ANNEX C

REPLIES BY THE PARTIES AND THIRD PARTIES TO THE QUESTIONS POSED BY THE PANEL AFTER THE FIRST SUBSTANTIVE MEETING

ANNEX C-1

REPLIES BY THE UNITED STATES TO QUESTIONS POSED BY THE PANEL AFTER THE FIRST SUBSTANTIVE MEETING

(30 November 2006)

Q1. (Both Parties) The United States has provided statistics on, *inter alia,* Turkish production, consumption and imports of milled rice in Exhibit US-45 attached to its first submission. Could the United States confirm the source of this data. The statistics provided by the United States go from 2001/2002 to 2006/2007. Can the United States confirm which of these figures correspond to actual events and which are projections.

1. The United States Department of Agriculture (USDA) official production, supply, and demand (PSD) is the source for the data provided in Exhibit US-45. For production numbers, USDA takes into account official Turkish production estimates; satellite imagery; weather (precipitation and temperatures) information and models; analysis from USDA personnel who travel to production areas within Turkey; and other sources of crop information. For trade numbers, USDA analyzes, evaluates, and cross-checks a variety of data sources, including customs data from the Turkish Statistics Corporation (TUIK) and independent trade specialists. For consumption and stocks numbers, USDA utilizes a network of assessments from specialists in the Office of Agricultural Affairs at the US Embassy in Ankara, agricultural economists in Washington, and international organizations (i.e. FAO, International Grains Council). The USDA official PSD numbers are reviewed and updated monthly by a US interagency committee chaired by USDA's World Agricultural Outlook Board (WAOB), and consisting of: the Foreign Agricultural Service (FAS), the Economic Research Service (ERS), the Farm Service Agency (FSA), and the Agricultural Marketing Service (AMS).

2. The data provided by the United States for 2001/2002 through 2005/2006 is based on actual historical events. The data provided for 2006/2007 are projected forecasts. Most of the data correspond to the Turkish marketing year (MY), which is September/August. The data provided in the seventh and eighth rows of the chart, however, correspond to the International Trade Year (TY), which is January/December. In cases where TY data is used, the data corresponds to the second year of the split year listed at the top of each column.

Q3. (Both Parties) Can the Parties also provide monthly information on imports into Turkey of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate), by country of origin.

3. The United States provides monthly import data from the Turkish Statistics Corporation (formerly the Turkish State Institute of Statistics) in Exhibit US-53. The data, which is provided in both numerical and graphical formats, covers imports up to and including September 2006. For USDA's estimates of total Turkish imports in 2006, please see the seventh row of the last column of the chart provided by the United States in Exhibit US-45 (300,000 metric tons on a milled rice equivalent basis). The United States provides an analysis of the data, which confirms the existence of an import ban covering MFN trade, in the answer to Question 26(b).

Q4. (Both Parties) In paragraph 26 of its first submission, Turkey asserts that "from 2003 to date, Turkey has approved a total of 2,223 Certificates of Control, allowing a total importation of 2,264,857 tonnes of foreign rice (paddy, brown and milled). Of the aforementioned quantity, 497.469 tonnes of rice equivalent have been allocated under the TRQ system since January 2004." In paragraph 65, Turkey asserts that "a high number of Certificates of Control (i.e., 2,223 between 2003 and 2006) were approved by MARA, corresponding to large amounts of

imported rice (i.e., 939.013 tonnes of rice equivalent between 2003 and 2006), both in relation to MFN and TRQ trade."

(a) Could the United States comment on the figures provided by Turkey. Can the United States also contrast these figures with the assertion contained in paragraph 1 of the United States' first submission that "[w]ith respect to the over-quota rate, Turkey's Ministry of Agriculture and Rural Affairs ('MARA') simply fails to issue licenses."

4. The figures provided by Turkey in its first submission asserting that Turkey's Ministry of Agriculture and Rural Affairs (MARA) issues Control Certificates for MFN trade have not been substantiated and are contradicted by the extensive documentary evidence presented by the United States. MARA fails to issue Certificates of Control at the over-quota rates of duty through the use of Letters of Acceptance. Letters of Acceptance are instruments in which the Turkish Grain Board's General Directorate of Protection and Control recommends to the Minister of Agriculture that MARA "delay" the start date for issuing Certificates of Control for rice to importers who do not purchase domestic paddy rice. Thus, the only way an importer may import rice into Turkey is through the TRQ system, under which the importer is obliged to purchase domestic paddy rice as a condition upon importation. The Letters often differentiate between Certificates of Control for paddy rice and Certificates of Control for "rice," which refers to milled rice.

5. The Minister's signature at the bottom of the document indicates that the Minister has "accepted" the Turkish Grain Board's recommendation. At this juncture, the United States is aware of Letters of Acceptance that cover the period September 1, 2003 through August 1, 2006:

– In Letter 964, dated September 10, 2003, the Minister of Agriculture accepted a recommendation to delay the start date for issuing Certificates to import rice until March 1, 2004;

– In Letter 107, dated January 23, 2004 (Exhibit US-12), Minister Guclu accepted a recommendation to delay the start date for issuing Certificates until July 1, 2004;

– In Letter 905, dated June 28, 2004 (Exhibit US-13), Minister Guclu again accepted a recommendation to delay the start date for issuing Certificates until January 1, 2005;

– In Letter 1795, dated December 30, 2004 (Exhibit US-14), Minister Guclu again accepted a recommendation to delay the start date for issuing Control Certificates until July 30, 2005;

– In Letter 1304, dated July 29, 2005, the Minister of Agriculture accepted a recommendation to delay the start date for issuing Certificates "until a new policy is in place;" and

– In Letter 390, dated March 24, 2006 (Exhibit US-36), Minister Eker accepted a recommendation to delay the start date for issuing Certificates until April 1, 2006. The panel in this dispute was established on March 17, 2006.[1]

[1] Despite this Letter, MARA apparently has continued to deny Certificates to importers who apply for them (*see* Exhibits US-22, US-39, US-40, US-41, US-42, and US-44). The continued denial of Control Certificates is likely due to the objections of Turkish producers (*see* Exhibits US-21 and US-24) decrying the intended change in policy announced by Minister Tuzmen in his March 24, 2006 letter to USTR Portman (Exhibit US-35). Further, Letter 390 asserts that MARA would continue denying the issuance of Certificates during the Turkish rice harvest (Exhibit US-36).

Thus, under the plain terms of the Letters of Acceptance, MARA officials are unable to grant Certificates of Control outside the TRQ regime, which was confirmed by a legal brief submitted by MARA's counsel in Turkish court.[2]

6. Turkey has asserted that this is not the case and that it does grant Certificates of Control, but it has not provided any documentary evidence to substantiate its claim. Further, as discussed in the US first submission and oral statement, Turkey has failed to rebut the documentary evidence presented by the United States in this regard, including the Letters of Acceptance, rejection letters to importers issued by MARA officials, and MARA's brief to the 1st Administrative Court of Ankara, in which MARA relied on the Letters of Acceptance as the sole legal basis for denying a Certificate of Control to a petitioning importer. Instead of providing documentary evidence of Certificates of Control granted for imports outside of the TRQ, Turkey has provided the chart contained in Annex 20. This chart raises several questions.

7. As an initial matter, the Letters of Acceptance only provide that MARA will not grant Control Certificates to importers who do not purchase domestic paddy rice. So, if MARA grants Control Certificates for importation under the TRQ, that fact would not rebut the US evidence that Turkey has imposed a ban on MFN trade.

8. Second, there is a vast discrepancy between the amount of Control Certificates Turkey claims it granted this year through September 21, 2006, for imports of US rice (400,000 metric tons) and the amount of US rice that US trade data shows has actually been shipped to Turkey in 2006 (about 18,000 tons through October 26, 2006). The United States cannot explain this discrepancy. It is notable that Turkey's chart shows a surge in Control Certificates in 2006, that is, when the DSB established the Panel. In addition, Turkey's chart shows that the vast majority of Control Certificates that Turkey allegedly granted in 2004 and 2005 were under the TRQ. Given that Turkey has alleged that the TRQ (with a domestic purchase requirement) provides a *benefit* to imported rice, it is unclear why importers would have suddenly decided in 2006 that the TRQ (with domestic purchase) no longer provided them an advantage, such that importers switched en masse from importing under the TRQ to importing at the MFN rates. It is also unclear from Turkey's chart whether the Control Certificates that MARA allegedly granted in 2006 were for outstanding applications that had been made in previous years or for new applications that were made after Minister Tuzmen's announced change in policy on Control Certificates "as of April 1, 2006." The chart also fails to indicate *when* the Certificates allegedly were granted – prior to April 1, 2006, which is when the alleged change in Turkish policy on Control Certificates began and which post-dates panel establishment, or after that date.

9. Third, even under Turkey's own revised chart, at least 96 per cent of the approved Control Certificates in 2004 and 83 per cent of the approved Control Certificates in 2005 were for entry under the TRQ, for which domestic purchase is required. Given how much more expensive it is to import rice under the TRQ regime,[3] 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.

10. Fourth, Annex 20 does not appear to account for imports of EU-origin rice. According to Turkish import data, Turkey imported approximately 25,000 and 32,000 tons of milled rice from Italy in 2004 and 2005, respectively.[4] Yet according to Annex 20, Turkey only granted Certificates of Control for approximately 7,000 tons of out-of-quota rice in 2004 and approximately 24,000 tons of

[2] Exhibit US-31.
[3] *See* paragraphs 32-37 of the US oral statement and Exhibit US-52.
[4] *See* Exhibit US-53.

out-of-quota rice in 2005. The validity period of Certificates of Control is no longer than twelve months – the Communiqués reserve MARA's right to shorten the validity periods of the Certificates – so Certificates obtained in prior years could not account for much of this apparent shortfall. This raises the question as to where EU rice imports can be found in Turkey's chart, as Turkey has asserted that all rice imports need to obtain Control Certificates.

11. Fifth, as previously noted, Annex 20 does not establish when the Certificates were allegedly granted, which creates particular problems interpreting the data for 2003 because the United States is not aware of any restrictions n importation prior to September 2003. MARA did not implement the import ban until September 10, 2003. That is when Turkey's Minister of Agriculture provided Ministerial approval to stop issuing Control Certificates. It is clear that there were no in-quota imports during the last four months of 2003, even though the first opening of the TRQ technically began on September 1, 2003, because Turkey did not announce the TRQ duty rates and domestic purchase requirement until late-April 2004. But these figures raise the obvious question as to when these Control Certificates for out-of-quota imports were allegedly granted.

12. Lastly, every Turkish importer the United States has spoken with has provided the same information: Turkey does not grant Control Certificates without the purchase of domestic paddy rice. The importers that have applied for Control Certificates outside the TRQ have been rejected or their applications have not been acted upon. Turkey has defended against related lawsuits brought by Torunlar and Mehmetoglu in Turkish court and has argued in court that it is bound by the Letters of Acceptance not to grant Control Certificates. In these circumstances, the figures in Annex 20 do not rebut the US evidence that MARA is not granting Control Certificates outside the TRQs, unless Turkey is willing to make copies of the Control Certificates available to review.

Q5. (Both Parties) Can the Parties provide monthly information on Turkey's domestic production of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate).

13. In Exhibit US-45, the United States provided this data for September 2003/August 2004, September 2004/August 2005, September 2005/August 2006, and a forecast for the current year which began in September 2006. USDA is unable to provide this data on a monthly basis. USDA annual production estimates are based on a Turkish marketing year (MY). Paddy production estimates are converted to milled rice production estimates based on an annual milling rate.

Q6. (Both Parties) Can the Parties provide monthly information on Turkey's domestic consumption of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate).

14. In Exhibit US-45, the United States provided this data for September 2003/August 2004, September 2004/August 2005, September 2005/August 2006, and a forecast for the current year which began in September 2006. USDA was unable to obtain this data on a monthly basis. USDA annual consumption estimates are based on a Turkish marketing year (MY). All consumption estimates are based on a milled equivalent basis since nearly all rice consumed in Turkey is milled white rice.

Q7. (Both Parties) Can the Parties provide the following information regarding Turkey's monthly average domestic prices of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate): (i) average prices for domestic production in the Turkish market; (ii) landed CIF prices; and, (iii) prices quoted by the Turkish Grain Board. Please indicate the source of your estimates and provide evidence, as appropriate.

