

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

***(WT/DS334)***

**ORAL STATEMENT OF  
THE UNITED STATES OF AMERICA  
AT THE FIRST MEETING OF THE PANEL**

**November 8, 2006**

1. Thank you, Madam Chair, and members of the Panel. We appreciate the opportunity to appear before you today to explain why Turkey's import licensing system for rice constitutes a serious market access barrier for rice and is inconsistent with Turkey's WTO commitments. We do not intend to repeat all of the arguments we made in our first written submission but will instead attempt to highlight the key issues and reply to the arguments Turkey raised in its first submission. Afterwards, we would be pleased to respond to any questions.

2. In its first submission, the United States made out a prima facie case that Turkey has breached several provisions of the GATT 1994 and the WTO Agreements, including with respect to barriers to importation as well as to discrimination against imported rice. For example, the United States demonstrated that Turkey has maintained a WTO-inconsistent domestic purchase requirement as part of its tariff rate quota system. In order to import rice under the TRQ and obtain a lower rate of duty, an importer must purchase substantial quantities of rice from the Turkish Grain Board (TMO) or Turkish producers and producer associations in order to obtain an import permit from Turkey's Foreign Trade Undersecretariat (FTU). And only domestic rice qualifies an importer to obtain this advantage – imported rice does not receive this advantage.

3. Although the domestic purchase requirement makes it very expensive to import rice, importers have no alternative but to import rice under the TRQ because Turkey's Ministry of Agriculture and Rural Affairs (MARA) fails to grant licenses to import rice at the over-quota rates of duty. Through the unpublished "Letters of Acceptance," Turkey's Minister of Agriculture repeatedly accepts recommendations from his staff to "delay" the start date of the period in which such licenses, or "Certificates of Control," will be granted, thereby ensuring that

rice trade occurs under the TRQ. When even the TRQ is closed during Turkey's annual rice harvest, no rice importation can occur. Turkey's denial of Certificates of Control outside the TRQ regime is a prohibition or restriction on importation that breaches Article XI:1 of the GATT.

4. Turkey has denied these and the other U.S. claims but, in doing so, has essentially ignored the extensive factual evidence presented by the United States and, despite all evidence to the contrary, has asserted that Turkey's rice regime actually provides an *advantage* to foreign rice producers over Turkish rice producers. In the next few minutes, we'd like to walk you through the legal arguments and demonstrate how Turkey has failed to rebut the *prima facie* case made by the United States.

### **Definition of Import License**

5. First, Turkey claims that the Certificate of Control is not an import license and hence is not subject to the provisions of the *Agreement on Import Licensing Procedures* ("Import Licensing Agreement") and other provisions, because the Certificate "amount[s] to administrative forms that are required exclusively for '*customs purposes*'." In its first submission,<sup>1</sup> Turkey sets forth its proposed criteria for when a document is exclusively for customs purposes (and hence should not be considered an import license). Turkey then asserts

---

<sup>1</sup> Para. 53.

that, since the Certificate of Control may be used for customs purposes, they are not licenses but rather official documents for customs purposes.

6. This argument is unpersuasive for at least three reasons. First, the fact that a document is necessary in order to clear customs does not mean it is not an import license. Indeed, import licenses will be used for customs purposes – that is the very nature of an import license since importation cannot occur without it. The real question is what else is the document used for. And here, the Certificate of Control is used to control importation – not just in the customs sense, but in the sense of a restriction or ban on importation. The Certificate of Control is not even a customs document in the most basic sense – it is very revealing that the Certificate of Control is approved by MARA, not by Turkish customs.

7. Second, the Certificate of Control is an import license even under Turkey's standard. In particular, in paragraph 51 of its submission, Turkey acknowledges that the import permit required by FTU for importation under the TRQ regime is an import license. Yet a side-by-side comparison of the elements required by MARA for the Certificate of Control and the elements required by FTU for the import permit reveal a remarkable degree of similarity. As you can see from U.S. Exhibit 51, FTU requires importers to submit a substantial amount of customs-related information in their applications for import permits, such as tariff classification number, product description, importer contact information, tax number, the quantity of the product to be imported, country of origin, and the country from which the product was shipped to Turkey. FTU also requires importers to provide information on the value of the product to be imported, including shipping costs and insurance. Customs valuation information is most certainly information that

could be used for customs purposes, yet it is also information that MARA does not ask for in the Certificate of Control. Clearly it is not simply the type of information requested that determines whether a document is an import license.

