

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

(WT/DS334)

**REBUTTAL SUBMISSION
OF THE UNITED STATES OF AMERICA**

December 14, 2006

TABLE OF CONTENTS

TABLE OF REPORTS CITED	ii
I. INTRODUCTION	1
II. ARGUMENT	2
A. The Control Certificate is an “Import License” for Purposes of Article XI:1 of the GATT 1994	2
B. Turkey Prohibits or Restricts Importation of Rice in Contravention of Article XI:1 of the GATT 1994	6
1. Recent Court Decisions Confirm That the “Letters of Acceptance” Are Legal Restrictions Under Turkish Law	6
2. The Control Certificate Data Provided by Turkey Confirms That Turkey Has Restrictions in Place on the Issuance of Control Certificates for Non-EC Origin Imports Outside the TRQ	9
3. Even if Turkey Were Not Enforcing the Restrictions on Over Quota Imports, Such Restrictions Would Still Constitute a Prohibition or Restriction on Importation Under Article XI:1 of the GATT 1994 and Discretionary Import Licensing Under Article 4.2 of the Agreement on Agriculture	17
C. Turkey’s Domestic Purchase Requirement Provides Less Favorable Treatment to Imported Rice in Breach of Article III:4 of the GATT 1994 and Imposes an Additional Cost on Importing Rice in Contravention of Article XI:1 of the GATT 1994	20
D. Turkey’s Argument That the Domestic Purchase Requirement Was Not Meant to Promote the Development of Turkey’s Rice Industry Is Not Credible	23
III. CONCLUSION	25
TABLE OF EXHIBITS	26

TABLE OF REPORTS CITED

SHORT TITLE	FULL TITLE AND CITATION
<i>Argentina – Bovine Hides</i>	Panel Report, <i>Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather</i> , WT/DS155/R, adopted 16 February 2001
<i>Canada – Wheat Exports (Panel)</i>	Panel Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/R, adopted 27 September 2004, as modified by the Appellate Body Report, WT/DS276/AB/R
<i>EC – Bananas III (Panel)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/R, adopted 25 September 1997, as modified by the Appellate Body Report, WT/DS27/AB/R
<i>Indonesia Autos</i>	Panel Report, <i>Indonesia – Certain Measures Affecting the Automobile Industry</i> , WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, adopted 23 July 1998
<i>Malt Beverages (GATT)</i>	GATT Panel Report, <i>United States – Measures Affecting Alcoholic and Malt Beverages</i> , DS/23R - 39S/206, adopted 19 June 1992
<i>US - 1916 Act (AB)</i>	Appellate Body Report, <i>United States – Anti-Dumping Act of 1916</i> , WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000
<i>US - Section 211 (AB)</i>	Appellate Body Report, <i>United States – Section 211 Omnibus Appropriations Act of 1998</i> , WT/DS176/AB/R, adopted 1 February 2002

I. INTRODUCTION

1. Turkey has employed a non-transparent, discretionary import licensing system for rice that prohibits or restricts the importation of rice and provides less favorable treatment to whatever rice is imported in spite of the hurdles Turkey has imposed. Turkey requires importers to submit an import license – the Control Certificate issued by Turkey’s Ministry of Agriculture and Rural Affairs (“MARA”) – in order to import rice. Turkey has furthermore restricted rice imports by declining to issue such Certificates. In addition, since September 2003, Turkey has applied a tariff-rate quota (“TRQ”) for rice under which it requires importers to submit two import licenses (the Control Certificate, as well as an import permit from Turkey’s Foreign Trade Undersecretariat (“FTU”)) in order to import at the in-quota rates and in addition has required the purchase of domestic rice. Turkey’s import licensing regime for rice is inconsistent with several provisions of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”), the *Agreement on Import Licensing Procedures* (“Import Licensing Agreement”), the *Agreement on Agriculture* (“Agriculture Agreement”), and the *Agreement on Trade-Related Investment Measures* (“TRIMs Agreement”).

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

3. With respect to the over-quota rates, MARA has imposed restrictions on the issuance of Control Certificates to import rice. The United States has provided extensive documentary evidence that Turkey denies these import licenses pursuant to so-called “Letters of Acceptance,” in which the Minister of Agriculture orders the blanket denial of Control Certificates to those importers who do not purchase domestic paddy rice. When importers have challenged MARA’s denial of Control Certificates in Turkish court, Turkey has successfully defended its failure to issue Certificates. At least two courts have agreed with Turkey that the Letters of Acceptance are binding, and that MARA is acting in accordance with Turkish law in not granting the Certificates. Turkey has completely ignored this documentary evidence in its submissions. In fact, Turkey’s arguments before this Panel are diametrically opposed to the arguments it advances in Turkish court. Turkey’s arguments in this proceeding are inconsistent with the Letters of Acceptance, the rejection letters MARA issued to importers that the United States has provided, and recent domestic court decisions. Instead, Turkey focuses on its unverified Control Certificate data. However, as the United States explains in this submission, such data only serve to confirm that the restrictions on the issuance of Control Certificates at the over-quota rates are in place and being enforced. Further, the United States has provided evidence, in the form of the Letters of Acceptance, rejection letters, and court documents, that Turkey’s import licensing system for rice is discretionary, which is all that is needed to support findings that MARA’s Control Certificates constitute a restriction on importation under Article XI:1 of the GATT 1994

and a breach of Article 4.2 of the Agreement on Agriculture.

4. With respect to in-quota quantities of rice, Turkey has made the receipt of import licenses from FTU contingent upon the purchase of large quantities of domestic paddy rice (the “domestic purchase requirement”). This domestic purchase requirement is an additional import restriction that is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agriculture Agreement. The U.S. calculations in Exhibit US-52 demonstrate the cost of the domestic purchase requirement, for which the United States used Turkish data or figures consistent with Turkish data in providing sample domestic purchase scenarios. And because only domestic rice qualifies for the purchase requirement, Turkey’s requirement alters the conditions of competition in a manner that discriminates against imported rice. Consequently, imported rice receives treatment less favorable than domestic rice and Turkey’s requirement is inconsistent with Article III:4 of the GATT 1994.

5. For these reasons and for the reasons set forth in its previous submissions and statements, the United States respectfully requests the Panel to find that Turkey’s import licensing regime for rice, including the most recent opening of the TRQ, is inconsistent with Articles III:4, X:1, X:2, and XI:1 of the GATT 1994; Article 4.2 of the Agriculture Agreement; Articles 1.4(a) and (b), 3.5(a), (e), (f), and (h), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement; and Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement and recommend that Turkey bring its measures into conformity with its WTO obligations.

II. ARGUMENT

A. The Control Certificate is an “Import License” for Purposes of Article XI:1 of the GATT 1994

6. The Certificate of Control is an “import license” for purposes of Article XI:1 of the GATT 1994 because MARA requires a Certificate in order for importation to take place. In paragraphs 59-62 of the U.S. first written submission to the Panel (“U.S. First Submission”), the United States noted that the ordinary meaning of the term “import license” was “formal permission from an authority to bring in goods from another country.” In order to import rice into Turkey, an importer has to obtain a Certificate of Control from MARA. To obtain the Certificate, an importer must follow certain procedures, including completing an application form and attaching an invoice. Because a Certificate of Control from MARA constitutes formal written permission from the Government of Turkey to import goods – in this case, rice – from another country, a Certificate of Control is an “import license” within the ordinary meaning of that term.