(i) average prices for domestic production in the Turkish market

15. The United States was able to obtain prices for milled rice in Turkey, wholesale and retail, from Turkish representatives of the USA Rice Federation, the primary association of US producers and exporters, but was unable to obtain such prices for paddy and brown rice. Exhibit US-54 shows prevailing prices of imported rice (U.S. Calrose and Egyptian), as well as Turkish rice (Baldo and Osmancik), in March, July, and November for the four years requested.

(ii) landed CIF prices

16. Please see Exhibit US-55. These prices were obtained from the Turkish Statistics Corporation.

(iii) prices quoted by the Turkish Grain Board

17. Please see Exhibit US-56. The 2003/2004 data was obtained from the Turkish Rice Millers Association. The remainder of the data was obtained from the website of the Turkish Grain Board (TMO). The paddy procurement prices presented in this exhibit are for paddy rice with a milling yield rate of 59-60 per cent whole kernels which is the average milling rate for Turkish rice. The United States was unable to obtain paddy rice sales prices for osmancik for all four years, so that has not been included in the chart. The United States was unable to obtain monthly pricing data, so only annual pricing data is presented, although the United States understands that the prices quoted by TMO do not change on a monthly basis.

Q11. (United States) Can the United States please provide the source of data that it has used to determine relative average import cost of a tonne of rice as set out in paragraph 52 of its submission.

18. The $295 per metric ton price cited in paragraph 52 was a spot price for US Calrose paddy rice in late 2005 in the US market.[5] Upon further reflection, the United States decided it would be more accurate to use average prices for US exports and Turkish domestic rice in 2005, as explained in the US oral statement and presented in Exhibit US-52.

Q13. (Both Parties) In paragraph 4 of its closing statement during the first substantive meeting with the Panel, the United States referred to "a bilateral agreement between the European Union and Turkey [under which] the European Union has an annual quota of 28,000 tons of milled rice".

(a) Please provide the provisions of that agreement, relevant to the importation of rice into Turkey.

19. Please see Exhibit US-58 ("Decision Regarding Tariff Quota Imposition on Import of Certain Agricultural Products of European Community Origin," Official Gazette No. 23225, January 9, 1998). As provided in the EC Quota Arrangement, Turkey permits the duty free importation of 28,000 metric tons of milled rice from the European Communities into Turkey each year. Article 3 provides that Turkey's Foreign Trade Undersecretariat will issue an import permit that an importer must submit to Turkish Customs for the shipment to be admitted into Turkey, but it is unclear whether this is a reference to the Certificates of Control or to some other document.

(b) Explain whether European imports of rice into Turkey are treated differently from other imports.

[5] Exhibit US-57.

20. It is the understanding of the United States that in-quota imports of EC-origin rice are not subject to the restrictions and requirements imposed on imported rice and are permitted entry at any time during the year. The United States spoke with a representative of the Italian Rice Millers Federation this week, who confirmed that there are no restrictions on EC-origin rice that enters under the EC quota but that importers are required to purchase domestic paddy rice with respect to any imports of EC rice over the 28,000 metric ton annual cap. It is clear from Turkish import data that in-quota EC imports are treated differently because imports of EC-origin rice occur during periods when other imports have ceased. For example, during the three periods of time since September 10, 2003 when the TRQ has been closed (and thus only out-of-quota imports are possible) – September 10, 2003 through April 27, 2004, September-October 2004, and September-October 2005 – EC-origin rice has been able to enter Turkey, whereas imports from other major rice exporters, such as Egypt and the United States, suddenly cease completely or, at best, plummet to *de minimis* levels.[6] [7]

(c) More specifically, explain whether importers of European rice are required to obtain Certificates of Control in order to import rice into Turkey.

21. It is unclear to the United States from the terms of the EC Quota Arrangement whether importers of EC-origin rice are required to obtain Certificates of Control in order to import rice into Turkey.

Q14. (Both Parties) Can the Parties describe, in chronological order, the steps that are necessary to import rice into Turkey, in terms of the different documents that must be obtained and other formalities that have to be completed, identifying the authorities involved in each step. Please make reference to the relevant legal instruments and provide evidence where appropriate.

22. ***Imports of Rice Generally:*** An importer must complete a multitude of steps in order to import rice.[8] First, the importer must obtain a Certificate of Control from MARA, specifically from the Provincial Agricultural Directorate office in Ankara. To obtain the Certificate, pursuant to Article 2 of the 2006 Communiqué the importer 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."[9] Further, the FTU website provides that "if the product to be imported is found to meet the criteria required," MARA will grant the Certificate.[10]

23. It is unclear to what specific documents the phrases "other documents which may be asked for, depending on the product" and "the criteria required" refer. Article 3 of the 2006 Communiqué appears to refer to the possibility that MARA may need to determine the compatibility of a product with human health and safety or animal and plant health. However, Article 2 of the Communiqué does not refer specifically to Article 3; rather, it is much broader.[11] As a result, Article 2 provides

[6] Turkish import data shows what appears to be a large shipment of Chinese rice in December 2003, which appears to be the lone instance where significant quantities of non-EC origin rice has entered Turkey while the TRQ was closed.

[7] In addition, Turkish import data reveals that, in September 2006, which was just after the TRQ "expired" and which marks the beginning of the Turkish rice harvest, rice imports once again fell to zero.

[8] This step-by-step outline of the importation process was provided to the United States by Turkish importers.

[9] Annex TR-1.

[10] General Assessment of the Regime Regarding Technical Regulations and Standardisation for Foreign Trade (27 May 2005) (www.dtm.gov.tr) (Exhibit US-43).

[11] And, as discussed below, Turkish importers claim that MARA does not request the phytosanitary certificate at the stage when it decides whether or not to grant the Control Certificate. Rather, MARA does not require the presentation of a phytosanitary certificate until the Provincial Agricultural Directorate that has

Turkey with sufficient flexibility to permit MARA to deny the Certificate if an importer does not provide with its Control Certificate application documentation from MARA demonstrating that the importer has purchased domestic paddy rice.

24. Second, assuming that the importer has actually obtained a Certificate of Control from MARA, it then would present the Certificate to the specific Turkish Customs office at the port where the importation is to take place and complete the required Customs form using the information contained in the Control Certificate.

25. Third, the importer then goes back to MARA a second time – specifically, to the Agricultural Provincial Directorate from the region where the port is located – and presents the Customs form and a phytosanitary certificate. If the Provincial Agricultural Directorate approves the importation (through analysis of product samples), the Directorate writes a letter granting permission for the importation.

26. Fourth, assuming that MARA approves the importation, the importer goes back to Turkish Customs a second time with the following documentation: the approval letter from the Provincial Agricultural Directorate, the invoice, the receipt for payment of the merchandise, a value declaration form from the exporter, the Control Certificate, the phytosanitary certificate, and if the payment for the merchandise has not been made in full, some documentation from the importer that it is acceptable to pay in instalments. All of these documents must be originals. Turkish Customs then gives the importer an invoice for the total duties owed. The importer can pay the duty at that time or through a wire transfer.

27. With the receipt of payment of the duties and the Customs form, the importer can go to the port and secure the release of the product.

28. Importers have informed the United States that Turkish Customs will not let the importer begin the process if it does not present a Control Certificate. If an importer decides to make contractual arrangements for the shipment before obtaining a Certificate of Control, as Torunlar did, the importer is taking a risk. If MARA does not issue a Certificate, the shipment will not be allowed to clear Customs and is destined for a bonded warehouse.

29. ***Imports of Rice under the TRQ Regime:*** Under the TRQ regime, the importation process is even lengthier. First, the importer must purchase domestic paddy rice.[12] This requirement has been tweaked over time but, as a general matter, the importer needs to purchase domestic paddy rice in specified quantities and obtain a receipt from the Turkish Grain Board documenting that the purchase has been made. The domestic purchase requirement has been modified over time in several respects. In the first TRQ opening (April 27, 2004 through August 31, 2004), importers could only purchase domestic paddy rice from TMO, and the amount of domestic paddy rice that was required to be purchased was not specified, at least not in the regulation.[13] In both the second (November 1, 2004

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jurisdiction over the port where the importation is to be realized asks for it. But this step only takes place after MARA has already granted the Control Certificate.

[12] The documents published in the Official Gazette allow importers to purchase domestic rice of any variety, but Letter of Acceptance 1795 confirms that the domestic purchase requirement can only be satisfied through the purchase of domestic paddy rice. Turkey did not appear to dispute this fact at the first substantive meeting. In this regard, the United States is submitting a revised translation of Letter 1795 to replace the current document labeled as Exhibit US-14. The language quoted by the United States in its first written submission was taken from this revised translation, which was done by a translator at the United States Department of State, Division of Translating Services. The United States inadvertently attached a different translation of this document with its first written submission, which is why the language quoted by the United States from Exhibit US-14 did not match the language in the exhibit as originally submitted. The United States regrets the error.

[13] Article 1 of the April 2004 Notification (Exhibit US-3).

through July 31, 2005) and third (November 1, 2005 through July 31, 2006) TRQ openings, importers could purchase domestic paddy from either TMO or Turkish producers and producer associations. While the precise quantities of rice that had to be purchased were specified, those amounts varied depending on the identity of the Turkish province from which the rice was purchased.[14]

30. Second, the importer needs to request that TMO provide a receipt documenting that the importer has purchased domestic paddy rice from either TMO or Turkish producers or producer associations.[15]

31. Third, the importer must apply to Turkey's Foreign Trade Undersecretariat (FTU) for an import permit and attach the TMO receipt to the application.[16] If FTU approves the importation, it will provide an import permit, which the importer must present to MARA when it applies for a Control Certificate.

32. Fourth, the importer must apply to MARA for a Certificate of Control.

33. Fifth, assuming that FTU grants an import permit and MARA issues a Certificate of Control, the importer would need to proceed through all the same steps outlined in the previous section ("Imports of Rice Generally"), with the addition of presenting the import permit to Turkish Customs.[17]

Q16. (Both Parties) Does Turkey's import system for rice affect imports from the United States in particular, or does it apply to all imports in the same way?

34. Turkey's import system for rice appears to affect all non-EC origin rice imports in the same way although, as the largest exporters of rice to Turkey, Egypt and the United States, are primarily affected by Turkey's restrictions on the importation of rice.

Q17. (United States) Please identify the main importers in Turkey of rice originating from the United States. Please also provide information as to the volumes these importers were importing, specifying whether they are importing (or attempting to import) at the MFN rate or under the TRQ and the problems they have faced when accessing the Turkish market.

35. The main importers of U.S.-origin rice are Torunlar, Akel, and Goze, but they may also import rice from other sources. All three of these companies have a large milling capacity, so they prefer to import US paddy rice.[18] Two other Turkish importers, Erdogan and Multigrain, import small quantities of U.S.-origin rice as well, and both companies have milling facilities. The United States was unable to obtain further information regarding ETM. Importers agreed that they would rather import US rice at the MFN rate if Turkey permitted it, which is confirmed by the repeated attempts of Torunlar, Mehmetoglu, and other importers to obtain Control Certificates outside the TRQ. However, the United States is unable to provide further information with respect to the remainder of the question. Please see the US answer to Question 62 for more information in this regard.

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[14] Article 1 of the September 2004 Regulation (Exhibit US-6) and Articles 1 and 2 of the September 2005 Notification (Exhibit US-11).

[15] Application Form Sample In Order to Benefit From the Tariff Quota and Receive Import License for the Imports of Domes Types of Paddy Rice and Rice, Items 8 and 9 (Exhibit US-11).

[16] See Article 2 of the April 2004 Notification (Exhibit US-3), Article 4 of the August 2004 Decision (Exhibit US-5), Article 4 of the September 2005 Decision (Exhibit US-10), and the Application Form (contained in Exhibit US-11).

[17] See Article 3 of the April 2004 Decree (Exhibit US-2), Article 4 of the August 2004 Decision (Exhibit US-5), and Article 4 of the September 2005 Decision (Exhibit US-10).

[18] The United States previously was a large exporter of milled rice to Turkey. It is our understanding that US rice exporters switched their exports from milled rice to paddy rice when Turkey lowered the tariff rate on paddy rice significantly below the tariff rate for milled rice.

