Than Domestic Rice Through the Imposition of Domestic Purchase Requirements “Affecting [its] Internal Sale, Offering for Sale, Purchase, . . . or Use”

86. Turkey’s imposition of a domestic purchase requirement under the TRQ regime on potential importers of rice into Turkey is inconsistent with Article III:4 of the GATT 1994, because the measure treats imported rice less favorably than domestic rice and adversely affects the conditions of competition for imported rice in the Turkish market. Article III:4 states, in relevant part:

The product of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

87. Thus, there are three elements that must be satisfied to establish that a measure is in breach of Article III:4: (1) the imported and domestic products must be “like” products; (2) the

measure is a law, regulation, or requirement “affecting their internal sale, offering for sale, purchase, transportation, distribution or use”; and (3) the imported products are treated less favorably than domestic products.¹¹¹

1. Turkish Rice and U.S. Rice Are Like Products

88. The first prong of the Article III:4 test is whether the domestic and imported products are “like” products. “Like” is defined by one reference as:

having the same characteristics or qualities as some other person or thing; of approximately identical shape, size, etc., with something else; similar.¹¹²

Thus, in general, “like” products are products that have the same or similar properties.

89. In examining whether products are “like” for purposes of Article III, several panels have found significant the fact that a measure distinguishes between a domestic and an imported product solely on the basis of origin.¹¹³ For instance, the *Canada Wheat* panel stated that:

Where a difference in treatment between domestic and imported products is based exclusively on the products’ origin, the complaining party need not necessarily identify specific domestic and imported products and establish their likeness in terms of the traditional criteria – that is, the physical properties, end-uses and consumers’ taste and habits. Instead, it is sufficient for the purposes of satisfying the “like product” requirement, to demonstrate that there can or will be domestic and imported products that are like.¹¹⁴

Moreover, the *FSC 21.5* panel, noting that the statute at issue made a distinction between foreign and imported articles solely on the basis of origin, found that “there is no need to demonstrate the existence of actually traded like products in order to establish a violation of Article III:4.”¹¹⁵

¹¹¹ See Appellate Body Report, *Korea Beef*, para. 133.

¹¹² *The New Shorter Oxford English Dictionary*, Volume I, p. 1588 (Exhibit US-27).

¹¹³ See *Canada Autos*, para. 10.74; *India Autos*, paras. 7.173 - 7.176; and Panel Report, *FSC 21.5*, paras. 8.130-8.135.

¹¹⁴ *Canada Wheat*, para. 6.164. The panel also recalled that in *Argentina Leather*, which dealt with a claim arising under Article III:2 of the GATT 1994, the panel found that it was unnecessary to examine the likeness criteria where the respondent drew a distinction based on origin with respect to an internal tax (paras. 11.168-11.170).

¹¹⁵ Para. 8.133.

90. In this instance, Turkey’s measures, on their face, make distinctions with respect to rice based on whether the origin of rice is foreign or domestic. The Letters of Acceptance bar the importation of foreign rice into Turkey, plainly stating that Certificates of Control will not be issued in order to protect producers of domestic rice. The domestic purchase requirement ensures that importers of foreign rice procure domestic rice as a condition upon importation. It is clear from the face of these measures that *Turkey* considers that foreign and domestic rice compete with each other; therefore, it is difficult to avoid the conclusion that at least *some* imported rice is “like” Turkish rice.

91. Even if Turkey’s measures did not distinguish between foreign and imported rice on the basis of origin, U.S. and Turkish rice also constitute “like” products with respect to a more detailed examination. In considering the unique circumstances of each dispute, past panels have considered a variety of factors in determining whether products are “like”, and the Appellate Body in *EC Asbestos* narrowed down the non-exhaustive list of factors that might be considered to four: tariff classification; the “properties, nature and quality” of a product; a product’s end-uses; and consumer preferences.¹¹⁶ Notably, the Appellate Body stated that, in conducting the like product analysis, it is important to bear in mind that “likeness” is “fundamentally, a determination about the nature and extent of a competitive relationship between and among products”¹¹⁷ and noted that this interpretation would create a “relatively broad product scope” for finding that products are “like” for purposes of the Article III:4 analysis.¹¹⁸

92. Under this test, U.S. and Turkish rice are “like” products for purposes of Article III:4. Both products are classified under HS 1006. Turkey and the United States both produce the same two varieties of rice: medium-grain and long-grain. Their end use is the same: paddy rice and brown rice is destined for milling and milled rice is destined for human consumption. U.S. Calrose rice is directly competitive with the Turkish Osmancik variety: in March 2005, they were selling in retail outlets in Ankara at roughly the same price.¹¹⁹ Therefore, Turkish rice and U.S. rice are “like” products under Article III:4.