8. Both documents satisfy Turkey's criteria. In fact, the FTU import license arguably asks for more customs-related information than the Certificate of Control since FTU asks for customs valuation information whereas MARA does not. Since Turkey acknowledges that the FTU import permit is an import license – despite the fact that FTU requests much of the same customs-related information as the Certificate of Control – under Turkey's own logic, there would be no reason to exclude the Certificate of Control from Import Licensing Agreement disciplines on that basis.

9. This discussion provides a nice transition into our third point, namely a Member can not shield a measure from coverage under the Import Licensing Agreement or other provisions by including customs-related information in the license application and then claiming that it is no longer an import license. The drafters of the Import Licensing Agreement appear to have shared that concern when they dropped a footnote to the definition of "import licensing" in the Import Licensing Agreement stating that "import licensing" is "[t]hose [administrative] procedures referred to as 'licensing' as well as other similar administrative procedures." The footnote makes clear that, regardless of how a Member characterizes particular administrative procedures, such procedures are still considered "import licensing" if they satisfy the criteria in Article 1 of the Import Licensing Agreement.

10. This is an important clarification because otherwise a Member could attempt to evade the disciplines of the Import Licensing Agreement by, for example, requesting customs-related information in the measure and then characterizing the measure as documentation required for customs purposes, even though customs authorities regularly require this type of information to be submitted on their own forms. The phrase “other than that required for customs purposes” was meant to provide an exception for documents that were actually “customs” in nature, not to provide a loophole whereby WTO Members could evade their commitments. The addition of customs-related information in the Certificate of Control does not change the fact that a Certificate of Control is part of Turkey’s requirement for the submission of an application or other documentation as a prior condition for importation and approval thus constitutes formal permission from MARA (not customs) to import rice into Turkey or, in other words, the Certificate is an import license within the definition in Article I of the Import Licensing Agreement.

### **Over-Quota Imports and the Issuance of Certificates of Control**

11. In its first submission, the United States made a prima facie case that Turkey’s denial of import licenses outside the TRQ is in breach of Article XI of the GATT 1994 because Turkey prohibits or restricts imports at the over-quota rate through the use of import licenses or other measures. In making its case, the United States presented a large amount of documentary

evidence demonstrating that Turkey does not issue Certificates of Control, which are necessary to import rice outside the TRQ. For example:

- The United States presented examples of “Letters of Acceptance” signed by Turkey’s Minister of Agriculture. Through these documents, the Minister directs MARA officials not to grant Control Certificates in order to protect the domestic rice industry. The “Letters of Acceptance” – at least the ones of which the United States is currently aware – cumulatively cover a time period from September 2003 through August 2006.
- The United States presented examples of correspondence between Turkish importers and MARA officials, including several letters from MARA rejecting importer requests for Control Certificates. One rejection letter, dated May 1, 2006, stated that the Ministry was unable to grant the applying importer a Control Certificate to import U.S. rice “since it is not possible to prepare a control certificate according to our laws and regulations.” In other words, a Turkish government official admitted that the government did not have authority under Turkish law to grant Certificates of Control.
- The United States presented Minister Tuzmen’s March 24, 2006 letter to USTR Portman, which was issued just after the DSB established the panel in this dispute. In response to repeated U.S. requests that Turkey begin granting Certificates of Control to import rice outside the TRQ, the Tuzmen letter stated that Turkey would issue Control Certificates “as of April 1, 2006.” Apparently, MARA was not in agreement with the contents of Minister Tuzmen’s statement, as evidenced by the May 1 rejection letter referenced above. The rejection letter was completely consistent with the guidance provided in the unpublished Letter of Acceptance, signed by Turkey’s Minister of Agriculture, that was operative at the time.