Q18. (Both Parties) It would seem that in some respects Turkey's import regime for rice has changed since the initiation of this dispute before the WTO in November 2005. If this is correct, could the Parties specify:

(a) The nature of those changes, including their dates and relevant legal instruments.

(b) The specific reasons for these changes.

(c) The potential effects of these changes.

36. With respect to the TRQ regime, the most recent TRQ opening covered the period November 1, 2005, through July 31, 2006. (The United States requested consultations on November 2, 2005.) The relevant legal instruments for the third TRQ opening are the following:

– Decision of the board of ministers: Decree No. 2005/9315 related to the implementation of a tariff contingent on the import of certain types of paddy rice and rice types (Official Gazette, No. 25935, 13 September 2005);[19] and

– A notification related to the implementation of a tariff contingent on the import of certain paddy rice and rice types, from the Foreign Trade Undersecretariat (Official Gazette, No. 25943, 21 September 2005).[20]

Further, the Decision of the board of ministers: Decree No. 2004/7333 related to the management of quota and tariff contingent on import (Official Gazette, No. 25473, 26 May 2004) provided FTU with the legal authority to make this and earlier openings of the TRQ and is still in force.[21]

37. Turkey claims that the TRQ "expired" on July 31, 2006, and will not be re-opened. Yet the TRQ already has "expired" and been re-opened on two occasions, despite Turkey's statements to the contrary.[22] The advent of these panel proceedings may also help explain why Turkey has not yet re-opened the TRQ with domestic purchase since July 31, 2006.[23] In addition, the United States has been informed by the trade that MARA is orally informing importers that the MFN tariffs will henceforth be calculated based upon government-determined reference prices for paddy, brown, and milled rice, respectively, rather than on the actual customs value of the merchandise.

38. With respect to imports outside the TRQ, the 2006 Communiqué was issued on December 31, 2005 to replace the 2005 Communiqué. According to the trade, the Communiqué is re-published in the Official Gazette every year, and the provisions of the 2005 and 2006 versions of the Communiqué are essentially the same.

39. Re-issuance of the Communiqué did not affect MARA's decision not to grant Control Certificates outside the TRQ. In Letter of Acceptance 1304, dated July 29, 2005, Turkey's Minister of Agriculture accepted a recommendation to delay the start date for issuing Control Certificates "until a new policy is in place."[24] Turkey began to formulate its "new policy" in March 2006. In his March 24, 2006, letter to then-USTR Rob Portman, which was prompted by the establishment of this

[19] Exhibit US-10.
[20] Exhibit US-11.
[21] Exhibit US-4.
[22] *See, e.g.,* G/AG/R/41, para. 23 (February 17, 2005).
[23] *See* Exhibits US-21, 24, and 35-37.
[24] The United States was unable to obtain a copy of this document, but its contents are discussed in Letter of Acceptance 390 (Exhibit US-36).

Panel on March 17, 2006, Turkish Minister of State Kursad Tuzmen stated that "the control certificate will be issued *as of* April 1, 2006."[25] On the same day of Minister Tuzmen's letter to Ambassador Portman, MARA issued Letter of Acceptance 390, in which Minister Bakan accepted a recommendation to delay the start date for issuing Certificates until April 1, 2006 for both paddy and milled rice.[26] Thus, the ban on imports of rice outside the TRQ scheme was still in place on March 17, 2006 – the date the DSB established this Panel.

40. Based on Minister Tuzmen's letter and Letter of Acceptance 390, it appeared that, as of April 1, 2006, MARA would begin issuing Control Certificates without requiring importers to purchase domestic paddy rice under the TRQ. However, MARA apparently has continued to deny Certificates to importers who have applied for them.[27] This is likely due to the objections of Turkish producers decrying the intended change in policy.[28] (Such objections may have been what prompted Turkey's apparent reliance on a reference price system, but the United States is unable to provide the Letter of Acceptance establishing the reference price regime, and importers are apparently being informed orally by MARA of the new reference prices.)

41. Further, Letter 390 states that the "closing date" to issue Control Certificates will be August 1, 2006, and that the ban on issuing Control Certificates to import rice during the harvest season "will be suitable to be kept in place." This is borne out by Turkish import data, which show that in September 2006, rice imports into Turkey ceased.[29]

Q21. (United States) In paragraphs 100 and 101 of its first submission, the United States has argued that Turkish regulations restrict the issuance of import licenses under the tariff-rate quotas (TRQs) to certain categories of persons, with the result that only domestic rice producers, and principally those with milling capacity, are eligible to import rice. The United States has referred to this as the "eligibility criteria". Can the United States clarify whether it views this argument as an additional and separate claim.

42. Turkey's requirement that only those entities who purchase domestic paddy rice may import rice into Turkey is an "other measure" imposing a "restriction . . . on importation" that is inconsistent with Article XI:1 of the GATT 1994. This claim of inconsistency is separate from the US claims regarding the domestic purchase requirement itself, which are concerned with the disparate treatment of imported and domestic products.

43. Specifically, Turkey restricts to the class of persons or entities that may import rice into Turkey; only those importers who purchase domestic paddy rice are eligible to import under the TRQ regime. First, the requirement is an "other measure" under Article XI:1. As noted in paragraph 57 of the US first written submission, the term "other measure" has been interpreted quite broadly by past panel and Appellate Body reports. The *India – Autos* panel called it a "broad residual category" that was reflective of the broad scope of coverage of Article XI:1. The limitation on eligible importers to those who purchase domestic paddy rice acts as a restriction on importation, and it is not a quota, export or import license, duty, tax, or charge.

44. In practice, this limitation on eligibility restricts eligible importers to Turkish rice millers. Paddy rice cannot be eaten. It must be milled before it can be consumed. Packers, retailers, and consumers do not have milling capacity. As they cannot mill the rice, it would be useless for them to purchase it. Only those with milling capacity purchase paddy rice; thus, millers are the only entities

[25] Exhibit US-35 (emphasis added).
[26] Exhibit US-36.
[27] *See* Exhibits US-22, US-39, US-40, US-41, US-42, and US-44.
[28] *See* Exhibits US-21 and US-24.
[29] *See* the chart in Exhibit US-53.

likely to be eligible to import rice, given the domestic purchase eligibility criterion. Not coincidentally, Torunlar, Akel, and Goze, the three largest Turkish importers of US rice, all have large milling facilities, and the United States is unaware of any Turkish importers of US rice that do not have milling facilities. Thus, the limitation on who may import rice into Turkey to those importers who purchase paddy rice acts as a restriction on importation and, as a result, breaches GATT 1994 Article XI:1.

Q22. (United States) For each of the measures that the United States has challenged in the current proceedings, please identify the relevant time periods that the Panel should consider in its analysis.

45. With respect to the measures that the United States has challenged in this proceeding, the key point in time is the state of the measures as they existed on March 17, 2006, when the DSB established this Panel and the Panel's terms of reference. The Panel should consider evidence from any time period that would aid its analysis of the measures as they existed on that date.

46. With respect to Turkey's failure to grant import licenses, or Control Certificates, at the over-quota rates of duty, the United States has presented evidence of Letters of Acceptance covering the period September 10, 2003 through August 1, 2006. With respect to the domestic purchase requirement, the United States has presented evidence that the TRQ regime, which features the domestic purchase requirement, was first instituted on April 20, 2004. The TRQ regime is still in place, as the 1995 Decree and the May 2004 Decree remain in force,[30] and thus far has been opened on three separate occasions, the most recent opening covering the time period November 1, 2005 through July 31, 2006. The United States also has presented evidence in the form of court documents, Control Certificate rejection letters, and press clippings dating from this period, all of which the panel should consider in its analysis of the WTO-consistency of the measures as they existed on March 17, 2006.

Q25. (Both Parties) Can the "letters of acceptance" constitute a valid legal basis to override provisions contained in Decrees and Communiqués issued by the Turkish Foreign Trade Undersecretariat (FTU)?

47. The Letters of Acceptance do not necessarily override the terms of the FTU Communiqués. It is not clear that importation is supposed to be automatic even under the Communiqués. Pursuant to the 2006 Communiqué, an importer wishing to obtain a Certificate of Control from MARA 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."[31] The 2005 Communiqué uses the same language, as noted in paragraph 20 of the US first written submission.[32] Further, the FTU website provides that "if the product to be imported is found to meet the criteria required," MARA will grant the Certificate.[33]

48. This language is broad enough to provide MARA with the flexibility to "ask for" other documents on a product-by-product basis. There is nothing in the FTU Communiqués limiting the type of documents that MARA can request. Letter of Acceptance 1795 makes clear that MARA will not grant Control Certificates to importers who do not purchase domestic paddy rice. Under the TRQ regime, importers need to document such purchases to FTU by presenting proof of purchase issued by the Turkish Grain Board in their applications for an FTU import permit. Receipts documenting the

[30] *See* paragraphs 39 and 42 of the US first written submission and Exhibit US-4.
[31] *See* Article 2 of the 2006 Communiqué (Annex TR-1).
[32] The US translation of this phrase is "other documents that may be required."
[33] General Assessment of the Regime Regarding Technical Regulations and Standardisation for Foreign Trade (27 May 2005) (www.dtm.gov.tr) (Exhibit US-43).

purchase of domestic paddy rice certainly constitute "other documents which may be asked for, depending on product, by the Ministry."

49. Further, paragraph 11 of the 2005 and 2006 Communiqués, which are identical, provide that, "provisions of other applicable ordinances shall prevail on all other matters not treaded [sic] in the present Notification." FTU has no role in the issuance of Control Certificates, which is administered by MARA, or in the mechanics of fulfilling the domestic purchase requirement, which is overseen by the Turkish Grain Board. The Letters of Acceptance are Ministerial approvals that are directly applicable to these matters and, therefore, prevail over the Communiqués.

50. Even if the Letters of Acceptance were in conflict with the Communiqués, the Letters bar the issuance of Control Certificates on their face. Therefore, the Letters constitute a prohibition or restriction on importation under Article XI:1 of the GATT 1994 whether or not Turkey treats the Letters as legally binding and overriding the Communiqués. Moreover, the United States has provided ample evidence that MARA interprets the Letters as overriding the Communiqués. As shown in Exhibit US-31, counsel for MARA argued in Turkish domestic court that the Letters precluded MARA from issuing any Control Certificates for the periods specified and cited the Letters as the sole basis under which MARA could not grant a Certificate to Torunlar. When another importer, Mehmetoglu, requested a Control Certificate in April 2006, a MARA official responded that "it is not possible to prepare a control certificate according to our laws and regulations."[34] This language can be interpreted in no other manner than as a general statement referring to the issuance of Control Certificates as a whole, not to the denial of a Control Certificate in that particular instance.

51. Letters of Acceptance 1304 and 390 confirm that this is the case. Letter 390, the subject of which is "[i]mport of rice and paddy rice," notes that, pursuant to Letter 1304, "it was decided not to issue any control certificate until a new policy is in place." The Letter stated that it was necessary to "finalize the new policy on rice/paddy rice import as soon as possible" and this document, dated March 24, 2006, apparently contained that new policy. The DSB established the panel in this dispute on March 17, 2006, or one week prior to the date that Minister Eker signed the Letter.

Q26. (United States) In paragraph 80 of its first submission, the United States states that the so-called "letters of acceptance", "apply to all importers seeking a Certificate of Control from MARA in order to import rice" and that they are "Ministerial Decisions taken by the Turkish Minister of Agriculture [that] are binding under Turkish law".

(a) Can the United States elaborate on its assertion that the so-called "letters of acceptance" "apply to all importers seeking a Certificate of Control from MARA in order to import rice".

52. At the time of the US first submission, the United States understood that MARA only required importers to obtain a Control Certificate for rice imports outside the TRQ regime. Thus, this statement was made in the context of discussing the import ban with respect to MFN trade. The United States has presented substantial evidence, including the Letters of Acceptance, rejection letters, court documents, and press reports, establishing that such a ban exists, and that there was a conscious decision by Turkey's Minister of Agriculture to implement such a ban. Turkey has not provided any documentary evidence to rebut these documents.

53. In its first written submission, Turkey has asserted that importers also are required to obtain Control Certificates for in-quota imports, and that it is issuing such documents freely. As mentioned in its oral statement at the first substantive meeting, the United States appreciates the clarification from Turkey, but notes that this requirement makes the TRQ regime more discretionary than the

[34] Exhibit US-22.