2. The Domestic Purchase Requirement is a Law, Regulation, or Requirement Affecting the Internal Sale, Offering for Sale, Purchase, and Use of Rice

¹¹⁶ See Appellate Body Report, *EC Asbestos*, para. 102; see also *Gasoline*, paras. 6.7-6.9; *EC Bananas*, paras 7.62-7.63; and Panel Report, *EC Asbestos*, paras. 8.112-8.150.

¹¹⁷ Appellate Body Report, *EC Asbestos*, para. 99.

¹¹⁸ Appellate Body Report, *EC Asbestos*, para. 100.

¹¹⁹ Exhibit US-48.

93. The second element that must be demonstrated to prove that a Member has failed to observe its Article III:4 obligations is that a measure (1) is a law, regulation, or requirement (2) “affecting [the] internal sale, offering for sale, purchase, . . . or use” of the like products at issue. The TRQ regime is comprised of several legal instruments, including decrees and notifications, that were promulgated by FTU and published in Turkey’s Official Gazette.¹²⁰ It is unclear to the United States whether Turkey’s individual instruments should be characterized as “laws” or “regulations” but it is clear that all of these instruments are legally binding under Turkish law.

94. With respect to whether the domestic purchase requirement could be characterized as a “requirement,” the *India Autos* panel found that the term “requirement” encompassed obligations which “an enterprise voluntarily accepts in order to obtain an advantage from the government.”¹²¹ This finding echoes an earlier finding under the same provision made by the *Canada Autos* panel.¹²² Similarly, in *FSC 21.5*, the panel found that a measure containing conditions that a person must satisfy to obtain an advantage from the government is a “requirement” for purposes of Article III:4.¹²³ Here, Turkey imposes a “requirement” that importers purchase domestic rice as a condition of importation if they want to pay a reduced rate of duty to import rice. Therefore, the domestic purchase requirement under the TRQ regime satisfies the “law, regulation or requirement” standard.

95. The domestic purchase requirement also clearly affects the internal sale, offering for sale, purchase, and use of the like products. The use of the word “affecting” in Article III:4 implies that a measure would not have to deal directly with the internal sale, offering for sale, purchase or use of a product, but encompasses a much broader range of potential interaction with those elements. The Appellate Body has noted that the term “affecting” should be interpreted as having a “broad scope of application.”¹²⁴ In addition, the panels in *EC Bananas*¹²⁵ and *India Autos*¹²⁶ both concluded that the word “affecting” covered more than measures which directly

¹²⁰ These documents include the 1995 Decree; the April 2004 Decree (Exhibit US-2); the April 2004 Notification (Exhibit US-3); the May 2004 Decree (Exhibit US-4); the August 2004 Decision (Exhibit US-5); the September 2004 Regulation (Exhibit US-6); the March 2005 Modification (Exhibit US-8); the May 2005 Modification (Exhibit US-9); the September 2005 Decree (Exhibit US-10); and the September 2005 Notification (Exhibit US-11).

¹²¹ Para. 7.181-7.186.

¹²² Para. 10.73.

¹²³ Para. 8.141.

¹²⁴ Appellate Body Report, *FSC 21.5*, paras. 210. *See also* *Canada Autos*, para. 10.80, and *India Autos*, para. 7.196.

¹²⁵ Para. 7.175.

¹²⁶ Para. 7.196.

regulate or govern the sale of domestic and imported like products. In fact, the term “affecting” was broad enough to cover measures that might “adversely modify the conditions of competition between domestic and imported products.”¹²⁷ Thus, in *India Autos*, the panel found that a measure “affects” the internal sale, offering for sale, purchase and use of an imported product, because it provided an incentive to purchase local products.¹²⁸ In *Canada Wheat*, the panel found that a Canadian measure “affects” internal distribution of like products, because it created a disincentive to accept and distribute imported grain.¹²⁹

96. In the instant dispute, there can be doubt that the domestic purchase requirement is “affecting” the internal sale, offering for sale, purchase, and use of rice. It provides *the only way* to import rice into Turkey. Turkey does not produce sufficient quantities of rice to meet its domestic needs, so it must import, and imports comprise a substantial portion of the Turkish rice market. Without documentary proof from TMO that an importer has purchased a specific quantity of domestic rice, FTU will not grant that importer an import license to bring foreign rice into Turkey. Therefore, the domestic purchase requirement directly affects the internal sale, offering for sale, purchase, and use of rice in Turkey. Because domestic producers, unlike their foreign competitors, are not required to procure massive quantities of rice from their competitors in order to sell rice in Turkey and, unlike their foreign competitors, are not limited in regard to whom they may sell their rice, the domestic purchase requirement has a seriously adverse effect on the conditions of competition between imported and domestic rice. Furthermore, only domestic rice can satisfy the purchase requirement - imported rice is excluded from eligibility.