12. Turkey has not contested the authenticity of any of these documents. Moreover, Turkey has not provided any documentary evidence to rebut their contents. Turkey has simply asserted that, contrary to what these documents say on their face, MARA is granting Certificates of Control. Turkey has offered no documentary evidence to back up this assertion.

13. In *Wool Shirts and Blouses*, the Appellate Body had this to say about the burden of proof:  
In addressing this issue, we find it difficult, indeed, to see how any system of judicial

settlement could work if it incorporated the proposition that the mere assertion of a claim might amount to proof. It is, thus, hardly surprising that various international tribunals, including the International Court of Justice, have generally and consistently accepted and applied the rule that the party who asserts a fact, whether the claimant or the respondent, is responsible for providing proof thereof. Also, it is a generally accepted canon of evidence in civil law, common law and, in fact, most jurisdictions, that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence. If that party adduces evidence sufficient to raise a presumption that what is claimed is true, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut the presumption.<sup>2</sup>

14. The United States has provided substantial documentary evidence that Turkey is not granting Certificates of Control to import outside the TRQ regime. As the United States has met its burden to make out a prima facie case that Turkey is in breach of Article XI:1 of the GATT, it is now up to Turkey to rebut this evidence. Turkey has not done so. In fact, Turkey completely ignored the contents of the evidence submitted by the United States. Instead, Turkey asserts, without any substantiation, that contrary to the express terms of the Letters of Acceptance, it has been granting Control Certificates at the over-quota rates of duty uninterrupted since 1996. Of course, the documents necessary to prove this claim are in Turkey's sole control. And yet Turkey has provided no documentary evidence, such as copies of the Certificates of Control it has granted at the over-quota rates, to support its assertion. Therefore, Turkey has failed to rebut the U.S. prima facie case that Turkey prohibits or restricts imports of rice outside the TRQ in contravention of Article XI:1 of the GATT 1994.

15. Instead of attempting to rebut the U.S. arguments directly, Turkey attempts to dismiss the Letters of Acceptance as (1) "leaked," "confidential" and "informal internal documents;" (2)

---

<sup>2</sup> Emphasis added, footnotes omitted.



documents that are “never enforced” and cannot be enforced by the courts and “are generally disregarded by the Turkish judiciary;” (3) “unreliable evidence of the real intention and trade policies of Turkey in relation to rice importation;” and (4) “inadmissible evidence” that cannot be reviewed by this panel. In addition, without addressing the contents of the rejection letters sent to importers by MARA and the court documents, Turkey dismisses those documents as nothing more than “a natural component of the interaction between any WTO Member's administration and its business community.”

16. The United States certainly understands why Turkey would like the Panel to ignore these documents. However, the fact is that they are evidence that cannot be ignored. And whether they are leaked or internal or enforced by the courts is irrelevant. The simple fact is that they demonstrate that Turkey decided not to issue Certificates of Control, thus demonstrating both that the Certificates are discretionary import licenses (and therefore an import restriction as such) and that Turkey is using them in practice to restrict imports.

17. In addition, Turkey’s arguments that the Letters of Acceptance are confidential, unenforceable and disregarded by the judiciary are contradicted by the fact that Turkey tried to use these documents in Turkish court to justify its denial of Control Certificates to a Turkish importer. As shown in Exhibit U.S.-31, counsel for Turkey’s Minister of Agriculture attached several Letters of Acceptance to the Government of Turkey’s brief in domestic court litigation when one frustrated importer finally sued the Turkish government to obtain a Control Certificate so he could move his rice out of storage. It is difficult to understand how Turkey can now claim that these documents are internal and confidential when its lawyers took the opposite position in

domestic court. It is also puzzling that Turkey is arguing that the Letters of Acceptance are unenforceable in Turkish court when the Government of Turkey relied upon the documents in Turkish court as its sole source of legal authority in making its decision to deny a Certificate of Control to the petitioning importer in that case.

18. Further, it is difficult to understand how the Letters of Acceptance are an unreliable source of the intentions of Turkish trade policy when counsel for Turkey's Ministry of Agriculture argued before the court that MARA did not have authority under Turkish law to grant Certificates of Control to the importer in question under the terms of those Letters, and that the Letters were adopted in order to protect domestic rice producers against foreign competition.