United States previously had understood, as importers are required to obtain two import licenses and appear before four Turkish government agencies in order to import rice.

54. In any event, Letter of Acceptance 1795 clarifies that MARA will not issue Certificates to importers who do not purchase domestic paddy rice, which is a requirement for in-quota importation, so the Letters only prohibit Control Certificate issuance outside the TRQ regime. And Turkey's Annex 20 confirms that Turkey distinguishes between Certificates issued for MFN trade and Certificates issued under the TRQ regime by laying out raw numbers of Certificates that allegedly have been granted and distinguishing between Certificates granted for in-quota trade and Certificates granted for out-of-quota trade. Therefore, even if Turkey is issuing Control Certificates under the TRQ, this has no bearing on the issue of Control Certificate issuance at the over-quota rates of duty.

55. The United States also is awaiting clarification from Turkey as to whether importers of EC-origin rice need to obtain Control Certificates, as such imports are subject to a separate quota regime established pursuant to a bilateral agreement between Turkey and the European Communities.

(b) Can the United States provide evidence to support its assertion that the so-called "letters of acceptance" "are binding under Turkish law".

56. In the first US written submission, oral statement, and answers to previous questions, the United States has provided evidence that the Letters of Acceptance are binding under Turkish law. The Letters constitute Ministerial approvals of Turkey's Minister of Agriculture, who signs each document to indicate his assent, and are clear on their face that no Control Certificates are to be granted for specified periods of time.

57. MARA's interpretation of these documents has conformed with the plain meaning of the text of these documents. As previously mentioned, MARA's lawyer, arguing in Turkish domestic court to deny a Control Certificate to a petitioning importer, cited the Letters of Acceptance as precluding MARA from issuing any Control Certificates for the periods specified and as the exclusive legal basis under which MARA could not grant a Certificate to the importer. The importer in question, Torunlar, which is one of the primary importers of US rice, petitioned MARA unsuccessfully for a Control Certificate on three separate occasions in 2003 and 2004 before finally taking its case to court. MARA's interpretation of the Letters of Acceptance, as reflected in its arguments before a Turkish tribunal, was not case specific but applied to all importers applying for Control Certificates. MARA confirmed this interpretation in April 2006 when, in responding to another importer's request for a Control Certificate, it stated that "it is not possible to prepare a control certificate according to our laws and regulations."[35] As discussed in the answer to Question 25, Letters of Acceptance 390 and 1304 confirm that the denial of Control Certificates is a blanket prohibition covering all imports of rice.

58. Turkey's own import data confirms the existence of an import ban covering MFN trade. Since September 10, 2003, there have been three periods of time where the TRQ was closed: (1) September 10, 2003 through April 27, 2004; (2) September-October 2004; and (3) September-October 2005. Thus, during those periods of time, the only way to import rice into Turkey would have been at the MFN rates. The import data clearly shows four clear trends:

– With one exception, imports of non-EC origin rice during those periods were either zero or at de minimis levels;

[35] Exhibit US-22.

– Rice imports were at high levels and/or rising in the months immediately preceding these periods, bottomed out during these periods, and resumed immediately following those periods at high levels;

– The TRQ is closed every year over the September/October period. Not coincidentally, these are the first two months of the Turkish rice harvest and, therefore, the time when Turkey would most want to protect its domestic producers by prohibiting importation; and

– During these periods, rice imports from Egypt, the United States, and other countries appeared to be at *de minimis* levels or, more commonly, zero, whereas rice imports from the European Communities continue unabated. EC imports are governed by a separate quota regime and are not subject to the restrictions challenged by the United States in these panel proceedings.

The import data thus also supports that the Letters of Acceptance are binding under Turkish law. To the extent Turkey is claiming that it ignores the Letters of Acceptance, the United States would note that, even if that were accurate (and the evidence indicates that it is not accurate) a failure to enforce a measure does not render that measure consistent with the WTO Agreement.[36] The Letters of Acceptance are on their face import restrictions and as such inconsistent with the WTO Agreement.

Q38. (Both Parties) In paragraph 25 of its first written submission, Turkey asserts that "[a]n approved Certificate of Control for rice importation will be valid, contrary to the claims from the United States, for a period of twelve months on the basis of Article 9(c) of the Communiqué No. 2006/05."

(b) Can the United States comment on this assertion.

59. The United States appreciates Turkey's clarification that "chapters" in Article 9(c) refers to HTS chapters, and not to chapters within the individual Annexes, and thus, that Control Certificates for rice importation can be valid for up to twelve months, not four months. Nevertheless, the validity period – be it twelve months or twelve years – is irrelevant as Turkey's Minister of Agriculture has ordered that Certificates are not to be granted to importers that do not purchase domestic paddy rice. Further, Turkish regulations do not preclude MARA from altering the validity periods for Control Certificates. Article 9 of the Communiqués states that the validity periods "shall not be extended." However, Article 9 is silent on the question of whether MARA can *shorten* the validity periods.

Q42. (United States) In paragraph 62 of its first submission, the United States claims that "the 2005 Communiqué is clear that the Certificate is a document that Turkey's Ministry of Agriculture and Rural Affairs (MARA) requires as a condition for permitting importation; there is no mention of Turkish customs in the Communiqué." Could the United States address the situation before the entry into force of "the 2005 Communiqué" (Communiqué 25687).

60. The United States was unable to obtain a copy of the 2003 Communiqué, but the 2004 Communiqué appears to be essentially the same as the later Communiqués. We are in the process of translating this document, and will provide it with our rebuttal submission.

Q43. (United States) In paragraph 55 of its first submission, the United States asserts that the Turkish Foreign Trade Undersecretariat (FTU) "... will grant an import licence to import under the TRQ ... without requiring that an importer obtain a Certificate of Control". In contrast,

[36] Appellate Body Report, *United States – Anti-Dumping Act of 1916*, WT/DS136/AB/R, WT/DS162/AB/R, adopted September 26, 2000.

Turkey states in paragraph 33 of its first submission that "[i]n addition to the import licences obtained for purposes of quota allocation, of course, importers also had to comply with all other customs obligations and requirements, in particular the presentation and approval by MARA of the required Certificates of Control".

(a) Can the United States demonstrate that Certificates of Control were not required to import rice inside the TRQ?

(b) Can the United States please provide evidence that imports inside the TRQ did not require a Certificate of Control?

61. In order to answer more fully the panel's questions, the United States has attempted to obtain additional evidence regarding in-quota trade. However, as discussed in the answer to Question 62, importers in Turkey have, for the most part, been unwilling to provide any documentation on this matter since the panel meeting.

62. The United States has not been able to identify provisions in any of the documents comprising the TRQ regime mandating that importers obtain Certificates of Control as a condition upon importation, but Turkey has now clarified that a Control Certificate is required under the TRQ. As previously discussed, this raises additional concerns about the discretionary nature of the TRQ regime because importers need to obtain two import licenses – a Control Certificate from MARA and an import permit from FTU – and obtain approval from four different Turkish government agencies – TMO, FTU, MARA, and Customs – in order to import rice into Turkey. Further, as previously discussed, the fact that importers may be required to present a Certificate of Control for imports within the TRQ does not rebut the US evidence that Turkey does not grant Certificates for imports at the over-quota rates of duty.

Q45. (Both Parties) In paragraph 72 of its first submission, the United States asserts that "Turkey fails to grant Certificates of Control 100 per cent of the time" and, similarly, that "Turkey never grants Certificates of Control."

(a) Can the United States provide arguments to support its assertion and specify the exact period to which it refers.

63. Pursuant to Ministerial approvals known as Letters of Acceptance, Turkey does not grant Control Certificates to import rice outside the TRQ. The cited statements were made in the context of the over-quota rates of duty and under the belief that MARA did not require Control Certificates for in-quota imports. Turkey has stated that it does, in fact, require Control Certificates under the TRQ regime and the EC Quota Arrangement. However, this does not alter the fact that Turkey's Minister of Agriculture repeatedly has ordered MARA personnel not to grant any Control Certificates which, as clarified by Letter of Acceptance 1795, refers to situations where importers attempt to import without purchasing domestic paddy rice, i.e., outside the TRQ.

64. The time period to which the United States refers is September 10, 2003, through the present. The first Letter of Acceptance of which the United States is aware was issued on September 10, 2003. In that Letter, the Minister of Agriculture accepted a recommendation from TMO to delay the start date on which MARA would grant Control Certificates. Following that Letter were at least five additional Letters of Acceptance with similar terms, which ensured that Certificates of Control would not be granted until April 1, 2006, or two weeks after the DSB established the panel in this dispute. The experiences of Mehmetoglu and ETM confirm that Turkey has continued to deny Certificates of Control since April 1.

Q46. (United States) In paragraph 67 of its first submission, the United States notes that a Minister of State from Turkey, in a letter to the US Trade Representative, dated 24 March 2006 pledged that "the control certificate will be issued as of April 1, 2006". Could the United States please elaborate on its related claim according to which, by this phrase, the Minister from Turkey would have "acknowledged that Certificates of Control were not being granted" and would have "confirmed that Turkey had not been issuing Certificates of Control up to that point in time".

65. In his March 24, 2006 letter, Minister Tuzmen stated that Control Certificates "*will be* issued *as of* April 1, 2006" (emphasis added). The logical implication of Minister Tuzmen's statement is that Control Certificates were not being issued at that time, but that Turkey would begin ("will be") issuing such Certificates beginning on ("as of") April 1, 2006. This is confirmed by the context in which this letter was provided to the United States.

66. As discussed in the US first written submission, the United States has been expressing, in bilateral discussions as well as in WTO committee meetings, its concern that MARA did not issue Control Certificates for some years. On November 2, 2005, the United States requested WTO consultations with respect to Turkey's restrictions on the importation of rice, including Turkey's failure to grant import licenses to import rice outside the TRQ. Consultations failed to resolve the dispute. As a result, on February 17, 2006 the United States made its first request to establish a panel to review the matter, which included Turkey's failure to issue licenses outside the TRQ. The DSB established the panel on March 17, 2006. On March 24, 2006 – one week after the DSB established the panel in this dispute – Minister Tuzmen presented Ambassador Portman with the cited letter stating that Turkey would, "as of April 1, 2006," issue Control Certificates.

67. Also on March 24, 2006, Letter of Acceptance 390 was issued. The Letter noted that on July 29, 2005, "it was decided not to issue any control certificate until a new policy is in place." The Letter further noted that it had been necessary to solicit the views of the Turkish Grain Board in order to finalize a new policy as soon as possible. This Letter was apparently that new policy, meaning that control certificates were not being issued as of that date. The last paragraph of the Letter provided the following:

> Taking into account the developments at WTO, I am asking your approval to rearrange the dates to issue control certificates to import rice/paddy rice . <u>The start date to issue certificates will be April 1, 2006</u> ... .[37]

68. This alleged "start date" to issue certificates is consistent with Minister Tuzmen's statement of the same day that "the control certificate will be issued as of April 1, 2006." Moreover, the use of the term "start date" further confirms that MARA was not issuing Control Certificates at the time of Minister Tuzmen's letter. Lastly, an April 28, 2006, letter from Mehmetoglu to MARA requesting a Control Certificate notes that a "letter numbered 14060 and dated 25.04.2006" – perhaps another Letter of Acceptance – noted that the "preparation period of control certificate for rice imports has <u>started</u> ."[38]

69. The United States has presented evidence that, in fact, MARA did not start issuing Certificates as of April 1, 2006, as it had stated it would, perhaps because of intense domestic industry and importer opposition. Nonetheless, MARA's stated intent to "start" issuing Control Certificates as of April 1, 2006, makes clear that MARA was not issuing Control Certificates to import outside the TRQ prior to that date.

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[37] Exhibit US-36 (emphasis added).
[38] Exhibit US-42 (emphasis added).

Q47. (United States) In paragraph 72 of its first submission, referring to Turkey's alleged failure to grant Certificates of Control, the United States refers to the case of an importer who attempted to obtain a Certificate of Control back in 2003 and was still waiting for a response from Turkey's Ministry of Agriculture and Rural Affairs (MARA). Could the United States identify other cases in which MARA has denied or not approved importers' applications for Certificates of Control to import rice outside the TRQ?