3. The Domestic Purchase Requirement Accords Less Favorable Treatment to U.S. Rice

97. Turkey’s domestic purchase requirement accords less favorable treatment to imported rice and hence, Turkey has acted inconsistently with Article III:4 of the GATT 1994. Previous panels have found that measures are inconsistent with Article III:4 if they impose requirements on foreign products that are not imposed on domestic products;¹³⁰ create an incentive to purchase and use domestic products or a disincentive to utilize imported products;¹³¹ or “adversely affect . . . the equality of competitive opportunities of imported products in relation to like domestic

¹²⁷ *India Autos*, para. 7.196.

¹²⁸ Para. 7.197.

¹²⁹ Para. 6.267.

¹³⁰ *Canada Wheat*, para. 6.185.

¹³¹ *India Autos*, para. 7.201.

products.”¹³² Significantly, the Appellate Body in *FSC 21.5* noted that a measure could still be inconsistent with Article III:4 even if unfavorable treatment did not arise in every instance.¹³³

98. On its face and by design, Turkey’s TRQ regime treats imported rice less favorably than domestic rice *in every instance*. Under the applicable regulations, imported rice cannot be sold in the domestic market under any circumstance unless the importer first purchases, at inflated prices, domestic rice. Domestic rice producers are not subject to the same requirement in order to bring their product to market, which provides them a tremendous advantage in the market. Further, because the domestic purchase requirement makes procuring imported rice more costly – oftentimes requiring an importer to purchase three or four times the quantity of domestic rice as the quantity of foreign rice an importer wants to import – the domestic purchase requirement creates a disincentive to purchase and import foreign rice. Consequently, by making the sourcing of imported rice less desirable, the domestic purchase requirement alters the decision-making calculus of domestic entities when making purchasing decisions regarding rice. And by making imported rice ineligible to satisfy the purchase requirement, the conditions of competition are altered in favor of domestic rice.

99. In sum, the domestic purchase requirement under Turkey’s TRQ regime creates a tremendous artificial advantage for domestic producers, adversely affecting the conditions of competition for imported rice, and thereby tilting the playing field squarely in the direction of domestic producers. Accordingly, the domestic purchase requirement is clearly inconsistent with Article III:4 of the GATT 1994.

4. The Eligibility Criteria for Who May Purchase Rice, and Hence Import Rice, Under the TRQ Regime Accords Less Favorable Treatment to U.S. Rice

100. Another aspect of the domestic purchase requirement – the eligibility criteria – accords less favorable treatment to U.S. rice and thus, is inconsistent with Article III:4 of the GATT 1994. Turkish regulations restrict the issuance of import licenses under the TRQ to certain categories of persons, namely (1) domestic producers who have a permit to grow paddy rice; (2) domestic producers who purchase paddy rice from Turkish producer associations of which they are members; or (3) those who procure rice from TMO, which will undoubtedly be domestic producers as well.¹³⁴ As a result of these criteria, only domestic rice producers, principally those with milling capacity, will be eligible to import rice.

¹³² Panel Report, *FSC 21.5*, para. 8.158.

¹³³ Appellate Body Report, *FSC 21.5*, para. 221.

¹³⁴ See Article 5 of both the August 2004 Decision (Exhibit US-5) and the September 2005 Decree (Exhibit US-10).

101. This state of affairs negatively affects competitive conditions for imported rice in the Turkish marketplace. The Turkish millers primarily want to import paddy rice to send to their milling facilities, increase their milling capacity, and keep out imported milled rice which competes with Turkish milled rice and reduces the domestic price. Whereas domestic producers can sell their rice to anyone along the production chain, from the paddy producer to the ultimate consumer, U.S. producers do not have that choice. They are not permitted to sell rice directly to consumers. Instead, they are forced to market their rice through their Turkish competitors.

102. For these reasons, the eligibility criteria for domestic purchase under the TRQ also are inconsistent with Article III:4.

F. Turkey Has Acted Inconsistently With Article XI:1 of the GATT 1994 Because Turkey’s Domestic Purchase Requirement Constitutes a Restriction on Imports Other Than in the Form of Duties, Taxes, or Other Charges

103. To the extent Turkey’s domestic purchase requirement is not viewed as a “law, regulation or requirement” within the meaning of Article III, this requirement breaches Article XI:1 of the GATT 1994, because it is a “restriction . . . on importation” within the meaning of Article XI:1. The domestic purchase element of the TRQ clearly falls within the scope of the phrase “whether made effective through quotas, import or export licences or other measures” because FTU will not issue an import license under the TRQ without proof of domestic purchase and the term “other measures” is broad enough to encompass a domestic purchase requirement. As noted by the *India Autos* panel, “any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1.”¹³⁵ That panel found that import limitations creating disincentives to importation and making importation more burdensome could constitute a restriction on importation for purposes of Article XI:1.¹³⁶