19. In lieu of documentary evidence, Turkey has produced a chart – Annex 20 to Turkey's first submission – which purports to show that Turkey is granting Certificates of Control outside the TRQ regime.

20. At first glance, the numbers themselves raise significant questions. U.S. export data and Turkish data on Control Certificates with respect to U.S. rice imports to Turkey vary significantly. For example, Turkey claims that MARA issued a large number of Certificates outside the TRQ regime in 2006. Turkey claims that through September 21, 2006, it has granted Certificates of Control covering the importation of over 400,000 tons of U.S. rice. Of course, the quantity approved on the certificate does not mean that this is the quantity actually imported. U.S. trade data puts the volume of U.S. rice exports to Turkey in 2006 at just under 18,000 tons through October 26. So we would be curious to know why Turkey granted Certificates of Control for nearly 400,000 tons of U.S. rice that U.S. producers have not shipped. Presumably

the rice was never imported. Perhaps some of this rice was U.S. rice that had been sitting in Turkish bonded warehouses unable to gain entry into Turkey because Turkey was not granting Certificates of Control. We can only discern the answer to these questions if Turkey provides copies of the actual Certificates.

21. Perhaps even more revealing, even under Turkey's own chart, at least 96 percent of rice approved in 2004 and greater than 90 percent of rice approved in 2005 was for entry under the TRQ, for which domestic purchase is required. Given how much more expensive it is to import under the TRQ – a subject which we will turn to in a moment – it is clear that such an overwhelming majority of importers would only “choose” to import rice under the TRQ if there were severe restrictions or a ban on importing at the over-quota rates.

22. Turkey also claims that the Letters of Acceptance are not being enforced, as evidenced by the fact that MARA is granting Certificates of Control to importers who purchase domestic rice under the TRQ regime. If Turkey is requiring Certificates of Control to import under the TRQ regime, the United States thanks Turkey for that clarification. However, that information is irrelevant to the question of whether Turkey is granting Control Certificates, and therefore blocking importation, outside the TRQ regime. Letter of Acceptance 1795 provides that:

[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.

23. Thus, the Letters only purport to suspend the granting of Certificates of Control to importers who want to import at the over-quota rates without domestic purchase. They do not address whether Certificates of Control are granted under the TRQ regime.

24. As an aside, it was the understanding of the United States that MARA did not require Certificates of Control under the TRQ. Turkey has now clarified that it does, and the United States appreciates that clarification. But this clarification only deepens our concern with respect to the WTO-inconsistency of the domestic purchase requirement. Turkey has now clarified that it imposes an additional restriction on imports under the TRQ. Furthermore, if an importer wants to import rice under the TRQ, it will have to approach four different Turkish government agencies – TMO, FTU, MARA, and Turkish Customs – and obtain two different import licenses in order to effectuate the importation:

1. First, TMO needs to provide a receipt to the importer documenting that the domestic purchase requirement has been satisfied;
2. Second, the importer presents the receipt to FTU in its application for an Import Permit;
3. Third, the importer applies to MARA for a Certificate of Control; and
4. Fourth, assuming that FTU and MARA approve the license applications, the importer must present all of this documentation to Turkish Customs to complete the importation.

With this new information provided by Turkey, it appears that the TRQ regime is potentially even more restrictive than the United States previously had understood.

25. With respect to the ban on the issuance of Control Certificates at the over-quota rates, even if Turkey could substantiate that it is not enforcing the Letters of Acceptance – which to this point it has not – that is not a bar to this panel making a finding of WTO-inconsistency

concerning them. A measure may still be found WTO-inconsistent even if it is not being enforced. In the *1916 Act* dispute, for example, the Appellate Body agreed that the panel could find a U.S. statute inconsistent “as such” with provisions of the covered agreements, despite the fact that the United States had never successfully prosecuted a case under the statute and had never imposed the criminal penalties provided in case of a violation. In this dispute, the United States already has documented several instances where Turkey has enforced the Letters of Acceptance. Since a panel could make a finding of inconsistency with respect to the 1916 Act, the Panel here should likewise make a finding of inconsistency in this dispute.