70. As discussed further in response to Question 63, four Turkish importers – Torunlar, Mehmetoglu, Goze, and Akel – account for approximately 90 per cent of all imported rice into Turkey. The United States and Egypt are the two largest exporters of rice to Turkey.

71. Torunlar is one of the major importers of US rice into Turkey. The case referenced in paragraph 72 of the US first written submission, and elaborated upon in paragraphs 28-31 of that submission, relates to Torunlar. As discussed in the US submission, Torunlar applied to MARA for a Control Certificate to import rice outside the TRQ three times between August 2003 and January 2004, but MARA would not grant the Certificate. Torunlar was forced to file suit in Turkish Court to try to obtain the Certificate.

72. The United States understands that Mehmetoglu is the major importer of Egyptian rice into Turkey. As discussed in paragraphs 35-36 of the US first written submission, Mehmetoglu heard about Minister Tuzmen's announcement that Control Certificates would be issued as of April 1, 2006, and decided to submit an application on April 10, 2006. After not hearing back from the Provincial Agriculture Directorate, Mehmetoglu sent several letters to MARA complaining about the lack of action on its application, noting that provincial officials had informed the company that they had been orally instructed not to provide Certificates, and requesting an explanation for why its application would not be granted. On May 1, 2006, the Provincial Agriculture Directorate provided the explanation that Mehmetoglu had requested, namely that "it is not possible to prepare a control certificate according to our laws and regulations."

73. Subsequent to the first panel meeting in this dispute, the United States has learned that Mehmetoglu had applied to MARA for Control Certificates to import milled rice outside the TRQ on three other occasions in 2005 and 2006. When MARA refused to grant its applications, Mehmetoglu filed three separate lawsuits in Turkish court in order to obtain a Control Certificate. Two of those lawsuits remain pending but, in one case, the court issued a decision in favor of the government's position that it could not issue Control Certificates. The court's opinion cites as grounds for its decision two Letters of Acceptance: Letter of Acceptance 1795, dated December 30, 2004 (Exhibit US-14), and Letter of Acceptance 1304, dated July 29, 2005, which provided that Control Certificates would not be issued during the time periods in which Mehmetoglu requested them. The United States has obtained the relevant court documents, but is still in the process of translating them. We will provide the translated documents and further detail on their contents with the US rebuttal submission.

74. A representative from Akel, another Turkish importer that imports rice mostly from the United States, informed US officials that it also applied for Control Certificates, but its applications were not granted. A representative of Goze, another importer of US rice, informed US officials that it did not apply for a Control Certificate because it knew that MARA was not granting any Control Certificates without domestic purchase. Finally, as discussed in paragraph 37 of the US first written submission, another Turkish importer, ETM, also tried to obtain a Control Certificate in April 2006 after Minister Tuzmen's announcement that it would begin issuing Certificates, with the same result as Mehmetoglu and Akel.

Q48. (United States) In paragraph 2 of its first submission, the United States alleges that "[i]mporters who have applied for licenses often wait for months or even years for a response to their applications, and if they do receive a response, their license applications are denied with

little reason (e.g., spelling errors) or denied with no reason provided at all." Please provide additional information relating to the factual claim that importers who have applied for Certificates of Control often wait for months or even years for a response to their applications, as well as other instances where this treatment has occurred.

75. Torunlar, one of the primary importers of US rice into Turkey, applied for a Control Certificate in August 2003. More than two years later, on December 12, 2005, Torunlar sent a letter to the Provincial Directorate of Agriculture in which it continued to plead is case for a Control Certificate. During the intervening period, Torunlar made three attempts to apply for a Certificate. As discussed in paragraph 28 of the US first submission, MARA rejected the first request because certain documents allegedly were missing. MARA rejected the second request due to alleged spelling errors. MARA rejected the third request in September 2004 – more than eight months after Torunlar first applied for a Certificate – without providing any explanation for the rejection.

76. Mehmetoglu, one of the primary importers of Egyptian rice, has applied for a Control Certificate to import outside the TRQ at least three times in 2005 and 2006, and none of those applications have been granted. MARA rejected one of Mehmetoglu's requests on May 1, 2006, but only after Mehmetoglu sent three letters to MARA demanding an explanation for the delay in the issuance of the Control Certificate. As noted in the US response to Question 47, the United States has obtained additional documentation with respect to Mehmetoglu's other requests for Control Certificates, and subsequent lawsuits, and will provide that information and additional argumentation in the US rebuttal submission.

77. The United States is aware of other instances where MARA has not acted on importer applications for Control Certificates, some of which are discussed in the answer to Question 47. However, as elaborated upon in response to Question 62, most of the importers that the United States has contacted have been unwilling to provide additional documentation since the first panel meeting. Thus, the United States is unable to provide additional documentary evidence with respect to other importers' experiences with the Control Certificate application process. Nevertheless, the general rule appears to be that, if an importer does apply for a Control Certificate, MARA will not respond to the application, either at all, or in a timely fashion, and if it does respond, the application will be rejected.

Q49. (Both Parties) During the first substantive meeting, Turkey asserted that once an importer obtains a Certificate of Control, the actual importation depends on market-related factors, such as relative exchange rates, demand, prices, etc.

(a) Can the United States comment on this point?

78. Turkey's Minister of Agriculture provides that no Control Certificates are to be granted at the over-quota rates of duty. However, assuming that Control Certificates were granted, Turkey's assertion would have been correct. Market-related factors would have been a part of importers' decision making if trade were not restricted. For example:

– The United States had a record high medium grain crop during the August 2004/September 2005 marketing year. These abundant supplies and lower US prices coincided with a continued drought in Australia resulting in nearly record US exports of medium grain rice over this period. The US stocks to use ratio of 22 per cent for medium grain rice during that marketing year indicates that the United States could have exported even larger volumes than it did if importation was not de facto restricted to a small group of importers and if entities in Turkey could have made purchasing decisions based on market-related factors. Turkey showed no import

response to lower prices because importers could not obtain the necessary Control Certificates.

– Australia had been a regular supplier to Turkey prior to the imposition of the import ban in mid-September 2003. In 2005/2006, Australian exports rebounded from drought the previous marketing year. However, Turkey did not return as a customer.

– Egypt also had significantly larger exportable supplies during the time period under examination by the Panel, due to expanded area planted paired with the highest field yields of any rice producing country in the world. Nevertheless, Turkish imports still showed months of zero imports from one of their largest suppliers.

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

Q50. (Both Parties) Under what circumstances, or on what grounds, if any, would Turkey's Ministry of Agriculture and Rural Affairs (MARA) not issue a Certificate of Control?

80. Pursuant to the Letters of Acceptance, MARA does not have any legal authority to issue Certificates of Control to importers who do not purchase domestic paddy rice. Each Letter spells out explicitly that Turkey's Minister of Agriculture accepts a recommendation from TMO not to grant such Certificates for a particular period of time and provides Ministerial approval to "delay" the start date for issuing such Certificates. MARA considers itself to be bound strictly by these Letters. When Torunlar petitioned the 1st Administrative Court of Ankara to force MARA to issue a Control Certificate, MARA's counsel cited these Letters as the sole legal basis for its failure to issue a Certificate. When Mehmetoglu applied for a Certificate in April 2006, the Provincial Agriculture Directorate replied that it was not possible to issue a Certificate under Turkish laws and regulations. When Mehmetoglu sued MARA in Turkish court to force the Ministry to issue a Control Certificate without domestic purchase, the Court issued an opinion in favor of the government, citing the Letters of Acceptance as the legal basis for rejecting the Control Certificate applications. Letter of Acceptance 1795 confirms that the failure to issue Control Certificates only applies to importers attempting to import rice outside the TRQ regime, i.e., without purchasing domestic paddy rice.

81. Turkey has clarified that it does, in fact, grant Control Certificates under the TRQ regime and to importers of rice from the European Communities, which is governed by a separate quota regime than rice from other sources. Nonetheless, this does not alter the fact that Turkey's Minister of Agriculture has ordered officials of his ministry not to grant any Control Certificates to importers who do not purchase domestic paddy rice, i.e., outside the TRQs. And, as the United States mentioned in paragraph 24 of its oral statement, if Turkey requires importers under the TRQ regime to obtain a Control Certificate, in addition to the import permit already required by FTU, the TRQ regime is even more discretionary than the United States previously understood.

Q51. (United States) In paragraph 71 of its first submission, the United States claims that "Turkey did not grant [Certificates of Control] at all for a period of over 2 ½ years and is still not granting them." Could the United States please specify the exact period(s) during which Turkey allegedly did not grant any Certificates of Control. Please identify the reason provided in each case when there was a formal rejection.

82. The time period referenced in paragraph 71 – "over 2 ½ years" – is September 10, 2003 through April 1, 2006. The first Letter of Acceptance of which the United States is aware was issued on September 10, 2003. In that Letter, the Minister of Agriculture accepted a recommendation from TMO and provided Ministerial approval to delay the start date on which MARA would begin to grant Control Certificates. Following that Letter were at least five additional Letters of Acceptance with similar terms, which ensured that Certificates of Control would not be granted until April 1, 2006, or two weeks after the DSB established the panel in this dispute.

83. The United States has been informed by the trade that importers knew that MARA was not granting Certificates so many did not bother applying for them. Those who did apply for Certificates either had their applications rejected or did not receive a response after waiting months or even years. As elaborated upon in the US response to Question 62, most of the importers that the United States has contacted have been unwilling to provide additional documentation on this matter since the panel meeting. However, the evidence the United States has provided thus far makes clear that Turkey does not, consistent with the plain language of the Letters of Acceptance, grant Certificates of Control for imports outside the TRQ (i.e., without domestic purchase):

- In Torunlar's case, MARA rejected Torunlar's first request because certain documents allegedly were missing, the second request due to alleged spelling errors, and the third request without explanation.

- One of Mehmetoglu's requests was rejected on the grounds that "it is not possible to prepare a control certificate according to our laws and regulations." In the correspondence with MARA, Mehmetoglu makes reference to conversations between the importer and MARA in which MARA officials said that they had been orally instructed not to provide Control Certificates. As previously mentioned, the United States will provide further information on Mehmetoglu's other Control Certificate requests and related court documentation in the rebuttal submission.

- ETM's request for a Control Certificate was not granted, but was never formally rejected. The company says that it was informed orally that no documents were missing, yet "based on the verbal instructions of the Ministry's Undersecretariat, the preparation of documents were stopped."[39]

84. Turkey has clarified that it does, in fact, grant Control Certificates under the TRQ regime and to importers of rice from the European Communities. (Imports of EC-origin rice are governed by a separate quota regime than is rice from other sources, and a representative of the Italian Rice Millers Association has confirmed that in-quota imports are not subject to any of the restrictions and requirements being imposed by Turkey on other imports.) Again, this information does not alter the fact that Turkey's Minister of Agriculture repeatedly has ordered officials of his ministry not to grant any Control Certificates which, as clarified by Letter of Acceptance 1795, applies to importers attempting to import without purchasing domestic paddy rice, i.e., outside the TRQs.

[39] Exhibit US-44.

Q52. (United States) In paragraph 26 of its first written submission, Turkey asserts that "Certificates of Control have been systematically and regularly approved on a non-discriminatory basis since the entering into force of 'The Regime for Technical Regulations and Standardization for Foreign Trade' in 1996." Can the United States comment on this assertion.

85. The United States has only presented documentation concerning this matter from September 10, 2003, to the present. Rice exporters had raised concerns regarding Turkey's seasonal import ban prior to that date, but the United States has not submitted evidence on this point. From September 10, 2003, onward, however, the United States has provided evidence contradicting Turkey's assertion that it is granting Control Certificates. As previously discussed, pursuant to the explicit terms of the Letters of Acceptance, Turkey does not grant Control Certificates to import rice outside the TRQ.[40] It did not grant Certificates from September 10, 2003, through the date of panel establishment and has yet to provide any evidence that it is granting such Certificates now. In fact, the United States presented evidence in the form of correspondence between importers (Mehmetoglu and ETM) and news reports demonstrating that Turkey has continued to deny Certificates of Control since April 1, and the court documents from the Mehmetoglu litigation will provide further confirmation that MARA is not issuing Control Certificates.