104. In this case, the domestic purchase requirement, on its face, imposes a substantial restriction on imports of rice. Importation under the TRQ regime cannot be realized unless an importer purchases large quantities of domestic rice and presents proof of such purchases from TMO to FTU. The TRQ regime constitutes a discretionary import licensing system, because receiving a license to import under the TRQ is non-automatic; rather, importation under the TRQ is conditioned on domestic purchase. Further, the Turkish regulations have not always specified the amount of rice that would need to be procured in order to receive a portion of the quota, which has rendered importers completely unable to ship at times, or at best, has left them in a state of considerable uncertainty as to how much domestic rice they would need to procure from TMO, Turkish producers, or Turkish producer associations in order to bring their shipments of

¹³⁵ Para. 7.265.

¹³⁶ Para. 7.272-7.273.

foreign rice into the country.¹³⁷ All of these features of the system make the importation process more burdensome and create serious disincentives to importation.

105. Therefore, Turkey’s domestic purchase requirement is a restriction on importation contrary to Article XI:1 of the GATT 1994.

G. Turkey Has Acted Inconsistently With Article XI:1 of the GATT 1994 Because the Eligibility Criteria for Who May Purchase Rice, and Hence Import Rice, Under the TRQ Constitutes a Restriction on Imports Other Than in the Form of Duties, Taxes, or Other Charges

106. To the extent that the eligibility criteria to purchase rice are not viewed as a “law, regulation or requirement” within the meaning of Article III, these criteria breach Article XI:1 of the GATT 1994, because they constitute a “restriction . . . on importation” within the meaning of Article XI:1. The eligibility criteria for importing under the TRQ fall within the ambit of the phrase “whether made effective through quotas, import or export licences or other measures” because FTU will not issue an import license under the TRQ to a person who has not met the eligibility criteria, and the term “other measures” is broad enough in scope to encompass eligibility criteria. As previously noted, the *India Autos* panel stated that “any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1.”¹³⁸

107. The eligibility criteria for purchasing domestic rice under the TRQ act as a restriction on importation, because they limit the range of entities that may import rice into Turkey. Specifically, Turkish regulations restrict the issuance of import licenses under the TRQ to three categories of persons, namely (1) domestic producers who have a permit to grow paddy rice; (2) domestic producers who purchase paddy rice from Turkish producer associations of which they are members; or (3) those who procure rice from TMO, which will undoubtedly be domestic producers as well.¹³⁹

108. As a result of these criteria, only domestic rice producers, principally those with milling capacity, will be eligible to import rice. Consumers – whether small grocery store owners or large retailers – would not have a permit to grow paddy rice or be a member of a Turkish rice producer association. Moreover, because consumers do not have milling capacity, they would never be interested in purchasing domestic paddy rice from TMO.

¹³⁷ See the April 2004 Decree (Exhibit US-2) and the April 2004 Notification (Exhibit US-3).

¹³⁸ Para. 7.265.

¹³⁹ See Article 5 of both the August 2004 Decision (Exhibit US-5) and the September 2005 Decree (Exhibit US-10).

109. Therefore, the eligibility criteria for who may purchase rice under the TRQ also constitutes a restriction on importation contrary to Article XI:1 of the GATT 1994.

H. Turkey Has Acted Inconsistently With Article 2.1 and Paragraph 1(a) of Annex 1 of the TRIMs Agreement Because It Requires the Purchase of Domestic Rice In Order to Import at Lower Duty Levels

110. Turkey is in breach of Article 2.1 and Paragraph 1(a) of the Annex 1 of the TRIMs Agreement, because it has instituted a domestic purchase requirement which importers must fulfill in order to obtain the advantage of importing rice at duty rates below the bound rates. Article 2 of the TRIMs Agreement, which is entitled “*National Treatment and Quantitative Restrictions*,” provides:

1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994.
2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement.

111. The TRIMs Agreement does not define what is a “trade-related investment measure” that would breach Article III:4; instead, it provides a non-exhaustive list in the Annex to the Agreement. Paragraph 1 of the Annex states in relevant part that:

TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

- (a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production . . .

Accordingly, to prove that a measure is inconsistent with Article 2.1, the United States must demonstrate that the domestic purchase requirement is a measure with the characteristics set forth in paragraph 1(a) of the Annex. The two main features of a measure falling under paragraph 1(a) is that such a measure must (1) be mandatory or enforceable under domestic law or under administrative rulings, or compliance with the measure is necessary to obtain an advantage; and

(2) require the purchase or use by a company of domestic products (e.g., based on the type, volume, or value of products).