26. Furthermore, even if Turkey were issuing some Certificates of Control, that would not change the fact that they constitute discretionary import licensing and an import restriction contrary to Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture.

### **Domestic Purchase Requirement**

27. With respect to the domestic purchase requirement, Turkey and the United States appear to agree on the core facts, namely that Turkey maintains a domestic purchase requirement under the TRQ and that importers are able to import rice at duty levels below that of the over-quota rates, so long as the importers purchase specified quantities of domestic rice from either TMO or Turkish producers and producer associations. Turkey and the United States also appear to agree on the three-part legal test that must be satisfied in order to establish that Turkey’s domestic purchase requirement is in breach of Article III:4. Further, Turkey and the United States appear

to agree on the first prong of the test, that imported and domestic rice are “like products” and on the first part of the second prong of the test, that the domestic purchase requirement is a “law, regulation or requirement” for purposes of Article III:4.

28. However, Turkey contests that (1) the domestic purchase requirement is a measure “affecting [the] . . . internal sale, offering for sale, purchase, transportation, distribution or use” of domestic and imported rice, and (2) that the domestic purchase requirement treats imported rice less favorably than domestic rice. Turkey’s rationale is that importers can freely import rice outside the TRQ and that, in any event, the TRQ modifies conditions of competition in such a way that imported products are actually treated more favorably than domestic products. Rest assured, if Turkey’s import licensing regime for rice provided more favorable treatment to U.S. rice than Turkish rice, as Turkey claims, none of us would be here in Geneva today. That observation aside, Turkey has failed to rebut the U.S. *prima facie* case on both of these issues.

29. With respect to whether the domestic purchase requirement is a measure “affecting [the] internal sale, offering for sale, purchase, . . . or use” of the like products at issue, the domestic purchase requirement directly affects the conditions of competition between domestic and imported rice. Only domestic rice satisfies the purchase requirement in order to import rice into Turkey under the TRQ, whereas imported rice does not. Accordingly, domestic rice has an advantage in the marketplace that imported rice does not have, and domestic rice is more attractive as a result. A purchaser considering a purchase of domestic or imported rice knows that only the domestic rice can be used to facilitate importation under the TRQ and so that advantage accrues only to the domestic rice. Turkey does not contest this fact. Rather, Turkey

claims that the United States has not satisfied the “affecting” standard because importers can import rice into Turkey outside the TRQ where domestic purchase is not required. Even if that were true, it does not erase the discrimination against imported rice.

30. In this respect, a Member’s requiring the sourcing of domestic goods as a condition to receive a benefit has long been recognized as inconsistent with Article III:4 of the GATT. As early as 1958, the GATT panel in *Italian Discrimination Against Imported Agriculture Machinery* examined an Italian law that conditioned the receipt of special credit terms for farmers on the purchase of domestic agricultural machinery and found the measure to be in breach of Article III:4.

31. Later panel and Appellate Body reports have found much the same. For example, the *India Autos* panel found an Article III:4 breach where India’s local content requirement for automobile manufacturers created an incentive to purchase and use Indian-origin parts and components and, thus, a disincentive to use like imported parts and components. If a foreign manufacturer wanted to enjoy the benefit of building autos in India, a condition for doing so was to source domestic materials in specified amounts.

32. In response to these arguments, Turkey argues that the TRQ system is not inconsistent with Article III:4, as it actually provides foreign rice producers with an advantage over Turkish rice producers in selling their rice in Turkey. The United States was quite surprised that Turkey completely ignores the costs stemming from the domestic purchase requirement in its analysis. As the United States demonstrated in paragraph 52 of its first submission and which it will elaborate upon further today, the large cost associated with domestic purchase more than offsets

any alleged cost savings resulting from the preferential rates of duty realized by importers under the TRQ. In sum, it hardly matters that one ton of U.S. rice will allegedly be a few dollars cheaper than one ton of Turkish rice if one fails to account for the fact that, in order to import that one ton of U.S. rice into Turkey, the importer needs to purchase two tons of Turkish rice at a cost of several hundred additional dollars.