Q56. (United States) In paragraph 63 of its first submission, the United States asserts that the Certificates of Control would in any event be a prohibition or restriction on importation that is made effective by an "other measure" within the meaning of Article XI:1 of GATT 1994. Please elaborate on what grounds the United States argues that the Certificates of Control and the alleged denial thereof can be considered an "other measure" for purposes of the application of Article XI:1 of GATT 1994.

86. As noted by the United States in its first submission, the range of measures covered by Article XI:1 of the GATT 1994 is broad.[41] Other than duties, taxes, or other types of charges, WTO Members are not permitted to employ any prohibition or restriction on imports whether through quotas, import licenses, or "other measures." Past panels have also interpreted Article XI:1 as covering a broad scope of measures.

87. Turkey's prohibition on MFN trade in rice is made effective through MARA's decision not to grant import licenses, or Control Certificates, for importers who do not purchase domestic paddy rice. The blanket prohibition on the issuance of Control Certificates is operationalized through the Letters of Acceptance (which are Ministerial approvals to delay the start date for issuance of Control Certificates), substantiated by the court documents, rejection letters, and newspaper articles submitted by the United States, and borne out by Turkey's own import data.

88. If the panel were to find that Control Certificates are not import licenses for purposes of Article XI:1 of the GATT 1994, the United States believes that MARA's failure to issue Control Certificates constitutes an "other measure" for such purposes. On its face, the term "other measures" is extremely broad and covers any measure other than quotas, import or export licenses, duties, taxes, or other charges. Read in context, the term "other measures" covers any other type of measure that a Member could take that would prohibit or restrict imports, other than those measures specifically mentioned in Article XI:1.

89. In order to import rice at the over-quota rates of duty, an importer must obtain a Control Certificate from MARA. Turkey's Minister of Agriculture decided not to issue such Certificates, as

[40] As previously mentioned, Turkey has clarified that Control Certificates are granted under the TRQ regime and the EC Quota Arrangement.

[41] See paragraphs 57 and 63 of the US first written submission.

evidenced by the Letters of Acceptance and the rest of the documentary evidence presented by the United States. MARA's failure to issue such Certificates blocks imports of rice outside the TRQ regime. Accordingly, Turkey's failure to provide importers with Control Certificates outside the TRQ is an "other measure" amounting to a prohibition or restriction on importation, and thereby is in breach of Article XI:1 of the GATT 1994.

Q57. (United States) In footnote 90 to paragraph 58 of its first submission, the United States claims that "even if Turkey did issue Certificates of Control, the conditions of use associated with such Certificates would constitute a 'restriction' on importation for purposes of Article XI:1." Could the United States provide detailed arguments for this claim.

90. Turkey has stated that Control Certificates to import rice – assuming they were granted – are valid for twelve months and can be utilized for more than one shipment. Regardless of whether or not that is the case, as previously discussed, the United States is not planning to pursue this claim further.

Q58. (United States) As noted by the United States in paragraph 19 of its first submission, according to Article 1 of the Turkish Foreign Trade Undersecretariat's (FTU) Communiqué No. 2005/5, Turkey's Ministry of Agriculture and Rural Affairs (MARA) determines the "fitness and compatibility" of certain products, including rice, with respect to human health and safety and other concerns. Accordingly, rice importers must present a Certificate of Control from MARA to Turkish Customs upon importation. Subsequently, in paragraph 62 of its submission, the United States argues that MARA's requirement that importers obtain a Certificate of Control is consistent with the definition of "import licensing" for purposes of Article 1 of the Agreement on Import Licensing. In the United States' view, is verification of the fitness and compatibility of imported agricultural products with relevant human health and safety regulations an administrative procedure that goes beyond what is required for customs purposes?

91. The Import Licensing Agreement covers "administrative procedures *used for the operation of import licensing regimes* requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member" (emphasis added). With respect, the United States believes that the relevant inquiry is whether a particular administrative procedure "used for the operation of an import licensing regime" goes beyond what is required for customs purposes.

92. Verification of the fitness and compatibility of agricultural products with the relevant health and safety regulations is a procedure that is sometimes required with respect to both imported and domestic products. So there is not necessarily any linkage between obtaining a phytosanitary certificate and importation. And, in the United States' view, it is unnecessary for the panel to decide, for purposes of resolving this dispute, whether the verification of the fitness and compatibility of agricultural products is an administrative procedure that goes beyond what is required for customs purposes. Rather, what matters is how a measure – whether it be a requirement to obtain a Control Certificate, a receipt for domestic purchase, or a phytosanitary certificate – is "used for the operation of an import licensing regime."

93. Here, Turkey is using the denial of the Control Certificate, which has all of the characteristics of an import license, as a WTO-inconsistent trade barrier. Turkey is not, to our knowledge, using the issue of "fitness and compatibility" to block or restrict rice importation. In fact, importers have informed US officials that MARA's Provincial Agricultural Directorates do not even ask for the phytosanitary certificate until *after* the Provincial Agricultural Directorate in Ankara has granted the Control Certificate. The US claim is that MARA is simply not granting the Certificates as the key factor in its operation of its import licensing regime, and that Turkey is using its failure to issue Control Certificates – irrespective of the individual elements comprising the Certificates – as an

import barrier. Because the United States is not arguing that Turkey is using the verification of the fitness and compatibility of imported rice as an import barrier, the Panel does not need to reach the issue of whether an analysis of fitness and compatibility is an administrative procedure that goes beyond what is required for customs purposes.

Q60. (Both Parties) In paragraph 26 of the provisional version of its oral statement, Australia indicates that "the measure at issue is Turkey's alleged blanket denial of Certificates of Control." Could the Parties comment on this statement. If appropriate, provide evidence to support your statements.

94. To be more precise, one of the measures being challenged by the United States is Turkey's blanket denial of Certificates of Control outside the TRQ regime, which amounts to a prohibition or restriction on importation that is in breach of Article XI:1 of the GATT 1994. As discussed in the answer to Question 4, the instrument used by MARA to effectuate the denial of Control Certificates is the Letter of Acceptance. There are other measures being challenged, including the Control Certificates themselves.

95. Turkey has clarified that it grants Control Certificates under the TRQ regime and to importers of rice from the European Communities under a separate quota regime.

Q61. (Both Parties) In paragraph 27 of the provisional version of its oral statements, Australia indicates that "[i]f the Panel finds that Turkey has in fact adopted a practice of denying Certificates of Control altogether... this could constitute a 'measure of general application' for the purposes of Article X:2 [of the GATT 1994], whether or not the Letters of Acceptance themselves can be enforced". Could the Parties comment on this statement.

96. Turkey's decision not to issue Control Certificates at the over-quota rates of duty, which were operationalized through the Letters of Acceptance, is a "measure of general application" for purposes of Article X:2 of the GATT 1994. In *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, the Appellate Body upheld the panel's finding that a country-specific safeguard was a "measure of general application" under Article X:2 because it "affects an unidentified number of economic operators, including domestic and foreign producers."[42]

97. In this dispute, each Letter of Acceptance applies to all non-TRQ rice trade, with the exception of trade governed by the EC Quota Arrangement, and Letter of Acceptance 390 confirms that the Letters are part of a policy governing all imports of paddy and milled rice outside the TRQ. Thus, the ban on the issuance of Control Certificates applies to all trade outside the TRQ regime, and it affects an unknown number of potential rice exporters from Egypt, the United States, and other WTO Members, as well as Turkish importers, millers, producers, wholesalers, packers, retailers, and consumers.

98. With regard to Australia's second point, the United States has provided ample documentary evidence that the Letters are being enforced – which will be further supplemented by the Mehmetoglu court documents – and that such Letters amount to more than individual instances of denial, but rather to a blanket ban. In any event, the Appellate Body in the *1916 Act* dispute found that mere non-

[42] *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted February 25, 1997, page 21. The Appellate Body further noted that "[t]he essential implication [of Article X:2] is that Members and other persons affected, or likely to be affected, by governmental measures imposing restraints, requirements and other burdens, should have a reasonable opportunity to acquire authentic information about such measures and accordingly to protect and adjust their activities or alternatively to seek modification of such measures." *See also United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/R, adopted February 25, 1997, para. 7.65.

enforcement of a measure does not preclude a finding of WTO-inconsistency. In that dispute, the measure at issue had never been enforced by the United States. By contrast, in the instant dispute the United States already has provided several instances where MARA has enforced the ban.

Q62. (United States) In its first submission the United States refers to three importers who were allegedly denied Certificates of Control to import rice into Turkey (Torunlar, Mehmetoglu, and ETM). Could the United States indicate additional cases where the importation of rice into Turkey was denied.

99. Prior to the first substantive meeting of the panel with the parties, Turkish importers had been extremely open and helpful in discussing Turkey's import licensing regime for rice and providing illustrative documentation.[43] After the first substantive meeting, the United States contacted several importers to solicit further documentation that would help to answer the panel's questions. Unfortunately, since the panel meeting most of the importers have become unwilling to provide such information. One importer contacted by US officials already had been provided with a copy of the panel's confidential questions from an unknown source. Thus, the United States is not able to provide further elaboration on this question or questions 64 through 66.

Q63. (Both parties) During the first substantive meeting with the Panel, Turkey asserted that the case of the difficulties faced by Torunlar in trying to import rice was exceptional.

(c) Can the United States specify the origins of rice imported by the three importers identified in its first submission (Torunlar, Mehmetoglu, and ETM).

(e) Can the Parties provide information regarding the importance and share of these three importers (Torunlar, Mehmetoglu, and ETM) in total imports of rice into Turkey and, more specifically, in imports of US rice into Turkey during the relevant period.

100. Torunlar, Mehmetoglu, Goze, and Akel are the top Turkish rice importers. Torunlar, Goze, and Akel import paddy rice from the United States, and Mehmetoglu imports Egyptian milled rice. According to officials at the US Embassy in Ankara, these four companies account for approximately 90 per cent of the imported rice in Turkey. The United States is unable to provide more detailed information (see answer to question 62).

Q64. (United States) In paragraph 28 of its first submission, the United States asserts that one importer, Torunlar, has been trying since 2003, without success, to import rice - and to get previously imported rice out of the warehouse - on the strength of a Certificate of Control. Was Torunlar seeking to import rice at the MFN rate of duty, under the tariff quota system, or both?

101. See answer to question 62.

Q65. (United States) In paragraph 30 of its first submission, the United States asserts that Torunlar had previously had no problems obtaining a Certificate of Control to import rice into Turkey. Can the United States clarify when, and how many times, had Torunlar obtained Certificates of Control for the importation of rice.

102. See answer to question 62.

[43] *See, e.g.,* Exhibits US-22, US-23, US-28, US-29, US-30, US-31, US-32, US-33, US-34, US-39, US-40, US-41, US-42, and US-44.

Q66. (Both Parties) In paragraph 31 of its first submission, the United States asserts that Torunlar's lawsuit against the Ministry of Agriculture and Rural Affairs (MARA) "is still pending", making reference to a letter from the Ankara Governorship Province Agriculture Department (Exhibit US-33). What is the current status of the lawsuit to date?

103. See answer to question 62.

Q69. (United States) In paragraph 41 of its first submission, the United States notes that Article 2 of Communiqué No. 25445 ("Application of Tariff Quota for the Importation of Some Species of Paddy Rice and Rice"), concerning the domestic purchase requirement, "... specified that the sources of the rice that had to be purchased in order to benefit from the reduced tariff rates under the TRQ were TMO, Turkish producers, or Turkish producers associations, and rice imports would be allocated according to the amount of rice one wanted to import". Can the United States identify the specific section of Article 2 where this is stated.

104. Article 1, rather than Article 2, of Communiqué No. 25445 provides that rice imports would be allocated according to the amount of rice an importer wished to import. As the United States notes in paragraph 41 of its first written submission, this first opening of the TRQ, as contrasted with the two most recent TRQ openings, does not provide the precise quantities of domestic rice that an importer must purchase in order to import. It appears that the amount of rice that must be purchase domestically is left to the discretion of TMO.

105. Furthermore, the United States was incorrect in asserting that "the sources of the rice that had to be purchased in order to benefit from the reduced tariff rates under the TRQ were TMO, Turkish producers, or Turkish producers associations." Under this first opening of the TRQ, importers were required to purchase domestic rice from TMO. FTU did not provide importers with the option of purchasing rice from Turkish producers or producer associations until the second and third openings of the TRQ.