112. Turkey’s domestic purchase requirement satisfies both of these elements, and hence, is within the ambit of paragraph 1(a). Turkey requires importers to purchase domestic rice in certain specified quantities, and fulfilling (and documenting to FTU) the domestic purchase requirement is necessary to obtain an advantage, namely importing rice under the lower rates of duty under the TRQ regime. Thus, Turkey has failed to observe its commitments in Article 2.1 and Paragraph 1(a) of Annex 1 of the TRIMs Agreement.

I. Turkey Has Acted Inconsistently With Article 4.2 of the Agriculture Agreement Because the Domestic Purchase Requirements Are “Measures of the Kind Which Have Been Required to Be Converted Into Ordinary Customs Duties,” Such as Discretionary Import Licensing and Non-tariff Measures Maintained Through State-trading Enterprises, Which Members May Not Resort to or Maintain Under that Agreement

113. Turkey’s domestic purchase requirement is inconsistent with Article 4.2 of the Agriculture Agreement. Article 4.2 provides that:

Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties¹, except as otherwise provided for in Article 5 and Annex 5.¹⁰⁶

Footnote 1 to Article 4.2 further states, in relevant part, that:

These measures include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties¹⁰⁷

114. In the Uruguay Round, Turkey committed itself to permit the importation of rice automatically at a bound rate of 45 percent *ad valorem*. Instead, Turkey is maintaining, resorting to, and reverting to measures which should have been converted into ordinary customs duties –

¹⁰⁶ Neither Article 5 nor Annex 5 are applicable with respect to this dispute.

¹⁰⁷ The rest of footnote 1 is inapplicable to this dispute, as Turkey does not maintain its domestic purchase requirement under a Turkey-specific provision of the GATT 1947, nor under balance-of-payments provisions, nor under any other non-agriculture specific provisions of either GATT 1994 or the other Multilateral Trade Agreements in Annex 1A to the WTO Agreement.

specifically a discretionary import licensing system and non-tariff measures maintained through state-trading enterprises. FTU will only grant a license to import rice under the TRQ to those importers who procure large quantities of domestic rice from TMO, Turkish producers, or Turkish producer associations and who present to FTU proof of such purchase. As the issuance of licenses is not automatic but contingent on domestic purchase, Turkey's maintenance of a domestic purchase requirement to import under the TRQ constitutes discretionary import licensing.

115. The domestic purchase requirement is also a non-tariff measure maintained through a state-trading enterprise, because TMO administers the domestic purchase requirement aspect of the TRQ. An importer may only import rice under the TRQ if it purchases rice domestically, including from TMO, which sells rice at prices it announces. In addition, the importer must obtain proof of such purchase from TMO, which must be presented to FTU. If an importer does not present that documentation, FTU will not grant a license to import under the TRQ. Lastly, under the regulations TMO is permitted to import 50,000 metric tons of milled rice in order to help stabilize the domestic market in the event that prices increase.¹⁰⁸

116. Both discretionary import licensing and non-tariff measures maintained through state-trading enterprises are measures set out in footnote 1 to Article 4.2 of the Agriculture Agreement. For these reasons, Turkey's domestic purchase requirement constitutes a breach of Article 4.2 of the Agriculture Agreement.

J. Turkey Has Acted Inconsistently With Article 3.5(h) of the Import Licensing Agreement Because Turkey Administers its TRQs in Such a Way as to Discourage the Full Utilization of Quotas

117. Turkey also has acted inconsistently with Article 3.5(h) of the Import Licensing Agreement, which states:

- (h) when administering quotas, Members shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of quotas

118. As previously discussed, Turkey ensures that the full amount of the quotas cannot be reached by setting the domestic purchase requirement so high that the entire Turkish domestic production of rice would be purchased by importers before the in-quota amount was reached. For example, Turkish paddy rice production was 415,000 metric tons in 2004 and 500,000 metric tons in 2005.¹⁰⁹ The maximum amount of paddy rice that could be imported under the TRQ was

¹⁰⁸ Exhibits US-5 and US-10.

¹⁰⁹ Exhibit US-45.

500,000 metric tons.¹¹⁰ Yet, in almost every instance, an importer seeking to import rice under the TRQ is required to purchase a larger quantity of domestic rice than the amount of rice it wants to import. Put simply, even if importers purchased every grain of rice in Turkey, they would not approach the 500,000 metric ton limit on paddy rice imports.

119. Further, the high cost of domestic purchase makes importing under the TRQ much more expensive to the importer, who is likely a miller, than simply procuring rice domestically, and hence discourages the full utilization of the TRQ. Therefore, Turkey is in breach of its commitments under Article 3.5(h) of the Import Licensing Agreement.