7. While the definition of “import licensing” in Article 1 of the Import Licensing Agreement is limited in application to that particular agreement, it also provides relevant context for interpreting the term “import license” in Article XI:1. In particular, footnote 1 to Article 1 of the Import Licensing Agreement clarifies that a Member’s characterization of a particular

procedure as something other than “licensing” cannot be used to evade the disciplines of the Import Licensing Agreement.

8. In its first written submission to the Panel (“Turkey’s First Submission”), Turkey attempted to characterize the Certificate of Control as something other than an import license by arguing that the Certificate “amount[s] to administrative forms that are required exclusively for ‘customs purposes’.”¹ In paragraph 53 of its first submission, Turkey set forth a list of customs-related items that, if requested by a document, would allegedly prove that document was exclusively for customs purposes (and hence should not be considered an import license). It then asserted that, since MARA requests that importers provide such customs-related information in their applications for Control Certificates, such Certificates are clearly used for customs purposes and, as a consequence, are not import licenses for purposes of Article XI:1.

9. Of course, the question is not what information is requested for a document, but rather what is the function of the document. It would not be difficult for Members to provide that every import license asked for nothing more than some subset of the information normally requested for customs purposes. That would not render every import license exempt from the disciplines of the covered agreements.

10. In this instance, if the Control Certificate were truly no more than ordinary customs documentation, the United States would not be proceeding with this dispute. But clearly Control Certificates are very different from ordinary customs documentation. Not only are they separate and apart from the ordinary customs documentation that Turkey also requires; in fact, they are not even documents of Turkish Customs, but of MARA. And they do not serve to facilitate customs entry. To the contrary, they serve to restrict entry.

11. Turkey’s argument is not even consistent with Turkey’s own approach, particularly its own statement that the FTU import permit is an import license. The FTU import permit, which Turkey requires from importers in order to import rice under the TRQ, arguably collects even more customs-related information than the Control Certificate does, and so, by Turkey’s logic, should not be considered an import permit.² At bottom, however, Turkey’s proposed interpretation is flawed because it is contrary to customary rules of treaty interpretation, as reflected in the *Vienna Convention on the Law of Treaties*.

12. Article 31(1) of the *Vienna Convention* provides that: “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” For purposes of the Article XI:1 analysis, one

¹ Paras. 47-57.

² See paragraphs 7-8 of the U.S. opening statement at the first substantive meeting of the Panel (“U.S. Oral Statement”) and Exhibit US-51.

relevant term whose ordinary meaning must be discerned is “import license.”³ The United States has shown that the ordinary meaning of the term “import license” is “formal permission from an authority to bring in goods from another country” and the United States has gone on to explain the text in its context and in light of the Agreement’s object and purpose. Turkey, however, has ignored the ordinary meaning of the term “import license.”

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

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

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

16. With respect to the first point, as noted in paragraph 6 of the U.S. Oral Statement, the fact

³ The United States has also argued that the Control Certificate is an “other measure” for purposes of Article XI:1 of the GATT 1994.

that a document is necessary in order to clear customs does not mean that it is not an import license. Indeed, the very nature of an import license is that it will be used for customs purposes since importation cannot occur without it. The relevant inquiry is simply this: what else is the form in question actually used for? In this case, the Certificate of Control, which is approved by the Turkish Ministry of *Agriculture*, not Turkish Customs, is being used as an import license: the document, when issued, constitutes formal written permission from the Government of Turkey to import rice. As demonstrated by the United States in this and previous submissions, Turkey is not granting these Certificates outside the TRQ regime for imports of non-EC origin rice in order to enforce restrictions on such imports.

17. Regarding the second point, the question is what is “required” for “customs” purposes. The ordinary meaning of the term “required” is “that [which] is required, requisite, necessary.”⁴ The ordinary meaning of the term “customs” is “such duty levied by a government on imports, . . .”⁵ Thus, this provision provides an exemption from the disciplines of the Import Licensing Agreement for administrative procedures requiring the submission of documentation that is necessary for purposes of a government’s levying of duties on imports.

18. Customs authorities throughout the world collect information from importers with respect to the type of good being imported, the quantity being imported, the value of the merchandise, and the country of origin. All of these pieces of information are “required” in order for a customs authority to make a determination as to how much of a duty to levy upon the importation of a particular good. MARA’s Control Certificate does not contribute to this process, since it is completely duplicative of what Turkish Customs already requires importers to provide separately.

19. In Exhibit US-62, the United States has attached a sample customs form from Turkish Customs. As would be expected, Turkish Customs requires that importers supply information that is necessary for a customs authority to be able to levy duties on imported merchandise, including: importer identification information, HTS number (“code of items”), description of the merchandise, quantity, country of origin, value, country where the merchandise was loaded, and the port. MARA requires that an importer submit much of this same information on its application for a Control Certificate. The Control Certificate application requires that importers submit, *inter alia*, importer identification information, HTS number, description of the merchandise, quantity, country of origin, country from which the merchandise was shipped, and port of entry. It is clear that MARA’s Control Certificate is not “required” for customs purposes when Turkish Customs itself already collects this information. Thus, the context provided by Article 1 supports a finding that the Control Certificate is an import license within the ordinary meaning of that term under Article XI:1 of the GATT 1994.

⁴ *The New Shorter Oxford English Dictionary*, Volume II, p. 2557 (Exhibit US-60).

⁵ *The New Shorter Oxford English Dictionary*, Volume I, p. 577 (Exhibit US-61).

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

21. In paragraph 25 of Turkey’s First Submission, Turkey also argued that one of the purposes of the Control Certificate is to ensure the fitness and compatibility of goods with health standards and that MARA will only approve a Control Certificate when the product to be imported has met certain requirements, including “fitness for use.” But Turkey now agrees with the United States that MARA does not even collect the phytosanitary certificate and make its inspection until after MARA has already granted the Control Certificate. In its reply to question 14 from the Panel, Turkey states:

After the approval of the Certificate of Control, importers must submit to the provincial directorate of MARA the following documents Sanitary or Phytosanitary Certificate, as applicable (this is the phytosanitary certificate for rice provided by exporters).⁶

Accordingly, Turkey’s argument that the Control Certificate process is meant to ensure the fitness and compatibility of imported products with health standards is not supported by the facts.⁷

B. Turkey Prohibits or Restricts Importation of Rice in Contravention of Article XI:1 of the GATT 1994

1. Recent Court Decisions Confirm That the “Letters of Acceptance” Are Legal Restrictions Under Turkish Law

22. Turkey has continued to advance the argument that the Letters of Acceptance are internal, informal documents that are unenforceable and have no legal status in Turkey, and that the instances where the United States has documented that MARA has denied the issuance of Control Certificates, such as the Torunlar case, are exceptions from the norm. In making this argument, Turkey has ignored the contents of the Letters, which impose a blanket denial of Control Certificates outside the TRQ governing all imports of rice into Turkey. Turkey has also ignored the content of the rejection letters and the court documents submitted by the United States, which make clear that the denials of Control Certificates are not based on importers’

⁶ Turkey’s Reply to Question 14 from the Panel, page 8, heading (ii) (emphasis added). *See also* U.S. Answers to the First Set of Panel Questions (“U.S. Answers to Questions”), paras. 24 and 25.

