

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

(WT/DS334)

**COMMENTS OF THE UNITED STATES OF AMERICA
ON TURKEY'S RESPONSES TO THE PANEL'S QUESTIONS FOLLOWING
THE SECOND SUBSTANTIVE MEETING WITH THE PARTIES**

February 20, 2007

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

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

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

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

- (a) Paddy rice or brown rice in the months of October in 2003, 2004 and 2005. In addition, the data in Exhibit TR-33 suggest that no rice imports whatsoever (paddy, brown or milled) took place in February and March 2004. Further, the data in Exhibit TR-33 seem to suggest that there were no rice imports other than EC/Macedonia out-quota rice imports in October - December 2003 and in September - October 2005.**
- (b) Milled rice from the United States during: (i) January - May 2004; (ii) July 2004; (iii) September - November 2004; (iv) July - December 2005; and, (v) January 2006 - onwards.**

¹See Exhibit US-82.

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

3. From September 10, 2003 through the date of panel establishment and beyond, Turkey maintained a legal prohibition on the granting of Control Certificates for MFN trade. Turkey instituted minimum import prices for rice on August 1, 2006 – the day after the TRQ allegedly expired – and Turkish import data during the September-December 2006 period shows that rice imports have ceased.² Turkey's maintenance of a discretionary import licensing regime, including the TRQ with domestic purchase, is the most compelling reason that rice imports have ceased altogether in certain periods, as the United States has previously argued.

4. Several of the explanations provided by Turkey are unsupported by the evidence on the record. Turkey argues that there was an increase in rice stocks by the beginning of 2004; however, the data on the record shows just the opposite, with Turkish rice stocks declining from 260,000 metric tons on September 1, 2003³ to 135,000 metric tons on September 1, 2004.⁴ Turkey contends that there was a steep increase in world rice prices in 2004, but that would not explain the decline in imports that began in *September 2003*. With respect to prices in 2004, one cannot measure the effect of an increase in world prices for rice in the Turkish market without knowing the domestic prices for rice in Turkey during the period in question. Annex TR-29 shows that TMO purchasing prices increased significantly in 2004 from the previous year, and Exhibit US-54 demonstrates that Turkish wholesale prices rose throughout the 2003-2006 time period. Turkey has taken issue with the data in Exhibit US-54 but has not provided a clear explanation as to why that data is inaccurate. The Panel has requested that Turkey provide data on domestic rice prices in Turkey but, to date, Turkey, which is in the best position to supply this data, has not done so. The Panel should draw the appropriate inference from Turkey's failure to provide this data.

5. Turkey also argues that import decisions have always been exclusively determined by business considerations. Yet an examination of the data shows that the United States has exported large quantities of rice throughout the world since September 2003, yet has been unable to export to Turkey during certain time periods, which implies that something other than

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

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

⁴See Exhibit US-45.

business considerations was driving the import trends. Moreover, Turkey maintains that preferential tariffs on rice from the EC and Macedonia could affect importers' choices. However, the EC quota only covers 28,000 metric tons of milled rice, a small percentage of the Turkish rice market. Further, as the United States noted in paragraph 51 of the U.S. Rebuttal Submission, Macedonia is a non-factor in the rice trade. It does not export rice. Even Turkey's Annex TR-33 shows that only one-third of the Control Certificates allegedly granted for the importation of Macedonian rice were ever utilized; some of those Certificates were only utilized in part; and the total quantity of Macedonian rice allegedly imported was less than 1,500 metric tons.

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

6. Without examining the actual Control Certificate data, it is impossible to discern whether there was a lack of applications for Control Certificates. However, the United States would not be surprised if that were indeed the case; as the United States has demonstrated, Turkey's legal prohibition on the granting of out-of-quota Control Certificates for MFN trade in rice prohibited or restricted the importation of rice at least through the date of panel establishment. Even Turkey's alleged Control Certificate data shows that it granted only 56 out-of-quota Control Certificates at the MFN rates over a 2 ½ year period and, as the United States explained previously, many of those alleged Certificates were either not utilized, covered the importation of very small amounts of rice, or were anomalies. Importers would have known from past years that Turkey would ensure that all imports of rice, with the exception of imports covered by a preferential agreement (e.g., the EC), would be made through the TRQ while it was open, and that such imports would cease during the Turkish rice harvest when the TRQ was closed. Further, no rice importer could have mistaken the significance of MARA's apparent decision to go to court to enforce its denial of such Control Certificates, as well as the court decisions siding with the government's position.