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

K. Turkey's Domestic Purchase Requirements, in Conjunction With Its Denial of Import Licenses for Rice At or Below the Bound Rate of Duty, Constitute a Prohibition or Restriction on Imports Other Than in the Form of Duties, Taxes, or Other Charges, and Thus Are Inconsistent With Article XI:1 of the GATT 1994

120. Turkey's TRQ regime, under which it requires that importers purchase significant quantities of domestic rice as a condition for receiving a license to import rice, coupled with Turkey's denial of Certificates of Control at the rates of duty set out in Turkey's domestic schedule or in its WTO Schedule constitutes a prohibition or restriction for purposes of Article XI:1. Each component of Turkey's import licensing system – the TRQ regime and the denial of Certificates of Control outside that regime – is inconsistent with Article XI:1 operating independently, as previously described. In addition, the two components also give rise to a breach of Article XI:1 acting in conjunction.

121. Turkey's denial of Certificates of Control outside the TRQ regime is what forces importers to utilize the TRQ: no economically rational importer would import under the TRQ given the choice, because the domestic purchase requirement is so large and therefore importing under the TRQ is so costly. As a consequence of the interaction between the two components, however, all importation of rice into Turkey takes place through the TRQ regime, which is a discretionary import licensing system: FTU only grants import licenses if importers agree to purchase large quantities of domestic rice from TMO, domestic producers, or domestic producer associations.

122. Turkey's import licensing regime for rice constitutes a serious market access restriction under Article XI:1, but it also frequently amounts to a prohibition on imports. Turkey has completely banned imports of rice outside the TRQ by denying the issuance of import licenses. Consequently, when Turkey temporarily closes the TRQ each year during the Turkish rice

¹¹⁰ Exhibits US-5 and US-10.

harvest, there is a total ban on imports of rice into Turkey. This “seasonal ban” was in place during the domestic rice harvest in 2003, 2004, and 2005.

123. Moreover, Turkey ensures that the full amount of the quotas cannot be reached by setting the domestic purchase requirement so high that the entire Turkish domestic production of rice would be purchased by importers before the in-quota amount was reached. For example, Turkish milled rice production was 270,000 metric tons in 2004 and 300,000 metric tons in 2005.¹¹¹ The maximum amount of milled rice that could be imported under the TRQ was 300,000 metric tons.¹¹² However, in almost every case, TMO requires the importer seeking to import rice under the TRQ to purchase a larger quantity of domestic rice than the amount of rice it wants to import.¹¹³ Based on the levels of domestic purchase set forth thus far, there is no way for importers to be able to import anywhere approaching the 300,000 metric ton limit on milled rice imports.

124. For the reasons set forth above, Turkey’s TRQ regime, with its domestic purchase requirement, acting in conjunction with Turkey’s denial of Certificates of Control outside the TRQ, constitutes a prohibition or restriction for purposes of Article XI:1.

L. Turkey’s Domestic Purchase Requirements, in Conjunction With its Failure to Grant Import Licenses for Rice At or Below the Bound Rate of Duty, Are “Measures of the Kind Which Have Been Required to Be Converted Into Ordinary Customs Duties,” Such as Quantitative Import Restrictions and Discretionary Import Licensing, Which Members May Not Resort to or Maintain Under the Agriculture Agreement and Thus Are Inconsistent With Article 4.2 of that Agreement

125. Turkey’s import licensing regime, comprised of (1) the TRQ requiring domestic purchase for under-quota imports and (2) the denial of import licenses for any imports at the rates of duty set out in Turkey’s domestic schedule or even in its WTO Schedule, also constitutes a breach of Article 4.2 of the Agriculture Agreement. The United States already has established that both aspects of Turkey’s import licensing regime are inconsistent with Article 4.2 of the Agriculture Agreement. The domestic purchase requirements under the TRQ constitute discretionary import licensing and non-tariff measures maintained through state-trading enterprises, which are measures set out in footnote 1 to Article 4.2. And Turkey’s denial of Certificates of Control outside the TRQ constitutes a quantitative import restriction and discretionary import licensing, which also are measures set forth in footnote 1. Furthermore, the United States demonstrated in the previous sub-section that Turkey’s import licensing regime *as a whole* is inconsistent with

¹¹¹ Exhibit US-45.

¹¹² Exhibits US-5 and US-10.

¹¹³ Exhibits US-6 and US-11.

GATT Article XI:1's ban regarding prohibitions or restrictions on importation. Because Article 4.2 of the Agriculture Agreement prohibits Members from employing quantitative import restrictions and discretionary import licensing in place of ordinary customs duties, the two measures operating in conjunction are necessarily in breach of Article 4.2.