⁷ The United States provided more detailed arguments on the fitness and compatibility issue in paragraphs 91-93 of the U.S. Answers to Questions.

failure to meet particular administrative requirements in individual cases, but rather that MARA simply does not issue Control Certificates unless an importer purchases domestic paddy rice. Turkey's argument also fails to accord with the fact that, in April 2006, a Turkish court agreed with MARA's position that the Letters of Acceptance provided for a blanket denial of Control Certificates to importers who do not purchase domestic paddy rice. In sum, Turkey's arguments before the Panel regarding the legal validity and enforceability of the Control Certificates stand in sharp contrast to the arguments it has made in domestic court and contradict the facts.

23. In its reply to question 53(e), Turkey has now acknowledged that there have been 14 such lawsuits brought by importers against MARA with respect to MARA's failure to grant a Control Certificate, nine of which are ongoing and five of which were decided in favor of the government's position. The United States does not possess copies of all of the briefs and court decisions but, in two of those cases, counsel for MARA argued that the Letters of Acceptance precluded the granting of Control Certificates – and the relevant Turkish court agreed, denying the importer's motion for a stay.

24. The facts of the Helin case, as set forth by the court,⁸ are:

- On August 1, 2005, Helin Food Products Marketing, a company associated with ETM, requested that MARA grant a Control Certificate to import medium grain milled rice from Egypt.
- On August 15, 2005, MARA rejected the application for a Control Certificate “on the grounds that approvals dated July 29, 2005 were amended to indicate that provincial directorates were notified that no product documents for husked rice would be approved until new guidelines are established for such importation.” (The July 29, 2005 document referenced is Letter of Acceptance 1304.)
- Helin filed a petition with the 11th Administrative Court of Ankara seeking a Control Certificate for importing milled rice “on the grounds that the opening date for issuance of the Inspection Document to import rice and husked rice, was determined as August 1, 2005, by the approval letter of the Minister dated December 29, 2004.” (The December 29, 2004 document referenced is Letter of Acceptance 1795, in which Turkey's Minister of Agriculture ordered that Control Certificates would not be granted to importers that did not purchase domestic paddy rice until August 1, 2005.)
- The grounds for relief were that Helin relied upon the August 1, 2005 start date contained in Letter of Acceptance 1795 to enter into a contract with an Egyptian miller for the sale of 20,000 metric tons of milled rice. However, the court noted that “provincial directorates were notified that no product documents for husked

⁸ See Exhibit US-63.

rice would be approved until new guidelines are established for such importation, as expressed in the approval subsequently dated July 29, 2005. . . therefore, the plaintiff firm was not granted an Inspection Document.” Consequently, the importer stood to lose \$5.8 million USD.

-- As summarized by the court, MARA’s defense with respect to its failure to issue a Control Certificate was that “there are no grounds for the revocation of the procedures as it has been carried out according to the letter and spirit of the law.”

25. The court decided in favor of the government. The decision states in relevant part:

In the event disputed, it is verified that the opening date for the issuance of the Inspection Document was indeed determined as August 1, 2005 by the administration as is evident from the “approval” document issued by the Office dated 12.30.2004, number 1795 [i.e., Letter of Acceptance 1795]; however, as stated by the “approval” document issued on 7.29.2005, number 1304 [i.e., Letter of Acceptance 1304], the stocks of produced and imported husked rice in 2004 were deemed to be at a level that would meet the needs of the country handily; therefore no Inspection Document [i.e., Control Certificate] would be issued until consumption volume and trade policies are reviewed, and a basis for the new practices is established. Under these circumstances, the court finds no basis for the claim of illegality in the decision not to grant an inspection document until the establishment of new practices, or in the procedure by which the plaintiff’s request was declined.

In light of the circumstances explained above, it was unanimously decided on April 18, 2006, to dismiss the case . . .⁹

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

27. The United States further notes that, in its response to question 66, Turkey acknowledged that the 1st Administrative Court of Ankara also sided with MARA in the lawsuit filed by Torunlar (discussed in paragraphs 28-31 of the U.S. First Submission). The United States does

⁹ Exhibit US-63 (emphasis added).

not have a copy of the court’s decision in the Torunlar matter but notes that MARA advanced the same arguments in that case as it did in the Helin case.¹⁰ Accordingly, not just one, but at least two, Turkish courts have now agreed with the government’s position that Turkey is justified under Turkish law in denying Control Certificates based on the Letters of Acceptance.

28. The United States also has obtained complaints in four other lawsuits brought by Turkish importers against MARA for failure to grant their applications for a Control Certificate.¹¹ In rejection letters issued by MARA in each of the four cases, MARA referred to Letter of Acceptance 1304 of July 29, 2005 as the basis for the rejection. According to the importers who filed suit, MARA stated in its rejection letters that, given the administrative decisions of July 29, 2005, “we are unable to prepare documents of control for rice, until new application rules are confirmed.”

29. In sum, Turkey has relied on the Letters of Acceptance as the basis for denying Control Certificates to importers. It has argued in its own domestic courts that the Letters of Acceptance are binding under Turkish law and that, as a result, MARA must deny the issuance of Control Certificates. The Turkish courts have agreed with the government’s position. And, according to Turkey, the government is bound to comply with court decisions, in whole and without delay, pursuant to the Turkish Constitution.¹² This contrasts with Turkey’s argument before this Panel that the Letters of Acceptance are informal, internal documents that are unenforceable by Turkish courts and have no legal standing in Turkey.

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

30. As just discussed, Turkey’s Minister of Agriculture has ordered officials in his Ministry not to grant Control Certificates in clearly-worded, unambiguous documents. When importers have sued the government in Turkish court to demand that they be issued Control Certificates, Ministry lawyers have argued that MARA is bound by such orders. The Turkish courts have ruled in favor of the government’s position. These facts alone demonstrate that Turkey is in breach of Article XI:1 of the GATT 1994. Thus, an examination of import and Control

¹⁰ See Exhibit US-31.

¹¹ See Exhibits US 64-67.

¹² See Turkey’s reply to question 53(a), which states in relevant part:

“Article 138 of the Turkish Constitution, also provides that “*legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.*”

Certificate data is unnecessary to establish that Turkey is in breach of Article XI.¹³ Nevertheless, our analysis of that data only serves to confirm that Turkey has imposed restrictions on the importation of non-EC origin rice outside the TRQ regime.

31. As a preliminary matter, the United States notes that Turkey has not provided copies of the actual Control Certificates, as the Panel requested, or even identified the importers. As a result, the United States is unable to confirm that the data are accurate. Further, the data leave many questions unanswered, as the United States notes in several places in its analysis below. Nevertheless, the data strongly support the U.S. claim that there is a prohibition or restriction on imports at the over-quota rates of duty.¹⁴

32. Turkey also argues in several places in its submissions that it has granted a certain number of Certificates of Control over a given period of time. But that does not address the fact that Turkey is prohibiting or restricting imports at the *over-quota* rates. Thus, the question is not whether Certificates are being granted in general, but whether Certificates are being granted for MFN trade (that is, not involving in-quota quantities or imports of EC origin milled rice which, under the EC Quota Arrangement, enter Turkey duty free and are exempted from Turkish import restrictions). Turkey's own data on Control Certificates reveal that, from September 10, 2003 through April 1, 2006, MARA in fact did not grant Control Certificates for non-EC origin imports of rice outside the TRQ regime, except for two brief periods of time, covering minuscule amounts of rice, which are discussed below. Therefore, the data submitted by Turkey in Annexes TR-33 and TR-38 lend additional confirmation to the U.S. claim that MARA is enforcing a prohibition or restriction on MFN trade in rice.