Q70. (United States) In paragraph 100 of its first submission, the United States asserts that the category of persons who purchase rice from the Turkish Grain Board would "undoubtedly be domestic producers as well". Turkey responds, in paragraph 100 of its first submission, that the United States "fails to argue or prove the validity of this assertion and its factual occurrence". Please provide the basis for asserting that those who purchase rice from the Turkish Grain Board would necessarily be domestic producers.

106. Letter of Acceptance 1795 clarifies that MARA will not grant Control Certificates to importers who do not purchase domestic paddy rice from the Turkish Grain Board or Turkish producers or producer associations. In the most recent opening of the TRQ, an importer wishing to import rice needed to purchase a larger quantity of domestic paddy rice than the amount of rice the importer wanted to import in order to realize the importation. Under this scheme, as a theoretical matter anyone can import rice who purchases paddy rice. The domestic purchase requirement in effect restricts importation to those entities with milling capacity. Thus, for greater precision, the reference to domestic producers in paragraph 100 was meant to refer to producers of rice for consumption (i.e., millers), not to growers.

107. As an initial matter, the domestic purchase requirement is more onerous for importers that are trying to import milled rice than paddy rice. This is most likely by design as Turkey wants to develop its milling capacity so it attempts to discourage imports of milled rice. Turkey's domestic tariff schedule, which provides for a much higher MFN rate for milled rice (45 per cent *ad valorem*) than for paddy rice (34 per cent *ad valorem*), confirms that intention.

108. In any event, non-millers would have no reason or desire to purchase paddy rice, not to mention the large quantities of paddy rice that are necessary to import milled rice under the TRQ. Paddy rice needs to be further processed and would not be sold to consumers in raw form. For an entity without milling capacity, this rice is useless, and milling facilities are not a minor investment. Building and maintaining a rice milling facility requires the investment of several hundred thousand to several million US dollars to engineer a system of sophisticated equipment in an adequate building with storage capacity. It would require the permanent installation of bulky machinery, such as: shellers to remove the husk; destoners to remove small foreign material; millers to remove bran layers; polishers to whiten the kernel; sorters to remove the broken pieces; and a host of conveyers and holding tanks to keep the system running smoothly. As a consequence, Turkish packagers, retailers, and consumers would not have the capacity or the desire to purchase paddy rice and, therefore, it is hardly surprising that the three main importers of US rice – Torunlar, Akel, and Goze – have large milling facilities.

109. Given these factors, it is clear that the requirement to purchase domestic paddy rice imposes a significant impediment to those entities wanting to import rice, thereby ensuring that only importers with milling capacity would actually import rice into Turkey.

Q72. (Both Parties) Can Turkey comment on the United States' assertion contained in paragraph 123 of its first submission, that "Turkey ensures that the full amount of the quotas cannot be reached by setting the domestic purchase requirement so high that the entire Turkish domestic production of rice would be purchased by importers before the in-quota amount was reached" and that, "[b]ased on the levels of domestic purchase set forth thus far, there is no way for importers to be able to import anywhere approaching the 300,000 metric ton limit on milled rice imports." If that were the case, please refer in particular to the reasons Turkey would have, if any, in setting the import quotas above the actual level of possible realisation of imports. Does the United States have any comments on the matter?

110. Turkey's total rice imports in MY 2001/2002 and 2002/2003 were approximately 300,000 metric tons and 325,000 metric tons, respectively. However, the domestic purchase requirement is so large that the alleged 300,000 metric ton (milled rice equivalent) cap (or 500,000 metric tons of paddy rice under the conversion factor) cannot be reached.

111. Total paddy rice production in Turkey was 415,000 metric tons in MY2003/2004, 500,000 metric tons in MY2004/2005, and 600,000 metric tons in MY2005/2006, for an average of 505,000 metric tons per marketing year.[44] The most generous domestic purchase requirement in the most recent TRQ opening was for importers who wanted to import paddy rice and purchased domestic paddy rice from Turkish producers or producer associations in certain designated provinces. Pursuant to the first row of the chart contained in the September 2005 Notification, such importers could import 800 kilograms of paddy rice for every ton of domestic paddy rice they purchased, for a ratio of 1:1.25.[45] Assuming that no milled rice was imported and all paddy rice could be imported using the least onerous ratio available, importers would have to purchase 625,000 metric tons of paddy rice in order to import 500,000 tons of paddy rice. Turkey's average paddy rice production in the past three marketing years is 505,000 metric tons. The 625,000 metric ton figure is not only much larger than the average, but it is larger than the 600,000 metric tons of paddy rice produced in MY2005/2006, Turkey's largest harvest to date.

[44] Turkish paddy rice production was 360,000 metric tons in both MY2001/2002 and MY 2002/2003, before increasing rapidly overt the past three years. This is probably not a coincidence, but the intended effect of Turkey's import licensing system. Because Turkish producers know that their entire crop will be purchased at prices that are significantly higher than the world price, they are encouraged to produce larger quantities of paddy rice each year, thereby diminishing the need for imports over time.

[45] *See* Exhibit US-11.

112. In fact, it is not possible to even approach the cap, because the scenario outlined above is unrealistic. Egypt exports milled rice to Turkey, and the domestic purchase ratio for importing milled rice is much more onerous than the ratio for importing paddy rice: importers need to purchase two or three times the quantity of domestic rice than the amount of milled rice they want to import. Second, there is a footnote to the first row of the chart contained in the September 2005 Notification. The footnote provides that the domestic purchase requirement is much larger with respect to imports from certain other enumerated provinces which, interestingly enough, account for approximately 80-85 per cent of Turkish paddy rice production. For those purchasing paddy rice from these provinces – most likely the majority – importers would need to purchase nearly two times as much domestic paddy rice as the amount of paddy rice they wanted to import, and nearly three times as much domestic paddy rice as the amount of milled rice they wanted to import.

Q73. (Both Parties) In paragraph 23 of the written version of its oral statements, Australia indicates that "... WTO jurisprudence supports the view that the imposition of an 'additional requirement' or an 'extra hurdle' on imported products, when compared to like domestic products, constitutes less favourable treatment ..." Australia adds that "these 'extra hurdles' need not be onerous in commercial and/or practical terms to be inconsistent with Article III:4 of GATT 1994". Could the Parties comment on this statement.

113. The United States agrees with Australia. In paragraph 97 of its first written submission, for example, the United States noted that the *Canada – Wheat* panel found that measures are inconsistent with Article III:4 of the GATT 1994 if they impose requirements on foreign products that are not imposed on domestic products.[46] The panel noted that Article III:4 did not contain a de minimis exception, and the fact that an extra requirement on an imported product might not be onerous in commercial and/or practical terms did not change the fact that it was still an additional requirement to which the like domestic product was not subject and thus was inconsistent with Article III:4.[47]

114. Previous reports lend support to this interpretation of Article III:4. First, the Appellate Body in the *Section 211* dispute found that a provision imposing an additional hurdle on foreign successors-in-interest that was not imposed on domestic successors-in-interest was inconsistent with US national treatment obligations in Article 2(1) of the Paris Convention (1967) and Article 3.1 of the TRIPS Agreement.[48] The panel noted that, although these were not the same provisions as Article III:4 of the GATT 1994, the Appellate Body's reasoning was nevertheless persuasive since the issue was national treatment.[49] Second, the GATT panel in the *Malt Beverages* dispute found a US requirement that only imported beer had to be distributed through an "additional level of distribution" – in that case, in-state wholesalers or other middlemen – constituted less favorable treatment for imports and was in breach of Article III:4 of the GATT.[50]

Q74. (Both Parties) In pages 2 and 3 of the written version of its oral statements, Korea indicates that "[n]o matter how much the cost of buying domestic rice was lowered by virtue of the so called domestic purchase requirement, it can not be denied that importers had to resource additional funds to purchase domestic rice, and foreign rice could be imported more if such funds were not forced to be used to buy domestic rice. The main focus in this issue is not

[46] *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/R, adopted September 27, 2004, para. 6.185 ("*Canada – Wheat (Panel)*").

[47] *Canada – Wheat (Panel)*, para. 6.190.

[48] *Canada – Wheat (Panel)*, para. 6.185, *citing United States – Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/AB/R, adopted February 1, 2002, para. 268.

[49] *Canada – Wheat (Panel)*, para. 6.185.

[50] *Canada – Wheat (Panel)*, para. 6.185, *citing United States – Measures Affecting Alcoholic and Malt Beverages*, adopted June 19, 1992, BISD 39S/206, paras. 5.32 and 5.35.

the price of domestic rice but the additional obligation imposed on the importers". Could the Parties comment on this statement.

115. Korea is correct that the domestic purchase requirement imposes an additional cost on importers seeking to import rice. Importers cannot purchase as much imported rice as they would like because some of their resources that would have been devoted to purchasing imported rice have to be expended to satisfy the domestic purchase requirement. This requirement is therefore a restriction on imports inconsistent with Article XI:1 of GATT 1994.

116. The United States disagrees with Turkey's argument that the cost of buying domestic rice is lowered by the domestic purchase requirement. In order to reach this conclusion, Turkey completely ignores the domestic purchase requirement and focuses on the average costs of each ton of rice that is part of the transaction. But that misses the point. An importer only cares about the total cost of the transaction, not the average cost of each ton, and no importer, if given the choice, would choose to purchase two tons of rice to import one ton of rice, if it was possible to import that one ton of rice without domestic purchase.

Q75. (Both Parties) Two of the Third Parties in their oral statements have presented views on the applicability of the Agreement on Trade-Related Investment Measures (TRIMs Agreement). China in paragraphs 4 and 5 of the provisional version of its oral statement, asserted that "Turkey ignores the fact that the US fails to define what 'trade-related investment measure' is and to prove Turkey's measure constitutes a TRIM"; and adds that "[i]n no case it is proper to bring a measure out of the coverage of TRIMs Agreement under the jurisdiction of it." Korea, in page 3 of the written version of its oral statement, noted that the TRIMs Agreement can only be applied to investment measures, which must have both a trade and an investment element. In the case of the domestic purchase requirement, it asserted that "there does not appear to be an investment element", and if so, "it can not be an investment measure, therefore the TRIMs Agreement could not be applied." Could the Parties please comment on the assertions made by China and Korea in their oral statements.

117. The proposed interpretation of China and Korea is not consistent with the text of the TRIMs Agreement. As the United States explains in paragraphs 110-112 of its first written submission, the TRIMs Agreement does not define what are "investment measures related to trade in goods" that would breach Article III:4; instead, it provides a non-exhaustive "Illustrative List" of such measures in the Annex to the Agreement. Accordingly China is wrong to claim that the United States has an obligation to define a TRIM. Nor does the TRIMs Agreement impose a separate requirement that a measure must satisfy in addition to the illustrative list in order to be in breach of the TRIMs Agreement. To satisfy the requirements of paragraph 1(a) of the Annex, and thereby prove that a measure is inconsistent with Article 2.1, the United States must demonstrate that the domestic purchase requirement mandates that importers purchase domestic products and that importer compliance with the domestic purchase requirement is necessary to obtain an advantage. Turkey's domestic purchase requirement satisfies both elements: Turkey requires importers to purchase domestic rice in certain specified quantities, and fulfilling the domestic purchase requirement is necessary to obtain an advantage, namely importing rice under the lower rates of duty under the TRQ regime. Thus, Turkey has breached Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement.

118. And in any event, the TRIMs Agreement does not limit the type of "investment" at issue in an "investment measure." A definition of the term "invest" is: to "expend (money, effort) in something from which a return or profit is expected, now esp. in the purchase of property, shares, etc., for the sake of interest, dividends, or profits accruing from them."[51] Thus, an investment is an expending of

[51] *The New Shorter Oxford English Dictionary*, Volume I, p. 1410.

money in order to realize a profit. The definition confirms the traditional identification of investing in property or the stock market, but recognizes that such are only examples how one may "invest." Any productive activity will involve investment.