M. Turkey Has Acted Inconsistently With Articles 3.5(a), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement Because Turkey Has Failed to Provide, Upon the Request of the United States, All Relevant Information Concerning the Administration of Turkey's Import Licensing Regime and the Import Licenses Granted Over a Recent Period and Has Failed to Notify its Import Licensing Regime for Rice

126. Article 3.5(a) of the Import Licensing Agreement provides that:

Members shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning:

- (i) the administration of the restrictions;
- (ii) the import licences granted over a recent period;

Further, Article 5 of the Import Licensing Agreement provides an obligation for Members to notify licensing procedures to the WTO Membership:

1. Members which institute licensing procedures or changes in these procedures shall notify the Committee of such within 60 days of publication.
2. Notifications of the institution of import licensing procedures shall include the following information:
 - (a) list of products subject to licensing procedures;
 - (b) contact point for information on eligibility;
 - (c) administrative body(ies) for submission of applications;
 - (d) date and name of publication where licensing procedures are published;
 - (e) indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3;
 - (f) in the case of automatic import licensing procedures, their administrative purpose;

- (g) in the case of non-automatic import licensing procedures, indication of the measure being implemented through the licensing procedure; and
 - (h) expected duration of the licensing procedure if this can be estimated with some probability, and if not, reason why this information cannot be provided.
3. Notifications of changes in import licensing procedures shall indicate the elements mentioned above, if changes in such occur.
 4. Members shall notify the Committee of the publication(s) in which the information required in paragraph 4 of Article 1 will be published.

127. During the consultations, the United States requested that Turkey provide information concerning the issuance of Certificates of Control at the over-quota rates of duty and the number of Certificates that had been granted over the last year. Turkey has not provided this information. Further, in July 2005, the United States requested that Turkey notify its non-automatic import licensing regime for rice to the Import Licensing Committee.¹¹⁴ Turkey has not done so. Accordingly, Turkey is in breach of Articles 3.5(a), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement.

N. Turkey’s Most Recent Opening of the TRQ Illustrates the Breaches of Turkey’s Import Licensing Regime for Rice

128. For further illustration, as described above,¹¹⁵ Turkey most recently opened its TRQ on November 1, 2005, while MARA was continuing to deny import licenses at the over-quota rates. As described previously in Section IV of this submission, this most recent opening is inconsistent with the provisions of the covered agreements previously discussed.

V. CONCLUSION

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

¹¹⁴ G/LIC/Q/TUR/3 (25 July 2005).

¹¹⁵ See Exhibits US-10 and US-11, which are described in paras. 48-49 of this submission.

1(a) of Annex 1 of the TRIMs Agreement and recommend that Turkey bring its measures into conformity with its WTO obligations.

Table of Exhibits

Exhibit US-	Title of Exhibit
1	Decree No. 96/7794 related to the General Assessment of the Regime Regarding Technical Regulations and Standardization for Foreign Trade (Official Gazette, No. 22541, February 1, 1996, Repeated) (English translation, followed by the original Turkish version)
2	Decision of the board of ministers: Decree No. 2004/7135 related to the implementation of a tariff quota for certain types of paddy rice and rice types imports (Official Gazette, No. 25439, April 20, 2004) (English translation, followed by the original Turkish version)
3	A notification related to implementation of tariff quotas for certain types of paddy and rice imports, from the Foreign Trade Undersecretariat (Official Gazette, No. 25445, April 27, 2004) (English translation, followed by the original Turkish version)
4	Decision of the board of ministers: Decree No. 2004/7333 related to the management of quota and tariff contingent on import (Official Gazette, No. 25473, May 26, 2004) (English translation, followed by the original Turkish version)
5	Decision of the board of ministers: Decree No. 2004/7756 related to the implementation of a tariff contingent on the import of certain paddy rice and rice types (Official Gazette, No. 25566, August 27, 2004) (English translation, followed by the original Turkish version)
6	A notification about the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25577, September 8, 2004) (English translation, followed by the original Turkish version)
7	A communiqué on Standardization in Foreign Trade, Communiqué No. 2005/05 (Official Gazette, No. 25687, December 31, 2004) (English translation, followed by the original Turkish version)
8	A notification about the amendment of the notification related to the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25767, March 26, 2005) (English translation, followed by the original Turkish version)