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

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

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

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

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

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

(a) Can Turkey please confirm this.

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

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

Q110: (to Turkey) In its question 7 posed to both Parties, the Panel had asked, inter alia, for information regarding Turkey's average prices for domestic production of, separately, paddy, brown and milled rice in its market, for the period from July

2003 to the end of 2006 (including estimates, as appropriate). In response to this question, Turkey indicated that "reference should be made to Annex TR-27". However, the data in Exhibit TR-27 seems to refer only to individual purchases by companies in 2005. It does not show monthly averages and specify the type of rice it refers to, nor does it cover the period requested by the Panel. In the absence of such information, can Turkey comment on the data provided by the United States in Exhibit US-54. Can Turkey find a relation between the price data provided in Exhibit TR-27 and that provided in Exhibit TR-29?

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

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

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

Q111: (to Turkey) In its reply to question 9 posed by the Panel, Turkey provided Exhibit TR-30 showing overall purchases and sales of milled and paddy rice by the

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

Turkish Grain Board (TMO) during the period 2003 to 16 November 2006. Could Turkey please explain the reasons for the significant difference in the quantities of paddy rice sold by the TMO in 2004, as compared to the quantities sold in 2005 and 2006, respectively?

14. The TRQ regime was designed to reduce TMO stocks, which were high entering 2004,⁶ so the fact that the quantities of paddy rice sold by TMO declined in 2005-2006 are evidence that the regime was operating as intended. Importers purchased more rice from Turkish producers than from TMO because, under the second and third TRQ openings, one could import more rice by purchasing rice from domestic producers and producer associations than from TMO. Second, the fact that importers were purchasing domestic rice at all had nothing to do with the purported “advantage” of having to make purchases of large quantities of domestic rice as a condition upon import; rather, importers made such purchases because that was the only way to import rice not covered by a special quota arrangement.

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

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

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

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

⁶See Annex TR-30.

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

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

17. The U.S. claim is that Turkey prohibits or restricts trade in rice at the MFN rates for paddy, brown, and milled rice.⁷ It does so by failing to issue Control Certificates. The earlier U.S. argument that there was a blanket ban on the issuance of Control Certificates was based on the U.S. belief that Turkey did not require such Certificates under the TRQ. Turkey has clarified that it does require importers to obtain Certificates under the TRQ, which provides further evidence that the TRQ regime is discretionary – as is the entire Turkish import licensing regime for rice. Thus, Turkey's argument that it grants Control Certificates under the TRQ does not rebut the U.S. claim that it is denying the issuance of such Certificates at the MFN rates.

18. Second, Article XI:1 provides that a breach occurs if a measure prohibits or restricts importation. Thus, even if Turkey did issue some Control Certificates, that would not rebut the U.S. claim that Turkey is restricting imports through the use of a discretionary import licensing regime. The United States has provided voluminous evidence that Turkey is restricting imports of rice – the Letters of Acceptance, the rejection letters, the court cases decided in favor of the government, statements of Turkish officials, newspaper articles and, most recently, the December 15, 2006 statement from the Turkish Minister of Agriculture⁸ and documentary proof that Turkey has imposed a minimum import pricing scheme as part of its Control Certificate

⁷As discussed in paragraph 13 of the U.S. First Submission, the MFN rates are 45 percent *ad valorem* for paddy, brown, and milled rice. However, Turkey's domestic tariff schedule provides different effective tariff rates for paddy, brown, and milled rice: 34 percent *ad valorem* for paddy rice, 36 percent *ad valorem* for brown rice, and 45 percent *ad valorem* for milled rice. In the U.S. panel request, the United States claimed that Turkey denied or failed to grant import licenses to import rice "at or below the bound rate of duty" in order to cover importation at the effective tariff rates, as well as the MFN rates.

⁸See Exhibit US-77.

process for rice.⁹ That Turkey is restricting imports of rice and has exercised discretion in denying the issuance of Control Certificates is confirmed by Turkish trade data, Turkey’s own Control Certificate data, and Turkey’s refusal to provide the actual Control Certificates that the Panel has repeatedly requested.