33. The United States has analyzed the data submitted by Turkey for each particular phase of Turkey's rice regime. That analysis shows the following.

Phase 1: Issuance of Control Certificates from January 1 - September 9, 2003

34. During this period, the TRQ regime was not yet in place. Imported rice came primarily

¹³ There is no need to demonstrate an impact on trade flows to establish a breach of Article XI:1. See *Argentina Bovine Hides*, para. 11.20 (recalling that "Article XI:1, like Articles I, II and III of the GATT 1994, protects competitive opportunities of imported products not trade flows . . .") and *EC – Bananas III (Panel)*, para. 7.50 (noting that "GATT rules have been consistently interpreted to protect "competitive opportunities" as opposed to actual trade flows"). Likewise, as discussed below in section 3, non-application of a mandatory measure does not excuse a breach.

¹⁴ The United States discussed the Turkish import data in paragraph 58 of the U.S. Answers to Questions. See also the chart in Exhibit US-53, which demonstrates that imports of non-EC origin rice are shut down or decrease to *de minimis* levels when the TRQ is closed and/or the Turkish rice harvest is ongoing.

from traditional sources, namely Egypt (milled rice), the United States (paddy rice), and Italy (milled rice). However, China began shipping milled rice to Turkey in March and April 2003, and Chinese rice shipments exploded in June and July 2003. The U.S. graph of Turkish import data contained in Exhibit US-53 confirms that actual imports followed these trends.¹⁵

35. In addition, it was not uncommon for MARA to grant Control Certificates for imports of U.S.-origin rice in quantities of 4,500 to 15,000 metric tons. The size of Control Certificates for imports of rice from Italy and Egypt tended to be smaller, but this disparity was a reflection of the fact that U.S. rice shipments tend to be larger than those of Italy and Egypt. Shipments from Italy and Egypt to Turkey have a shorter shipping distance, so exporters tend to ship smaller quantities of rice – for example, a few hundred to a few thousand metric tons – on a more frequent basis. By contrast, the United States ships rice to Turkey from California. Given the longer shipping distance, U.S. exporters tend to ship rice less frequently and in larger allotments, typically between 10,000 and 20,000 metric tons.

Phase 2: Issuance of Control Certificates from September 10, 2003 - April 30, 2004

36. On September 10, 2003, the first Letter of Acceptance (of which the United States is aware), Letter 964, was issued. In the Letter, Turkey's Minister of Agriculture ordered that Control Certificates to import rice would not be granted until March 1, 2004. Letter 107, dated January 23, 2004 (Exhibit US-12) extended the delay in issuing Certificates until July 1, 2004. Letter of Acceptance 1795 later confirmed that restrictions on the issuance of Control Certificates only applied to those importers who did not purchase domestic paddy rice under the TRQ regime. The TRQ regime was promulgated in April 2004 and made retroactive to September 1, 2003. Based on these facts, one would expect that no Control Certificates for the importation of rice would have been granted, except for imports of EC-origin milled rice.

37. Turkey's data confirm this. During this period, MARA did not issue any Certificates of Control except to importers of EC-origin milled rice, primarily from Italy. All of those Control Certificates were granted from September - December 2003 and the imports entered Turkey prior to the end of 2003. Although rice exporters from China, Egypt, and the United States were shipping large quantities of rice to Turkey prior to this period, MARA did not grant Control Certificates to importers of rice from these countries during this period. Consequently, the import data show that rice exports from these countries were shut out of the Turkish market from September 10, 2003 through April 30, 2004, with two possible exceptions.

38. The first exception is an alleged shipment of 10,000 metric tons of Chinese milled rice in December 2003. Although this shipment appears in Turkey's import data, Turkey's Control Certificate data does not show any Control Certificate for the import of Chinese origin rice with

¹⁵ The import data shows that imports of U.S.-origin rice in September 2003 were 35,000 metric tons. However, Turkey's Control Certificate data shows only one U.S. shipment in September, a shipment of 5,000 metric tons of rice that occurred on September 4, 2003.

an importation date of December 2003. Rather, the data show that all imports of Chinese rice occurred prior to September 10, 2003. Thus, the alleged December 2003 shipment either did not occur, occurred prior to September 10, 2003, but was erroneously recorded as having entered Turkey in December 2003, or erroneously entered Turkey without a Control Certificate.

39. The second exception is an alleged shipment of 663 metric tons of Egyptian milled rice in October 2003 that appears in Turkey’s import data. Turkey’s Control Certificate data demonstrates that MARA did not grant any Control Certificate for the import of Egyptian origin rice with an importation date of October 2003. So this shipment also likely did not occur, occurred prior to September 10, 2003 and was erroneously recorded as having entered Turkey in October 2003, or erroneously entered Turkey without a Control Certificate.

40. The lack of imports from outside the European Communities during Phase 2 is revealing, given that Turkey claims that Control Certificates are valid for one year. Despite the fact that importers of Egyptian, Chinese, and U.S. rice had accumulated unused Control Certificates for thousands of tons of imported rice prior to September 10, 2003, those Certificates were not used during this period. Given the large volume of imports these unused Certificates covered, it is unlikely that the Certificates were, as Turkey argues, unused due to “business considerations and free market choices.”¹⁶ This is confirmed by an examination of the pricing data provided by the United States in Exhibit US-55. The average landed CIF price for Italian milled rice during Phase 2 was between \$690 and \$767 per metric ton, with an average landed CIF price of \$2,784 per metric ton in January 2004. By contrast, in 2003 the average landed CIF price of Egyptian milled rice was between \$200 and \$300 per metric ton. Yet, from September 10, 2003 through April 30, 2004, Turkey’s argument suggests that no importer in Turkey wanted to import Egyptian rice.

Phase 3: Issuance of Control Certificates from May 1 - August 31, 2004

41. During this period, the restrictions on the issuance of Control Certificates for MFN trade continued. Letter of Acceptance 107, dated January 23, 2004 (Exhibit US-12) remained in effect until July 1, 2004, when it was replaced by Letter 905, dated June 28, 2004 (Exhibit US-13). Letter 905 provided Ministerial approval to delay the start date for issuing Certificates until January 1, 2005. Importation under the TRQ regime could now begin because Turkey had announced the in-quota rates and domestic purchase requirement (precise quantities unspecified) in the Official Gazette in late-April 2004.

42. Not surprisingly, the non-EC origin rice trade during this period was entirely within the TRQ. Imports from China, Egypt, and the United States resumed. There were also shipments of EC-origin milled rice in August 2004. With respect to the distribution between in-quota and over-quota Control Certificates, all Control Certificates for EC-origin rice were granted outside the TRQ, whereas all Control Certificates for imports from all other sources were granted for in-

¹⁶ See Turkey’s Answers to Panel Questions, page 10.

quota imports.

Phase 4: Issuance of Control Certificates from September 1, 2004 - October 31, 2004

43. The TRQ closed at the end of August 2004. Because Letter of Acceptance 905 remained in effect, the restrictions on the issuance of Control Certificates for MFN trade continued. As expected, the overwhelming majority of imports from September through October were from the EC. Imports from all other sources were virtually nil, as shown in Exhibit US-53.