9	A notification about the amendment of the notification related to the implementation of a tariff contingent (customs duty) on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25812, May 11, 2005) (English translation, followed by the original Turkish version)
10	Decision of the board of ministers: Decree No. 2005/9315 related to the implementation of a tariff contingent on the import of certain types of paddy rice and rice types (Official Gazette, No. 25935, September 13, 2005) (English translation, followed by the original Turkish version)
11	A notification related to the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25943, September 21, 2005) (English translation, followed by the original Turkish version)
12	Letter of Acceptance 107 (January 23, 2004) (English translation, followed by the original Turkish version)
13	Letter of Acceptance 905 (June 28, 2004) (English translation, followed by the original Turkish version)
14	Letter of Acceptance 1795 (December 30, 2004) (English translation, followed by the original Turkish version)
15	Schedule XXXVII – Turkey. Part I – Most Favoured-Nation Tariff. Section I – Agricultural Products. Section 1 – A Tariffs
16	2005 Tariff Schedule, Official Gazette (29 December 2005)
17	Effective Tariff Rates, Official Gazette (31 December 2005)
18	Annex VI-A to “A communiqué on Standardization in Foreign Trade”
19	Certificate of Control form, Republic of Turkey, Ministry of Agriculture and Rural Affairs (English translation)
20	“TMO is given priority to import rice to prevent extra high prices,” <i>GNToruner</i> , 13 July 2006 (English translation)
21	“Clean the rice from the stones,” <i>Milliyet</i> , 7 April 2006 (English summary, followed by the original Turkish version)
22	Letter from Provincial Agriculture Directorate, Republic of Turkey, to Mehmetoglu Domestic and Foreign Trade A.S., B.12.4.ILM.0.06.00.061868/9338, 1 May 2006 (English translation, followed by the original Turkish version)

23	Letter from Torunlar to MARA re: request for a Certificate of Control (22 January 2004)
24	<i>Referans</i> , 31 March 2006, pps. 1 and 9 (English translation)
25	<i>The New Shorter Oxford English Dictionary</i> , Volume I, p. 1578
26	<i>The New Shorter Oxford English Dictionary</i> , Volume I, p. 1324
27	<i>The New Shorter Oxford English Dictionary</i> , Volume I, p. 1588
28	Rejection letter from MARA to Torunlar re: Torunlar's 29 August 2003 application for a Certificate of Control (10 September 2003) (English translation, followed by the original Turkish version)
29	Rejection letter from MARA to Torunlar re: Torunlar's 23 October 2003 application for a Certificate of Control (3 November 2003) (English translation, followed by the original Turkish version)
30	Motion for Stay, filed by Torunlar in the 1 st Administrative Court of Ankara (English translation, followed by the original Turkish version)
31	MARA's Response to Torunlar's Motion for Stay (English translation, followed by the original Turkish version)
32	Additional submission of Torunlar in the 1 st Administrative Court proceedings (English translation, followed by the original Turkish version)
33	Rejection letter from MARA to Torunlar re: Torunlar's 20 January 2004 application for a Certificate of Control (9 September 2004) (English translation, followed by the original Turkish version)
34	Letter from Torunlar to MARA, Provincial Directorate of Agriculture re: MARA's denial of Torunlar's applications for a Certificate of Control (12 December 2005) (English translation, followed by the original Turkish version)
35	Letter from Turkish Minister Kurzad Tuzmen to U.S. Trade Representative Rob Portman re: Turkey's commitment to begin issuing Certificates of Control (24 March 2006)
36	Letter of Acceptance 390 (24 March 2006) (English translation, followed by the original Turkish version)
37	Letter of Acceptance 603 (14 March 2006) (English translation, followed by the original Turkish version)
38	Rice – Wikipedia (en.wikipedia.org/wiki/Rice)

39	1 st letter of complaint from Mehmetoglu to MARA re: request for a Certificate of Control (25 April 2006) (English translation)
40	Letter from MARA to Mehmetoglu re: request for a Certificate of Control (27 April 2006) (English translation)
41	2 nd letter of complaint from Mehmetoglu to MARA re: request for a Certificate of Control (27 April 2006) (English translation)
42	3 rd letter of complaint from Mehmetoglu to MARA re: request for a Certificate of Control (28 April 2006) (English translation)
43	General Assessment of the Regime Regarding Technical Regulations and Standardisation for Foreign Trade (27 May 2005) (English translation)
44	Letter from ETM to MARA re: MARA’s denial of the issuance of a Certificate of Control (undated) (English translation)
45	USDA Production, Supply and Distribution Online (www.fas.usda.gov/psdonline/psdHome.aspx)
46	<i>The New Shorter Oxford English Dictionary</i> , Volume II, p. 2372
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48	Turkey Grain and Feed Annual 2005: USDA Foreign Agricultural Service GAIN Report (GAIN Report Number TU5006, 6 March 2005)
49	TMO Sale Price for Importers Fulfilling Domestic Purchase Requirement by Purchasing Rice from TMO: Conversion Table
50	“The Turkish Grain Board Paddy Rice Stocks Are Opened For Sale,” www.tmo.gov.tr , 6 February 2005 (English translation)