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

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

Q115: (to Turkey) During the second substantive meeting with the Panel, the United States presented exhibit US-71, in which the number provided by Turkey of the

⁹See Exhibits US-68 and US-76.

¹⁰See Exhibit US-71.

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

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

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

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

24. Lastly, the United States would like to clarify its characterization of time periods as "relevant" or "irrelevant." The United States is not alleging that Turkey did not grant Control

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

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

26. Indeed, the United States has provided documentary evidence that Turkey is continuing to prohibit or restrict imports since March 17, 2006 through the denial of Control Certificates and the imposition of a minimum import price regime for rice, which appears to be having the same effect on imports. Since Minister Tuzmen's announcement that Control Certificates will be issued as of April 1, 2006, Turkish import data shows that only 1,044 metric tons of rice were imported into Turkey between that date and the end of 2006.¹¹

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

Q125: (to Turkey) In its reply to question 14 posed by the Panel, Turkey submitted "that the import procedure which applies for imports at both MFN and TRQ rates is described in the scheme provided in Annex TR-32". In that Exhibit, Turkey has identified the legal basis for both the procedure for importation at MFN rate and

¹¹See Exhibit US-81rev.

that for importation at TRQ rate. During the second substantive meeting with the Panel, however, Turkey stated that Communiqué No. 2006/5 on the Standardization in Foreign Trade had been replaced by new legislation.

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

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

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

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

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

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

[The references prices noted above] will be considered as references prices *in case a control document is drawn up and this fact is communicated to the Ministry of Agriculture and Rural Affairs.*

Consequently, *since the values mentioned above will be considered as reference in the establishment of control documents for the subject items from the date of 01.08.2006, this fact has to be taken into account while determining the price.*¹² (emphasis added).

¹²Exhibit US-68.

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

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

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

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

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

32. Article 2 states that "it is necessary to apply to [MARA] "with control certificate form (Annex VII), pro forma invoice or invoice, and other documents which may be asked for, depending on product, by the Ministry."¹⁴ Turkey argues that this language does not provide

¹³See Exhibit US-1.

¹⁴Article 6 of Communiqué No. 2003/31 on the "Issuance of Control Certification at the Importation of Foodstuffs and Packaging Materials that come into Contact with Foodstuffs and

MARA with the flexibility to ask for documents other than the application form and invoice on a product-specific basis. In sum, Turkey is contending that Article 2 does not mean what it says on its face. The United States has also demonstrated that, in fact, Turkey has imposed a legal prohibition on the granting of Control Certificates for the importation of rice unless importers provide documentation certifying that they have purchased the requisite quantity of domestic paddy rice. (Turkey failed to cite documentary proof of domestic purchase in its answer as one of the required documents.) Thus, Article 2 allows MARA to request other documents and MARA has utilized that discretion to do so, and deny or fail to issue Certificates where those documents are not provided.

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

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

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

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

on Control Procedures at Importation Stage,” as amended (Annex TR-21), also notes that MARA requests certain documents from importers, including the Control Certificate form, proforma invoice, and “[o]ther documents that must be presented according to the type of the product.”

product's compliance with relevant standards and technical regulations." Turkey has acknowledged that actual verification of product compliance with SPS controls occurs after MARA has issued the Certificate, so this statement is not correct. Further, Turkey has not explained why it is necessary for both MARA and Turkish Customs (not to mention FTU, with respect to its import permit) to verify the same customs-related information twice in two separate documents. Turkish Customs already requires submission of this information¹⁵ and MARA does not conduct inspections until after it has granted the Certificate, so the Certificate is extraneous. The function of the Control Certificate is to prohibit or restrict imports of rice (and other agricultural products as MARA sees fit).

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

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

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

¹⁵See Exhibit US-62.

¹⁶See Step 1 and Step 2 on pages 7-8 of Turkey's Replies to the First Set of Panel Questions.