44. During this period of time, Turkey alleges that it issued 11 Control Certificates for the import of non-EC origin rice at the over-quota rates of duty. Without being able to examine the Certificates, it is difficult to know if and why they were granted, despite the restrictions. However, it is odd that a Control Certificate would be granted for 611 metric tons of U.S. paddy rice in September 2004. As previously explained, the United States does not ship rice to Turkey in such small quantities. And there were no Control Certificates for U.S. rice granted in October 2004. Thus, U.S. imports went from 9,000 tons in August 2004, the month immediately preceding the Turkish harvest period, to an alleged 611 tons total for September/October 2004.

45. With respect to the other 10 Certificates, they covered a combined total of 1,978 metric tons. Only half of those Certificates were used, covering a total of 1,289 metric tons of imports, during the September-October period.¹⁷ This figure contrasts sharply with imports of non-EC origin rice in August 2004, approximately 24,000 metric tons. This further supports the conclusion that Turkey is restricting trade pursuant to the Letters of Acceptance.

Phase 5: Issuance of Control Certificates from November 1, 2004 - July 31, 2005

46. Turkey opened the TRQ for a second time to cover the period November 1, 2004 through July 31, 2005. Meanwhile, the restrictions governing MFN trade continued. Letter of Acceptance 905 ensured that the start date for issuing Control Certificates was further delayed until January 1, 2005. In Letter of Acceptance 1795, dated December 30, 2004 (Exhibit US-14), Minister Guclu accepted a recommendation to delay again the start date for issuing Control Certificates until the end of July 2005.

47. During this period, the non-EC origin rice trade again revived. Beginning in November 2004, imports from China, Egypt, the United States, and other countries resumed, and imports from the EC continued. Once again, imports followed a very distinct pattern. Nearly every Control Certificate issued for importation of EC-origin rice was outside the TRQ. By contrast, nearly every Control Certificate issued for importation of Egyptian rice was in-quota. Control Certificates for rice from India, Pakistan, Russia, Thailand, Uruguay, and Vietnam also were issued solely for importation under the TRQ. With respect to imports of U.S.-origin rice, a

¹⁷ Two other Certificates were used in December 2004, totaling 21 tons of milled rice from Pakistan and 21 tons of milled rice from Thailand.

revealing pattern emerged. In most cases, Control Certificates were issued for in-quota imports. However, there was one six-week period during April/May 2005 where MARA allegedly issued Control Certificates to import U.S.-origin paddy rice at the MFN rate.

48. At the March 16, 2005 meeting of the WTO Committee on Agriculture, the United States noted that Turkey’s import licensing regime for rice appeared to be inconsistent with several provisions of the covered agreements, including Article III of the GATT 1994, the TRIMs Agreement, and Article 4.2 of the Agreement on Agriculture.¹⁸ Prior to this date, MARA had not issued any Control Certificates for the importation of U.S.-origin rice at the MFN rate during the second TRQ opening. However, in late-March 2005, MARA began granting Control Certificates to import U.S. paddy rice at the over-quota rate. Between April 5, 2005, and May 12, 2005, Turkey granted approximately three dozen Certificates to import U.S. rice outside the TRQ. No single Control Certificate covered a quantity greater than 2,032 metric tons, and most were much smaller than that. The total quantity covered by such Certificates was around 25,000 metric tons, or the approximate size of one or two shipments of U.S. medium grain paddy rice shipped from California,¹⁹ so this entire importation could have been covered by one or two Control Certificates if there was no size restriction in place. It is noteworthy that, during this six-week period, all Control Certificates issued for imports of U.S.-origin paddy rice were for the over-quota rate whereas, prior to this period, it was precisely the opposite. And after that six-week period, the status quo resumed, with nearly every Control Certificate granted for importation of U.S.-origin rice occurring at the in-quota rate.

Phase 6: Issuance of Control Certificates from August 1, 2005 - October 31, 2005

49. The TRQ was now closed, so importation could only occur at the over-quota rates. However, in Letter of Acceptance 1304, dated July 29, 2005, Turkey’s Minister of Agriculture accepted a recommendation to delay again the start date for issuing Certificates “until a new policy is in place.” As expected, imports of non-EC origin rice were again shut out of the Turkish market. During this period, MARA granted 129 Control Certificates. All of them were for the importation of Italian milled rice at the over-quota rate, except for one Control Certificate to import a small quantity of rice from Macedonia that was never used. No Control Certificates were granted for the importation of rice from Egypt or the United States, despite the fact that both countries had been importing substantial quantities of rice in the preceding months.

¹⁸ G/AG/R/42, 25 May 2005, para. 21.

¹⁹ Without knowing the identity of the importer and examining the Control Certificates, it is difficult to draw any conclusions from this deviation, except to reiterate that U.S. exporters do not ship rice to Turkey in such small quantities. Thus, if this importation occurred at the over-quota rate for paddy rice, it had to have been one or two shipments for which the importer had to apply for several Control Certificates.

Phase 7: Issuance of Control Certificates from November 1, 2005 - March 30, 2006

50. Turkey re-opened the TRQ to cover the period November 1, 2005 through July 31, 2006.

Letter of Acceptance 1304 remained in force, so Ministerial approval to delay the start date for issuing Control Certificates to importers who did not purchase domestic paddy rice was still in effect. In Letter of Acceptance 390, dated March 24, 2006 (Exhibit US-36), Turkey's Minister of Agriculture accepted a recommendation to delay the start date for issuing Certificates until April 1, 2006. On November 2, 2005, the United States filed its request for consultations in this dispute and, after consultations failed to resolve the dispute, requested that the DSB establish this Panel on February 17, 2006. The DSB established the Panel at its March 17, 2006 meeting.

51. Once again, now that the TRQ was re-opened, imports of rice from non-EC countries resumed. In the November-December 2005 period, with the exception of one Control Certificate for the import of Egyptian brown rice, all Control Certificates granted outside the TRQ were for rice from Italy and Macedonia.²⁰ Control Certificates for Egyptian milled rice and rice from Argentina, Bulgaria, Russia, Thailand, Uruguay, the United States, and Vietnam were all granted for in-quota trade. There were some Certificates granted for in-quota trade for EC-origin rice during this period, but this is probably due to the fact that the European Communities had exceeded its 28,000 metric ton quota by this point in the year.²¹ In the January-March 2006 period, all but one Control Certificate granted by MARA was under the TRQ, including for EC-origin rice. Thus, there were virtually no rice imports outside the TRQ during this time.

Phase 8: Issuance of Control Certificates from April 1, 2006 - present

52. Under Letter of Acceptance 390, Turkey's Minister of Agriculture set the start date for issuing Control Certificates at April 1, 2006, although only one at a time and with strict quantitative limits: 10,000 metric tons of milled rice and 15,000 metric tons of paddy rice. However, the Minister also decided that MARA would stop granting Certificates of Control (to the extent that they were being issued in the interim) on August 1, 2006 – in other words, MARA would again restrict the granting of Certificates of Control at the start of the Turkish rice harvest, which is when the TRQ would be temporarily closed.

53. As discussed in paragraphs 33-37 of the U.S. First Submission, it is unclear whether

²⁰ According to USDA Production, Supply, and Demand Estimates, Macedonia only produces between 5,000-10,000 metric tons of rice per year and does not export rice, so the large numbers of Control Certificates that MARA allegedly granted to import rice from Macedonia is curious.