33. Let us walk through some examples, as highlighted in Exhibit US-52. Outside the TRQ, it is theoretically (but only theoretically) possible to import paddy rice into Turkey without domestic purchase. According to the Turkish State Institute of Statistics, the average CIF price of U.S. paddy rice in 2005 was \$260 per ton. If one factors in the 34 percent duty rate for paddy rice in Turkey's tariff schedule, the cost to import a ton of paddy rice into Turkey in 2005 outside the TRQ was \$348.

34. Now compare that price to the price to import the same one ton of paddy rice into Turkey under the TRQ regime. Under the most recent opening of the TRQ, the duty rate for paddy rice is 20 percent, which is lower than the 34 percent over-quota rate for paddy rice importation. When one adds the cost of the 20 percent duty to the CIF price, the cost to import the ton of rice under the TRQ thus far is \$312, for a savings of \$36.

35. That is just the beginning, however. In order to realize this \$36 savings, the importer must purchase domestic rice from TMO or Turkish producers. Let's assume that the importer decides to purchase paddy rice from TMO. This is the second scenario on the chart. Under Turkey's most recent opening of the TRQ, the importer would need to purchase two tons of Turkish paddy rice from TMO for every ton of U.S. rice it wishes to import. According to the



TMO website, the average price of a ton of long grain osmancik rice from TMO stocks in 2005 was approximately \$644 per ton after factoring in the average exchange rate in 2005. If one adds the cost of purchasing two tons of rice from TMO stocks – \$1288 – into the equation, it costs \$1600 to import one ton of U.S. paddy rice into Turkey under the TRQ. This is between 4-5 times as much as the \$348 it costs to import a ton of paddy rice into Turkey at the over-quota rate.

36. If the importer decided to purchase rice from Turkish producers, the analysis is the same. Under Turkey's most recent opening of the TRQ, the importer would need to purchase either 1.25 or 1.67 tons of Turkish paddy rice from Turkish producers for every ton of U.S. rice it wishes to import, depending on the province from which the Turkish rice originates. According to Turkey, the average price of paddy rice charged by Turkish producers in 2005 was 640 New Turkish liras which, when using the average exchange rate in 2005, amounts to \$477 per ton. Multiplying that figure by either 1.25 in scenario 4 or 1.67 in scenario 3, there is an additional cost of \$596 and \$794, respectively. Thus, the total cost to import one ton of U.S. paddy rice when purchasing rice from Turkish producers is \$908 or \$1,106 per ton. Both of these figures are much larger than the \$348 it costs to import a ton of paddy rice into Turkey at the over-quota rate.

37. Now imagine shipping several thousand tons of U.S. rice into Turkey, and the additional costs attributed to the domestic purchase requirement are staggering. As illustrated in U.S. Exhibit 21, it is no wonder that forty Turkish rice producers visited Turkey's Agriculture

Ministry to protest an alleged decision by MARA to issue a Certificate of Control to a Turkish importer who had not purchased domestic rice.

### **Restrictions on Who May Import Rice Under the TRQ Regime**

38. As noted in the U.S. submission, 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 almost certainly be domestic millers. The practical result of these criteria is that only domestic rice producers and millers will be eligible to import rice.

39. Turkey claims that the third category – those who procure rice from TMO – enables anyone to utilize the TRQ. While it is true on the face of the regulation that this is a theoretical possibility, Turkey has ensured through the Letters of Acceptance that this will never occur in practice.

40. Again, Letter of Acceptance 1795 provides that:

[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. (Emphasis added)

Thus, only those entities who purchase paddy rice can import rice under the TRQ. Only millers or those with milling capacity would purchase paddy rice. Consumers, wholesalers, retailers, and other distributors are unlikely to have milling capacity and, thus, would not be able to “take advantage” of being able to import under the TRQ.