- (a) Can Turkey elaborate on the legal reasons why, under Turkish domestic legislation, the government would not be authorized to provide the copies requested by the Panel.**
- (b) If Turkey cannot provide a photocopy of each of the 2,223 Certificates of Control approved between 2003 and September 2006, can it then at least provide a photocopy of each of the 56 approved Certificates of Control characterized as "relevant" by the United States during the second substantive meeting with the Panel (see para. 8 of the United States statement during the second substantive meeting with the Panel and Exhibit US-71).**
- (f) If Turkey cannot provide the full photocopies requested in paragraphs (b), (c), (d) and (e) above out of concerns for the privacy of the companies involved, can it at least provide those same photocopies after having blacked out the names of the companies.**

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

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

38. Second, the Panel has asked Turkey to provide copies of the Control Certificates at the first panel meeting, in its first set of questions to the parties (Question 44(e)), at the second panel meeting, and in its second set of questions to the parties (Question 133(b)). Turkey's answer to Question 133 is that Turkey will provide copies of the Certificates *if the Panel wants such documents*. The Panel has now requested that Turkey provide this information on no fewer than four occasions during these panel proceedings. It is clear that the Panel wants Turkey to provide

this information. Yet Turkey still has not provided it. The Panel should draw an appropriate inference from Turkey's refusal to comply with the Panel's repeated requests for this information.

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

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

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

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

- (a) **Can Turkey confirm whether spelling errors would be grounds for the rejection of an application for a Certificate of Control? If so, under which of the three categories ("Missing documents not completed", "Upon the demand of the Company" or "Incomplete Administrative Requirements") would a spelling error fall? What is the legal basis for rejecting applications owing to "spelling errors"?**
- (b) **Can Turkey confirm whether the specific photocopy submitted by the United States as Exhibit US-29 corresponds to the application identified as number 3 in the list of "Denied Control Certificates Applications and Reasons for Denial in 2003", provided by Turkey in Exhibit TR-36?**

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

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

- (a) If this is the case, why would importers not import rice during periods in which Certificates of Control are allegedly not being approved, but some Certificates of Control are presumably still valid?**
- (b) During periods when the TRQ was not open, why would imports of rice not occur under Certificates of Control that were presumably still valid?**

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

43. Throughout these panel proceedings, Turkey has made various assertions that contradict the documentary evidence then on the record or documentary evidence later provided. Without being able to examine the actual Control Certificates, which Turkey refuses to provide, the United States cannot agree that Control Certificate issuance is never conditioned on importation of specific amounts. In fact, most of the Control Certificates for imports of U.S. rice granted

during the period in which the United States is alleging a breach were allegedly issued for quantities that are much smaller than a typical shipment of U.S. paddy rice. A rational importer would apply for one Control Certificate to import 10,000 tons of paddy rice, not multiple Control Certificates. Yet the data provided by Turkey in Annex TR-33 shows that the majority of Control Certificates allegedly issued between September 10, 2003 and March 17, 2006 were for the importation of 2,000 metric tons of rice or less, and the amount of rice covered by each Certificate was often recorded right down to the ton because Turkey was enforcing a TRQ. Further, Letter of Acceptance 390 provides that, as of April 1, 2006, Control Certificates could be issued but only one at a time and with strict quantitative limits – 10,000 metric tons for milled rice and 15,000 metric tons for paddy rice.¹⁷ Thus, the evidence in the record demonstrates that regulating quantity is a critical element of the Control Certificate process.

- (c) Is there any difference between the Certificates of Control issued to import at the MFN rate, under preferential trade agreements and under the TRQ? If so, please specify the differences between them. If not, does this mean that a same Certificate of Control could have been equally used to import under the different rates? Did an importer have to specify whether the intended import was to be in-quota or over-quota when applying for a Certificate of Control? Please make reference to relevant evidence, as appropriate.**
- (d) Would a Certificate of Control still be valid for twelve months, even during a period when a TRQ was in place? Would an in-quota Control Certificate maintain its validity of 12 months, and therefore still allow imports to take place at the preferential in-quota tariff rate, despite the tariff quota period closing?**
- (e) Does the amount permitted to be imported under the Certificate of Control hold any relation with the amount permitted to import when applying for an import license to the Turkish Foreign Trade Undersecretariat (FTU)?**

44. As the United States noted in its answer to this question, Turkey has maintained throughout these proceedings that it differentiates between “in-quota Certificates of Control” and “out-of-quota Certificates of Control.” These were terms coined by Turkey, not the United States and, in Annex TR-33, Turkey set forth what it purported to be a list of all of the Control Certificates it has granted, broken down into “in quota” and “over quota.” In the column “In Quota/Over Quota,” there was not a single instance in 58 pages listing over 2,000 alleged Control Certificates in which the word “both” was entered in that column. In every single case, the Certificate was issued for either in-quota imports or over-quota imports.¹⁸ Apparently, Turkey has now realized the implications of that distinction and is attempting to reverse itself,

¹⁷See Exhibit US-36.