²¹ According to Turkish import data (Exhibit US-53), the EC shipped approximately 32,000 tons of milled rice into Turkey in 2005, mostly from Italy.

Letter 390 was implemented – as evidenced by the experiences of Mehmetoglu and ETM – given the reaction that Minister Tuzmen’s letter to Ambassador Portman²² caused within the domestic industry. It is also possible that there have been other such Letters issued of which the United States is unaware. Annex TR-33 reveals an unusual pattern of Control Certificate issuance, where the trends often shift from month-to-month. In April, MARA granted all but one Control Certificate in-quota.²³ In May, MARA allegedly granted several Control Certificates for the import of U.S.-origin paddy rice at the MFN rate, including several covering between 5,000 and 15,000 metric tons – only one of which was used. But almost every other Certificate granted was for in-quota imports. In June, there were again a few large (covering 13,000 - 20,000 metric tons) and unused Control Certificates issued for U.S. over-quota imports, and there was one Control Certificate granted for 5,000 metric tons of rice from Russia (also unused). The other Certificates granted were for use under the TRQ. In July, the Control Certificate situation reverted to the status quo, where virtually all Certificates were granted in-quota for very small quantities of rice. Since August 2006, MARA has again allegedly issued very large Control Certificates (5,000 - 100,000 metric tons), most of which have gone unused, and all of which were for use at the over-quota rates.²⁴

54. Interestingly, Turkey’s Control Certificate data shows that it granted Control Certificates

²² See Exhibit US-35.

²³ The one Certificate granted by MARA outside the TRQ was for the import of EC-origin rice.

²⁴ The United States would like to note two additional points. First, the size of Control Certificates has followed a curious trend. Many of the Control Certificates that were issued prior to September 10, 2003, covered quantities of 4,500 to 15,000 metric tons. However, from September 10, 2003 through the date of panel establishment, it was very rare to see a Control Certificate that was valid for importing more than 4,500 metric tons of rice. After the Panel was established, the size of the Control Certificates appears to have experienced a sudden and dramatic increase (5,000 to as high as 100,000 metric tons). Second, many of the large Control Certificates that MARA allegedly issued since panel establishment have gone unused. One of the reasons for this may be that FTU and MARA jointly implemented a reference price system beginning August 1, 2006. Under this system, duties are no longer calculated on the actual value of imported rice but on certain reference prices: CIF \$340 USD per metric ton for imported paddy rice, CIF \$425 USD per metric ton for imported brown rice, and CIF \$570 USD per metric ton for imported paddy rice. The document establishing the reference price system, which was never published, was distributed to all principal Turkish customs houses for use in calculating the price on which duties are levied for rice imports. See Exhibit US-68. In this regard, it is interesting to note that, in its reply to the Panel’s question regarding whether Turkey’s import regime for rice had changed since November 2005 (question 18), Turkey stated that the TRQ regime had “lapsed” but that no other aspects of Turkey’s import system for rice had changed.

for 400,000 metric tons of U.S. rice, and Turkey’s import data shows that 90,000 metric tons of U.S. rice entered Turkey in 2006. U.S. export statistics, however, only record 16,870 metric tons of U.S. rice shipped to Turkey this year, and no future sales have been recorded in the USDA Export Sales Report, under which U.S. exporters are required by U.S. law to submit destinations and volumes of sales of U.S. products, including rice.²⁵ As U.S. industry has informed us, the difference in these figures was comprised of U.S. rice that Turkey finally released from bonded warehouse, which previously had been unable to enter Turkey due to the Turkish import restrictions described by the United States.

55. Turkey’s Control Certificate data in Annex TR-38 likewise does not demonstrate that Turkey is not restricting imports through Letters of Acceptance. In that exhibit, Turkey presents a list of Control Certificates that MARA allegedly granted for Torunlar, ETM, and Mehmetoglu. The United States cross-checked the Control Certificate numbers with the global list of Control Certificates that MARA allegedly granted, as contained in Annex TR-33. Not surprisingly, between September 10, 2003 (the date on which Letter of Acceptance 964 was issued) and March 17, 2006 (the date of Panel establishment), with three exceptions, all of the Control Certificates MARA granted to these three importers were under the TRQ. The three Certificates outside the TRQ covered a minuscule quantity of rice (756 metric tons), and none were utilized. Further, all three Certificates were granted in November 2005 to Mehmetoglu for the importation of rice of Macedonian origin. As previously noted, Macedonia only produces between 5,000-10,000 metric tons of rice per year and we understand that it does not export rice.

56. The foregoing analysis confirms that the Control Certificate data which Turkey has submitted does not rebut the U.S. argument that Turkey is restricting rice imports outside the TRQ through the Letters of Acceptance. The data indicate that, with few, relatively small exceptions, the Certificates MARA granted were for rice under the TRQ. When the TRQ closed, imports of non-EC-origin rice declined to very low levels, or ceased altogether.

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

57. The United States has provided evidence that Turkey prohibits or restricts the importation of rice outside the TRQ regime. The Letters of Acceptance, on their face, constitute an import prohibition or restriction. In the Letters of Acceptance, the General Directorate of the Turkish

²⁵ See Turkey sales data in Exhibit US-69, which shows that, since August 1, 2006, U.S. exporters have not reported any “outstanding sales” (sales that have been made by U.S. exporters but have not yet been shipped from the United States) of rice to Turkey. In addition, “accumulated exports” (exports that have actually been made since August 1, 2006) of rice to Turkey have been negligible.

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

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

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

60. Even if Turkey's data had demonstrated that the Letters of Acceptance were not enforced at all, that would not change the conclusion that the Letters breach Article XI:1 of the GATT 1994. As discussed in paragraph 25 of the U.S. Oral Statement and paragraph 98 of the U.S. Answers to Questions, a mandatory measure may still be found WTO-inconsistent even if it is not being enforced. In the *US – 1916 Act* dispute, the Appellate Body agreed that the panel could find a 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.²⁶

61. Similarly, in the *Malt Beverages (GATT)* dispute, the panel found that mandatory legislation that was either not being enforced or only being enforced nominally did not shield measures from being found in breach of the GATT 1947. In that dispute, two U.S. states, Massachusetts and Rhode Island, imposed a requirement that imported alcoholic beverages could not be priced below the price of such products in neighboring states. The United States argued that the U.S. measures were not inconsistent with Article III:4 of the GATT 1947 because Rhode Island was providing only token enforcement of its measure and Massachusetts was not enforcing its measure at all. The panel found that, because the legislation was mandatory, the measures were still subject to scrutiny under Article III:4, noting that

[e]ven if Massachusetts may not currently be using its police powers to enforce this mandatory legislation, the measure continues to be mandatory legislation which may influence the decisions of economic operators. Hence, a non-enforcement of a mandatory law in respect of imported products does not ensure that imported beer and wine are not treated less favourably than like domestic products to which the law does not apply.²⁷

62. In this dispute, it is clear that Turkey *is* enforcing the Letters of Acceptance, with the support of the Turkish judicial branch, and the United States has documented several individual instances of where the restrictions on the issuance of Control Certificates have been enforced, in the form of letters and court documents. Nevertheless, as noted by the *Malt Beverages (GATT)* panel, non-enforced mandatory measures may still breach a Member's obligations, and can affect the decision-making of economic actors. Here, even had they not been enforced, the Letters of Acceptance were known to many importers, and, as a consequence, could have deterred them from applying for Control Certificates to import rice at the MFN rates, or led them to seek to import under the TRQ. Thus, even were the Panel to conclude that the Letters were not enforced at all, the Panel should still find, in line with findings of past panels with respect to non-enforced mandatory measures, that Turkey's restrictions on MFN trade in rice are inconsistent with Article XI:1 of the GATT 1994.