41. Further, even if TMO would allow entities to purchase milled rice in order to satisfy the domestic purchase requirement, the TRQ regime would still exclude much, if not all, of the non-milling community from importing rice under the TRQ. According to the TMO website, TMO only sells milled rice in 50 ton batches. Assuming that a consumer wanted to import milled rice from the United States and the requirement that TMO only sells milled rice in batches of 50 tons, under the most recent TRQ opening, the importer would be permitted to import 25 tons of milled rice. Assuming the consumer could afford to purchase 75 tons of milled rice, the United States would imagine that not many restaurants would want to purchase and store 75 tons of milled rice. For these reasons, the eligibility criteria for domestic purchase under the TRQ also are inconsistent with Article XI of the GATT 1994.

### **Measures That Have Allegedly Expired**

42. Lastly, Turkey argues in its submission that the measures comprising its TRQ regime are no longer in force and, therefore, the panel should refrain from making findings with respect to that regime or, if it does make such findings, should not make any recommendations to the WTO Dispute Settlement Body regarding those measures. The United States disagrees that the Panel should refrain from making findings and recommendations and further disagrees that the measure is no longer in force.

43. First, the text of the DSU, as clarified by past panel and Appellate Body reports, makes clear that if a measure exists at the time of consultations and panel establishment, it has not

expired for purposes of WTO dispute settlement. The DSB typically establishes a panel with standard terms of reference, as provided for in Article 7.1 of the DSU. Those terms of reference provide that the panel is to examine the “matter” referred by the complainant to the DSB and to make findings that will assist the DSB in making recommendations and rulings. Previous Appellate Body and panel reports have clarified that a “matter” is comprised of the “measures” at issue in the dispute, and the “claims” made by the complainant alleging that the measures are in breach of one or more provisions of the covered agreements. Article 3.3 of the DSU further provides that DSB recommendations and rulings “shall be aimed at achieving a satisfactory settlement of the matter.”

44. In this dispute, the DSB established this panel with standard terms of reference to examine the matter raised by the United States on March 17, 2006. The TRQ regime allegedly “expired” on July 31, 2006, over four months after consultations and panel establishment. Therefore, the TRQ regime had not “expired” at the time of consultations and panel establishment, and the Panel is charged by the terms of reference and Article 3.3 of the DSU to issue findings with respect to the consistency of the measures comprising Turkey’s TRQ regime with the relevant provisions of the covered agreements and make recommendations in order to resolve the dispute.

45. The reports cited by Turkey respect the distinction between measures that expire prior to consultations and panel establishment and measures that expire after panel establishment. In *Certain EC Products*, the panel declined to make findings on the U.S. measure since the measure expired in April and the panel was established in June – two months later – and thus the measure

was not part of the matter referred to in the panel's terms of reference. *Chile Price Bands* is not on point because in that dispute, the provisional safeguard measure on which the panel declined to make recommendations also expired prior to panel establishment. With respect to *Dominican Republic – Cigarettes*, Turkey states that the panel did not find it necessary to make finding with respect to a measure that expired during the course of panel proceedings. What Turkey fails to note is that the Appellate Body later disagreed with the panel and, contrary to what the panel did, recommended that the Dominican Republic bring its measure into conformity with its WTO obligations to the extent that it has not already done so.

46. By contrast, the domestic purchase requirement was in force at the time of consultations and panel establishment, a fact that Turkey does not contest. Accordingly, the reports cited by Turkey support the U.S. position that the Panel should make findings on the measures at issue, and if the panel finds the TRQ regime to be inconsistent with provisions of the covered agreement, to make the recommendations required under the DSU.

47. Further, it is not clear to the United States that the TRQ regime ceased to exist on July 31, as Turkey claims, given the number of unpublished documents that the Government of Turkey issues with respect to the rice trade. Moreover, Turkey claimed that the TRQ regime "expired" in 2003, 2004, and 2005 and yet the measure resurfaced a few months later. Therefore, the United States believes that it is critical for achieving a definitive resolution of this matter that, if the Panel were to make adverse findings in this dispute, that it also issue recommendations that Turkey bring its measures into conformity with its WTO obligations.

48. Thank you, Madam Chair. This concludes the U.S. oral statement this morning. We thank the members of the Panel and the Secretariat for their attention and look forward to receiving any questions you may have.