¹⁸Except for eleven entries where the “In Quota/Over Quota” column was left blank.

arguing that there is no such thing as in-quota or out-of-quota Certificates of Control. But its reversal is contradicted by its own prior arguments and the evidence it has itself provided.

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

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

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

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

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

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

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

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

49. Turkey’s assertion is contradicted by the evidence. Minister Tuzmen’s letter, in which he states that Control Certificates will be issued as of April 1, 2006 and that the TRQ will “cease to exist” after July 31, 2006 was presented to Ambassador Portman on March 24, 2006. On the same day, Turkey’s Minister of Agriculture approved the recommendation contained in Letter of Acceptance 390 which provides that the “start date to issue certificates will be April 1, 2006 and the closing date will be August 1, 2006.”¹⁹ August 1, 2006 was the day after the TRQ was set to “expire” (and we now know that, on that date, Turkey put in place a reference price system for rice which implicates various WTO obligations of Turkey). The evidence supports the conclusion that Letter of Acceptance 390 was the measure by which Turkey meant to implement the commitments contained in Minister Tuzmen’s letter. As the United States has documented – in the form of importer rejection letters, newspaper articles, and Turkish trade data – Turkey did not do so.

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

Q141: (to Turkey) In its statement during the second substantive meeting with the Panel (para. 6), Turkey asserted that "[t]here is no provision that gives the relevant authority discretion not to approve Certificates of Control." In other submissions (see, for example, para. 78 of its first submission and reply to question 23 from the

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

Panel), Turkey has stated that the so-called "Letters of Acceptance" are internal communications aimed at developing policy recommendations.

- (a) If the Minister of Agriculture and Rural Affairs has no discretion not to approve Certificates of Control, under what legal basis have then officers from the same ministry submitted internal communications to the Minister recommending that Certificates of Control not be approved? What could explain a Director General of MARA repeatedly making a recommendation to the Minister to adopt a policy if the Minister had no discretion to adopt such policy?**
- (b) What legal basis, if any, would give the Director General of MARA the authority to issue these so-called "Letters of Acceptance". Please also specify under what basis these letters could extend to the subject of the issuance of Certificates of Control.**
- (c) What factors or events would trigger these recommendations from the Director General of MARA?**
- (d) Would one of the reasons that could trigger such a recommendations from the Director General of MARA be that there is a sufficient level of domestic production or a high level of imports?**
- (e) Could the Minister refuse the recommendation made by a Director General of MARA through a so-called "Letter of Acceptance"? Please provide documentary evidence in support of your response.**

51. In its answer to question (e), Turkey acknowledges that “the Minister may refuse the recommendation made by a Director General of MARA.” There are consequences when a recommendation is refused and consequences when a recommendation is approved. When a recommendation is refused, no action is taken. On the other hand, when a recommendation is approved, the Minister is ordering that action be taken to implement that recommendation. In this dispute, the United States has provided documentary evidence of several instances where a recommendation from the Director General was approved. It is not a coincidence that, in the 2 ½ year period covered by these recommendations, Turkish trade data shows that MFN trade in rice was virtually shut down when the TRQ was closed. Even Turkey’s alleged Control Certificate data – which, again, we are unable to verify because Turkey is refusing to provide the actual Certificates – shows that, while only 56 Control Certificates were allegedly issued at the MFN rates during that period, there were 740 Control Certificates allegedly issued under the TRQ with domestic purchase, which no rational economic actor would select if he or she had the choice.²⁰

²⁰See Exhibit US-71.