63. Lastly, Turkey's failure to issue Control Certificates for the import of rice at the over-quota rates of duty breaches both Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture because it constitutes discretionary import licensing. The Communiqués provide that, in order to apply for a Control Certificate, importers must submit the Certificate application form, the pro forma invoice or invoice, and "other documents which may be asked for, depending on product, by the Ministry."²⁸ Further, the FTU website provides that

²⁶ *US – 1916 Act (AB)*, para. 155.

²⁷ *Malt Beverages (GATT)*, para. 5.60.

²⁸ Exhibit TR-1.

“if the product to be imported is found to meet the criteria required,” MARA will grant the Certificate.²⁹

64. As discussed by the United States in paragraphs 47-51 of the U.S. Answers to Questions, this language appears to provide MARA with the discretion not to grant Control Certificates if an importer does not present certain unspecified documents – for example, a receipt showing that the importer has procured the appropriate quantity of domestic paddy rice. The Letters of Acceptance, even if they are, as Turkey implausibly argues, “informal internal documents” that are never enforced, provide strong evidence of this discretion. In each Letter cited by the United States, Turkey’s Minister of Agriculture accepts recommendations from the Provincial Agricultural Directorate to delay the start date for issuance of Control Certificates. Therefore, it is certainly clear that *Turkey* believes it has the discretion not to grant Control Certificates if it wants to, and the United States has provided documentary evidence highlighting instances where Turkey has denied or failed to grant such Certificates. Discretionary import licensing is prohibited under Article 4.2 of the Agreement on Agriculture as well as Article XI:1 of the GATT 1994. Accordingly, Turkey’s discretionary import licensing system for rice is a prohibited measure under Article 4.2 of the Agreement on Agriculture, as well as a restriction on importation under Article XI:1 of the GATT 1994.

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

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

66. The United States also has argued that the domestic purchase requirement imposes an additional cost on importing rice, thereby constituting a restriction on importation contrary to Article XI:1 of the GATT 1994. In sum, the United States has argued that it is more expensive to purchase one, two, or three tons of domestic rice as a condition upon importation, than to purchase zero tons of domestic rice in order to import. Turkey has been unable to rebut the U.S. argument because it is a mathematical impossibility that it would cost an importer more to

²⁹ General Assessment of the Regime Regarding Technical Regulations and Standardisation for Foreign Trade (27 May 2005) (www.dtm.gov.tr) (Exhibit US-43). *See also* paragraphs 22-23 of the U.S. Answers to Questions.

purchase zero tons of rice than it would to purchase x tons of rice, where x is any number greater than zero. Turkey completely ignores this fact, instead focusing its analysis on the cost of each ton that is purchased, when the relevant question is the total cost to the importer of having to comply with the domestic purchase requirement in order to import rice.

67. Turkey also argues that, through the TRQ, it is simply pursuing the “legitimate objectives” of “greater market supply” and “market stabilization.”³⁰ On this point, the United States would simply note that Turkey has not invoked an Article XX defense in this dispute, and neither of the objectives cited by Turkey are listed in Article XX.

68. The United States will refrain from repeating its prior arguments on this point³¹. The United States would simply add the following comments with respect to the calculation of the cost of the domestic purchase requirement.

69. Turkey has argued that the U.S. calculation of the cost of domestic purchase in Exhibit US-52, where the United States set forth several possible domestic purchase scenarios under the third TRQ opening, “beggars belief” and is based on figures that are “at best, inconsistent and, at worst, randomly chosen.”³² Yet Turkey has failed to identify which specific figures in the model it finds objectionable. This is not surprising, since the United States utilized numbers that were supplied by Turkey or are consistent with data provided by Turkey.

70. In scenario 1, the United States used an average CIF price for U.S. paddy rice in 2005 of \$260 per ton, which was taken from Turkish Statistics Corporation data. That data is contained in the table entitled “1006.10 Paddy Rice Imports” in Exhibit TR-25. To derive this figure, the United States summed the U.S. monthly totals for 2005 and divided value by quantity. Turkey reached the same conclusion, as evidenced by Exhibit US-70, which contains a document Turkey provided to the United States during the consultations. That document also confirms that, with an \$88 duty (the over-quota rate for paddy rice is 34 percent *ad valorem*), the average total import cost for paddy rice in 2005 outside the TRQ would have been \$348 per ton, and with a \$52 duty (the in-quota rate for paddy rice is 20 percent *ad valorem*), the average total import cost for paddy rice in 2005 outside the TRQ would have been \$312 per ton.

71. In scenario 2, the United States derived the 865 New Turkish Lira per ton price from sales prices announced by the Turkish Grain Board for four milling yield rates of long grain

³⁰ Turkey’s Reply to Question 79.

³¹ See paragraphs 86-99 of the U.S. First Submission, paragraphs 27-37 of the U.S. Oral Statement and Exhibit US-52, and paragraphs 113-166 of the U.S. Answers to Questions.

³² Turkey’s closing statement at the first substantive meeting of the Panel, paras. 16 and 17.

osmancik rice.³³ The U.S. estimate was extremely close to TMO's actual average monthly selling price for paddy rice in 2005 (871 New Turkish Liras) provided by Turkey.³⁴

72. In scenarios 3 and 4, the United States took the 640 New Turkish Lira per ton price from paragraph 95 of Turkey's First Submission.³⁵

73. With respect to the exchange rate used, given that the United States was using average 2005 prices in the model, we decided it was most accurate to use the average daily interbank exchange rate for 2005 for converting the figures from New Turkish Liras to U.S. dollars.³⁶ The exchange rate used is consistent with the average of the monthly exchange rates in 2005 provided by Turkey in Annex TR-37. The average of Turkey's monthly figures is 1.341833 (New Turkish Liras to U.S. dollars) in 2005. The U.S. figure in Exhibit US-52 is 0.744759956 (U.S. dollars to New Turkish Liras) which, converted into New Turkish Liras to U.S. dollars, is 1.342715.

74. Finally, the domestic purchase ratios utilized in scenarios 2, 3, and 4 were taken from Turkey's third TRQ opening. In Exhibit US-11, the fifth column of the table provides the amount of rice one may import provided that one purchases 1,000 kg of domestic rice:

- Scenario 2 illustrates how the domestic purchase requirement works when the purchase is made from the Turkish Grain Board. The fourth row of the chart provides that, if an importer purchases 1,000 kg of paddy rice from the Turkish Grain Board, it may import 500 kg of paddy rice;
- Scenario 4 illustrates how the domestic purchase requirement works when the purchase is made from one category of Turkish producers. The first row of the chart provides that, if an importer purchases 1,000 kg of paddy rice from those producers, it may import 800 kg of paddy rice; and
- Scenario 3 illustrates how the domestic purchase requirement works when the purchase is made from a second category of Turkish producers. The chart contains an asterisk, which makes reference to a paragraph contained on the second page of the document. That paragraph provides that the domestic purchase requirements are larger when procurement is made from certain Turkish

³³ Exhibit US-50 (first table, column 4).