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

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

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

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

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

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

55. Turkey cannot argue before this Panel that the Letters of Acceptance are not enforceable

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

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

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

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

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

58. A review of the instances identified by the Panel shows that the vast majority of the alleged Certificates identified by the Panel covered in-quota importations that occurred within three days after the TRQ was closed. It is impossible to know for certain without examining the Certificates and other accompanying documentation themselves, but a likely explanation is that the Certificates and FTU import permits were approved for in-quota importation before the TRQ

was closed, but completion of the customs process was delayed so the importation did not officially occur until the beginning of the following month. As the United States previously noted in its answer to Panel Question 14, the importer obtains the FTU import permit first, then the Control Certificate, and then must undergo several other steps, including the SPS assessment at the applicable provincial directorate of MARA, returning to Turkish Customs to provide all of the necessary documentation, and then going to the port to secure the release of the product. If any one of these steps is delayed, or the importer is unable to pay for the merchandise in full or make alternative arrangements, the importation can be delayed. Thus, it is not inconceivable that, in a few cases where the importer was attempting to realize an importation just before the TRQ closed, the process ran over a few days.

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

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

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

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

- (a) Please explain why the TRQ has not been reopened since?**
- (b) In its response to question 79 posed by the Panel, Turkey stated in turn that the TRQ regime "pursued, at the same time, two legitimate objectives, i.e., that of a greater market supply and that of market stabilization". Can Turkey explain how these two objectives could now be guaranteed in the absence of the TRQ regime.**

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

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

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

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

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

62. Turkey has not answered the question posed by the Panel. Further, if Turkey considered that a TRQ without domestic purchase would have resulted in too great an advantage for imported rice, the United States believes that the obvious alternative would have been not to

impose a TRQ at all and simply allow rice importation at the MFN rates. The United States also notes that, in any event, the AMS requirement does not create an exception to other WTO obligations.

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

- (a) Does Turkey propose that the Panel first examine US claims under GATT Article III:4 and then consider the claims under the TRIMs Agreement separately?**
- (b) In the negative, can Turkey explain why would the United States be required to prove how Turkey's domestic purchase requirement would result in a trade-related investment measure in the first place?**
- (c) Alternatively, does Turkey believe that once the Panel has made a ruling under GATT Article III:4, it should resort to judicial economy and refrain from making a finding under the TRIMs Agreement?**

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

64. With respect to the substance of this claim, the United States stands by its previous arguments that the domestic purchase requirement contains an investment element. These arguments are supported by the nature of the domestic purchase requirement, Turkish production data, and other evidence, including statements from Turkish officials in Letters of Acceptance. By contrast, Turkey's assertions ignore the evidence. Turkey now alleges that certain factors – for example, the renewal and modernization of farm systems and technologies and an increase in the harvested area – provide evidence that the increase in domestic rice production resulted from

increases in productivity, rather than the domestic purchase requirement. Turkey’s argument does not necessarily follow. All of these factors also could provide evidence that the domestic purchase requirement worked as intended. For the previous three years, Turkish producers have been assured that their entire crop would be purchased at above-market prices which, as the data demonstrates, has encouraged them to increase their harvested area. These developments have led to increased industry profits, some of which could have been expended on modernizing farming equipment and investing in new technologies.

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

66. Lastly, Turkey’s argument that rice imports have increased from 2004 through 2006 is misleading. First, imports of rice in 2004 fell from 2003 levels because Turkey imposed its restrictions on September 10, 2003, when Turkey’s Minister of Agriculture issued the first Letter of Acceptance, and imports of rice were not permitted to resume until late-April 2004, when FTU first opened the TRQ. As shown in Exhibit US-45, TY (trade, or calendar year) imports were 151,000 metric tons in 2004, as compared to 320,000 metric tons in 2003. With rice exports virtually zeroed out for nearly eight months, it is no surprise that imports would have subsequently increased. However, they did not rebound to previous levels. While TY imports in 2005 were 298,000 metric tons, they fell again in 2006 to approximately 154,000 metric tons, which is virtually the same quantity of imports as in 2004.²²

²¹See Exhibit US-83.

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

TABLE OF EXHIBITS

Exhibit US-	Title of Exhibit
81rev	Annual and Monthly Turkish Import Data for Paddy, Brown, and Milled Rice (2003-2006) (revised)
82	Turkish Import Data for Paddy Rice and Paddy Rice for Sowing (Turkey's State Institute of Statistics)
83	Letters from Turkish Producer Groups to the U.S. Embassy in Ankara regarding the WTO panel proceedings in this dispute