³⁴ Annex TR-29 (second table, column 3).

³⁵ The 640 New Turkish Lira figure can also be found in Annex TR-27 (page 3, bottom of the third column).

³⁶ See www.oanda.com.

provinces, which account for the large majority of the Turkish rice crop. The first row of the chart contains a footnote, labeled “(1)” which, as indicated in the footnote, means that for purchases from the provinces listed in the footnote, if an importer purchases 1,000 kg of paddy rice from certain Turkish producers, it may only import 600 kg of paddy rice.

Exhibit US-11 reveals that the domestic purchase requirement is even larger if an importer wants to import milled rice. Therefore, the examples selected by the United States in Exhibit US-52 actually would tend to underestimate the obstacle posed by the domestic purchase requirement towards the importation of rice.

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

75. In its Reply to Question 75, Turkey claims that the domestic purchase requirement is not a TRIM as it does not contain an investment element and that nothing in the TRQ legislation even implies an investment objective.³⁷ At one point, Turkey even claims that “it fails to understand how the TRQ and its domestic purchase requirement could have had a significant impact on investment in the rice sector and development of a domestic rice industry.”

76. The United States has argued that the TRIMs Agreement does not require that a Member demonstrate the existence of a TRIM, in addition to showing that a measure satisfies the elements of the illustrative list contained in the Annex to that agreement, in order to prove a breach of the TRIMs Agreement. However, even if it were necessary for the United States to show that the domestic purchase requirement is a TRIM in order to prevail on the Article 2.1 claim, the United States has done so. Turkey’s professed inability to understand how the TRQ could have possibly affected investment in the domestic rice sector is not credible.

77. As discussed below, the TRQ regime serves to aid in the development of the Turkish rice industry and this effect is intended. Turkey is forcing rice importers to purchase large quantities of domestic rice as a condition upon importation. This scheme makes it much more likely that rice produced by Turkish farmers will be purchased, and at higher prices.

78. As shown in Exhibit US-45, Turkish production of paddy rice was 360,000 metric tons in 2001/2002 and 2002/2003, before the TRQ was established. By 2005/2006, Turkish paddy rice production was 600,000 metric tons, and the figure for 2006/2007 was projected to be the same. In a Letter dated March 3, 2006, the Director General of MARA’s Protection and Control Department, confirmed that there had been a 66 percent increase in paddy rice production since 2003 and that “thanks to this implementation, the producers were able to sell their products at

³⁷ Turkey does not appear to contest that the domestic purchase requirement has a trade component.

worthy prices and marketing their products was easier for them. . . . and we took a positive step in our producers’ competitiveness against the world producers.” The “implementation” referred to by the Director General was, as noted in the first paragraph of the Letter, “the tariff quota system in paddy rice.” Additionally, Letter of Acceptance 390 provided that “producers should [instead] be supported through paying the price difference to close the gap with world prices” given that “the Tariff Quota System will not be possible in the coming years.” And Letter of Acceptance 905 provided that Control Certificates would not be granted outside the TRQ “in order to protect the national growers.”³⁸ These documents confirm that Turkey instituted the domestic purchase requirement in order to strengthen the domestic rice industry.

79. Lastly, the reasoning of the *Indonesia Autos* panel on the investment issue supports the U.S. argument that the domestic purchase requirement is a TRIM. As quoted by Turkey in its reply to question 75, the panel found that the Indonesian measures met the alleged “investment requirement” because they

aimed at encouraging the development of a local manufacturing capability for finished motor vehicles and parts and components in Indonesia. Inherent to this objective is that these measures necessarily have a significant impact on investment in these sectors. For this reason, we consider that these measures fall within any reasonable interpretation of the term “investment measures.”³⁹

Turkey also notes that the references in the Indonesian legislation to investment objectives differentiates that measure from the TRQ regime, because the TRQ legislation does not mention such objectives.

80. But Turkey fails to cite the next paragraph of the panel report, which states in relevant part that:

[w]ith respect to the arguments of Indonesia that the measures at issue are not investment measures because the Indonesian Government does not regard the programmes as investment programmes and because the measures have not been adopted by the authorities responsible for investment policy, we believe that there is nothing in the TRIMs Agreement to suggest that a measure is not an investment measure simply on the grounds that a Member does not characterize the measure as such, or on the grounds that the measure is not explicitly adopted as an investment regulation. . .⁴⁰

81. In other words, the fact that Turkey did not specifically state investment objectives in the

³⁸ Exhibit US-13.

³⁹ *Indonesia Autos*, para. 14.80.

⁴⁰ *Indonesia Autos*, para. 14.81.

TRQ legislation does not preclude the conclusion that the domestic purchase requirement has an investment component. If the legal test rested upon a Member's characterization of a measure, then nothing would qualify, because a respondent in WTO dispute settlement would always characterize the measure at issue as not an investment measure. The relevant inquiry is what the measure in fact does, and the United States has made arguments on this issue in paragraphs 117-119 of the U.S. Answers to Questions. Nonetheless, Turkey did indicate in its Letters of Acceptance that the domestic purchase requirement had investment objectives, as cited above, and one of those objectives – strengthening the competitiveness of the domestic industry – was cited by Indonesia as one of the investment objectives of the Indonesian measure that was the subject of a successful TRIMs claim in the *Indonesia Autos* dispute.⁴¹

III. CONCLUSION

82. For the reasons set out above and in its previous submissions and statements, the United States respectfully requests the Panel to find that Turkey's import licensing regime for rice, including the most recent opening of the TRQ, is inconsistent with Articles III:4, X:1, X:2, and XI:1 of the GATT 1994; Article 4.2 of the Agriculture Agreement; Articles 1.4(a) and (b), 3.5(a), (e), (f), and (h), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement; and Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement and recommend that Turkey bring its measures into conformity with its WTO obligations.

⁴¹ *Indonesia Autos*, para. 14.78.

TABLE OF EXHIBITS

Exhibit US-	Title of Exhibit
60	<i>The New Shorter Oxford English Dictionary</i> , Volume II, p. 2557
61	<i>The New Shorter Oxford English Dictionary</i> , Volume I, p. 577
62	Blank Turkish Customs Form (English translation, followed by the original Turkish version)
63	Helin court decision (11 th Administrative Court of Ankara), 18 April 2006 (English translation, followed by the original Turkish version)
64	Brief filed by Asena Import Export Construction and Trade Ltd. Company in the 9 th Administrative Court of Ankara, 8 November 2005 (2005/2262) (English translation, followed by the original Turkish version)
65	Brief filed by Pirtas Construction and Trade Ltd. Company in the 8 th Administrative Court of Ankara, 8 November 2005 (2005/2291) (English translation, followed by the original Turkish version)
66	Brief filed by Zarifler Construction and Tourism, Inc. in the 4 th Administrative Court of Ankara, 8 November 2005 (2005/2371) (English translation, followed by the original Turkish version)
67	Brief filed by Etra Civil Engineering Ltd. Inc. in the 9 th Administrative Court of Ankara, 12 December 2005 (2006/339) (English translation, followed by the original Turkish version)
68	Import of Rice, Undersecretariat of Customs, no. 20421 (10 August 2006) (English translation, followed by the original Turkish version)
69	USDA Export Sales Report (rice section)
70	US Paddy Rice – 1006.10