119. Taking the ordinary meaning of the term "trade-related investment measure," Turkey's domestic purchase requirement is a TRIM that is inconsistent with Article 2.1 of the TRIMs Agreement. It requires importers to expend money in Turkey to purchase domestic rice as a condition for importation, which importers must do to make a profit. And the requirement is related to trade because it is a condition that importers must fulfill in order to import rice into Turkey. The domestic purchase requirement is really no different than a local content requirement, where an auto manufacturer is required to source a certain percentage of parts and components domestically as a condition for being able to build automobiles in the host country (and ostensibly turn a profit). Both domestic purchase and local content requirements affect investments in a country's industry and affect trade flows and, therefore, both are subject to the disciplines of the TRIMs Agreement.

Q76. (United States) Can the United States identify which are the trade-related investment measures it is challenging in the current proceedings.

120. As discussed in the answer to Question 75, the domestic purchase requirement is the trade-related investment measure that the United States is challenging in this proceeding.

Q77. (Both Parties) In paragraph 122 of its first submission, Turkey asserts that the deadlines for the submission of applications for import licenses was extended twice in 2005, as "evidence that Turkey did not intend to discourage full utilization of the quotas."

(a) Can the United States comment on this assertion.

121. Turkey's assertion is incorrect. As discussed in the US answer to Question 72, it is not possible for the 300,000 metric ton (milled rice equivalent) cap to be reached, given the current size of Turkey's crop of paddy rice and the large quantities of domestic paddy rice that importers are required to source domestically as a condition for importing rice into Turkey. Turkey claims that the TRQ provides a benefit to imported rice and actually provides an advantage to foreign rice over domestic rice (despite the fact that Turkey requires an importer to purchase a larger quantity of domestic paddy rice than the amount of rice the importer wishes to import). If that were the case, one would expect that importers would use up the quota well before the end of the application period. The fact that Turkey has been forced to extend the deadlines for importers to apply for a portion of the TRQ demonstrates the fallacy of that argument.

Q78. (United States) Can the United States comment on Turkey's assertion contained in paragraph 125 of its first submission, that it has provided "relevant data and trade statistics clearly indicating that MFN trade in rice has effectively occurred throughout the operation of the TRQ regime."

122. The only information that Turkey has provided on MFN trade is the chart contained in Annex 20. The United States noted in its response to Question 4 that the chart raises many more questions than it answers and has not been substantiated with documentary evidence. Further, Turkey has not rebutted any of the documentary evidence provided by the United States, including the Letters of Acceptance, rejection letters, court documents, and newspaper articles, which indicate that MARA has imposed a ban on rice trade outside the TRQ regime.

Q81. (Both Parties) In its oral statement, Thailand has raised the issue of "the inconsistency of Turkey's rice TRQ regime with its obligations under Article II of GATT 1994 with respect to its Schedule of Concessions". Further, in paragraph 5 of the written version of its oral

statement, it based its argument on "the factual evidence submitted by the United States, [according to which] the treatment actually accorded by Turkey under its TRQ regime is 'less favourable' than that provided in its Schedule to all Members." Can the Parties comment on the issue raised by Thailand in its oral statement.

123. The United States did not make an Article II claim in its request for the establishment of a panel. Therefore, this issue is outside the panel's terms of reference.

Q83. (Both Parties) In page 1 of the written version of its oral statements, Korea indicates that "the disproportionate number of certificates for out-quota imports should be explained by Turkey in order to avoid the suspicion that the issuance of out-quota certificates have been deliberately controlled". In page 2, Korea also notes that "the proportion of out-quota certificates to in-quota certificates in 2006 is much higher than it is for the years 2004 and 2005" and states that "[a]n explanation for this should be sought so as to avoid the assumption that Turkey loosened its grip on out-quota certificates only after having been challenged in the WTO". Could the Parties comment on these statements.

124. If Korea's statement on page 1 refers to the disproportionate number of Control Certificates that MARA purportedly granted in 2006, the United States agrees that there is no obvious explanation for why out-of-quota trade in rice would have dramatically increased sometime in 2006, which is when the DSB established this panel, whereas trade in 2004-2005 was largely confined to the TRQ regime. In any event, as noted by the United States in paragraphs 19-21 of its oral statement as well as in its response to Question 4, the numbers provided in Annex 20 for 2006 do not appear to make sense, and no conclusions can be drawn without examining the actual Control Certificates. For instance, Turkey's assertion that it has granted Control Certificates for 400,000 metric tons of US rice as of September 2006 does not correspond with the fact that the United States has thus far exported approximately 18,000 metric tons of rice to Turkey in 2006 and has never exported anywhere close to 400,000 metric tons of rice to Turkey.

Q84. (Both Parties) In the hypothetical case that Certificates of Control do not qualify as import licenses under the Import Licensing Agreement, would it automatically flow that such documents cannot qualify as import licenses under GATT 1994 either?

125. No. The definition of "import licensing" in Article 1 of the Import Licensing Agreement provides relevant context for interpreting the term "import license" in Article XI:1 of the GATT 1994 but Article 1, by its very terms, limits the definition set forth therein to the Import Licensing Agreement. As the United States discussed in paragraphs 59-63 of its first written submission, the ordinary meaning of the term "import license" is formal permission from an authority to bring in goods from another country. A Certificate of Control from MARA constitutes formal written permission from the Government of Turkey to import goods from another country. Thus, a Certificate of Control is an "import license" within the ordinary meaning of those terms.

Q91. (Both Parties) Is the Turkish Grain Board a state trading enterprise as defined in GATT Article XVII and the Understanding on the Interpretation of Article XVII of the GATT 1994?

126. Yes. Paragraph 1 of the Understanding on the Interpretation of Article XVII of the GATT 1994 provides the following "working definition" of a state-trading enterprise:

> Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.

127. The Turkish Grain Board (TMO) is an entity of the Turkish government that has been granted exclusive rights and privileges through various Ministerial Decrees. By exercising those rights and privileges, TMO is able to influence directly the importation of rice into Turkey. TMO administers all trade in rice under the TRQ regime and, as MARA has banned MFN trade in rice, TMO administers all trade in rice in the Turkish market.

128. TMO possesses a myriad of tools with which to influence and control the Turkish rice trade. All importers need a receipt from TMO documenting that the domestic purchase requirement under the TRQ has been satisfied. If an importer does not present that documentation to FTU, FTU will not grant a license to import under the TRQ. The domestic purchase requirement can be met by an importer purchasing domestic paddy rice from Turkish producers or producer associations or from TMO itself. TMO determines the procurement prices at which it purchases paddy rice from Turkish producers and also determines the prices at which it sells such rice to importers as a condition upon importation, and the TMO prices influence rice prices in the Turkish market. Additionally, the domestic purchase requirement itself is set each year by TMO officials after TMO holds discussions with Turkish producers on the projected size of the impending rice crop.

129. Lastly, under the TRQ regulations TMO is permitted to import 50,000 metric tons of milled rice in order to help stabilize the domestic market in the event that prices increase.[52] A July 13, 2006, Turkish newspaper article entitled "TMO is given priority to import rice to prevent extra high import prices" discusses TMO's ability to influence domestic prices by, among other things, importing rice. The article, which discusses the possibility that TMO would be given priority by FTU to import the 28,000 metric tons of milled rice under the EC Quota Arrangement, summarizes a conversation with Mr. Sukru Yildiz, the General Manager of TMO. In that conversation, Mr. Yildiz stated that FTU's decision to grant permission to TMO to import duty free rice was expected to stabilize prices in the market. Mr. Yildiz added that TMO did not plan to import at that time since the market appeared to be stable, but it would do so on an expedited basis if prices increased during Ramadan.[53]

[52] Exhibits US-5 and US-10.
[53] Exhibit US-20.

ANNEX C-2

REPLIES BY TURKEY TO QUESTIONS POSED BY THE PANEL AFTER THE FIRST SUBSTANTIVE MEETING

(30 November 2006)

Q1. (Both Parties) The United States has provided statistics on, *inter alia*, Turkish production, consumption and imports of milled rice in Exhibit US-45 attached to its first submission. Could the United States confirm the source of this data. The statistics provided by the United States go from 2001/2002 to 2006/2007. Can the United States confirm which of these figures correspond to actual events and which are projections. Can Turkey confirm the figures provided by the United States.

Turkey does not confirm the import figures provided in Exhibit US-45 to the first submission of the United States. Turkey's actual yearly import figures for milled rice are attached in Annex TR-23. The actual production and consumption figures for milled rice in Turkey are attached in Annex TR-24.

Q2. (Turkey) In paragraph 11 of its first submission, the United States asserts that "Turkey produced 234,000 metric tonnes of milled rice in 2003, 270,000 metric tonnes of milled rice in 2004, and 300,000 metric tonnes of milled rice in 2005". In paragraph 12 of its submission, the United States adds that "Turkish consumption was 545,000 metric tonnes in 2003, 550,000 metric tonnes in 2004, and 560,000 metric tonnes in 2005". Could Turkey comment on the figures provided by the United States.

Turkey draws the attention of the Panel to Annex TR-24. Turkey submits that the difference between the figures is not great. With respect to the increase in production over time, reference should be made to the answer provided by Turkey to question 49(c) below.

Q3. (Both Parties) Can the Parties also provide monthly information on imports into Turkey of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate), by country of origin.

Turkey's rice import figures, by month and organized by country of origin, types of rice, years, quantity and value, are provided in Annex TR-25.

Q4. (Both Parties) In paragraph 26 of its first submission, Turkey asserts that "from 2003 to date, Turkey has approved a total of 2,223 Certificates of Control, allowing a total importation of 2,264,857 tonnes of foreign rice (paddy, brown and milled). Of the aforementioned quantity, 497.469 tonnes of rice equivalent have been allocated under the TRQ system since January 2004." In paragraph 65, Turkey asserts that "a high number of Certificates of Control (i.e., 2,223 between 2003 and 2006) were approved by MARA, corresponding to large amounts of imported rice (i.e., 939.013 tonnes of rice equivalent between 2003 and 2006), both in relation to MFN and TRQ trade."

(b) Could Turkey specify the quantities of each type of imported rice (i.e., milled, paddy and brown) that correspond to the figure of 497,469 tonnes of rice equivalent, which would have been allocated under the TRQ system since January 2004. Could Turkey also specify the corresponding quantities imported under this period outside of the TRQ.

Turkey's in-quota and over-quota importation figures are provided in Annex TR-8.

(c) Could Turkey specify the quantities of each type of imported rice (i.e., milled, paddy and brown), broken-down into MFN and TRQ imports, that correspond to the figure of 939,013 tonnes of rice equivalent imported between 2003 and 2006.

The import data, broken down into types of rice and into MFN and TRQ imports for the years 2004 to 2006, are provided in Annex TR-8. The data for 2003 broken down into types of imported rice are provided in Annex TR-26 herewith.

As shown in Annex TR-8, the total imports of milled rice equivalent between 2004 and 2006 amount to 568,650 tonnes. Since there was no tariff-rate-quota in 2003, adding the 2003 figure of milled rice equivalent import of 370,363 tonnes to the figure for 2004 to 2006 (i.e., 568,650 tonnes), the result is a total milled rice equivalent importation of 939,013 tonnes between the years 2003 and 2006.

Q5. (Both Parties) Can the Parties provide monthly information on Turkey's domestic production of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate).

The Turkish harvest season begins in mid-September and lasts until the end of November each year. Therefore, production figures are available only on a yearly basis. They are provided in Annex TR-24.

Q6. (Both Parties) Can the Parties provide monthly information on Turkey's domestic consumption of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate).

The consumption figures are provided on an annual basis in Annex TR-24. The consumption levels do not change considerably on a monthly basis. Therefore, average monthly consumption can be calculated by total consumption divided by 12.

Q7. (Both Parties) Can the Parties provide the following information regarding Turkey's monthly average domestic prices of, separately, paddy, brown and milled rice, for the period from July 2003 to the end of 2006 (including estimates, as appropriate): (i) average prices for domestic production in the Turkish market; (ii) landed CIF prices; and, (iii) prices quoted by the Turkish Grain Board. Please indicate the source of your estimates and provide evidence, as appropriate.

In relation to point (i) of the question, reference should be made to Annex TR-27.

With respect to point (ii) of the question, the monthly landed CIF prices are provided by Turkey in Annex TR-28. Turkey submits, however, that some recorded CIF prices may not be indicative of the real CIF values due to some importers under-declaring value for purposes of tax avoidance or tax minimization.

Finally, in relation to point (iii) of the question, reference should be made to Annex TR-29. As the TMO functions to regulate the market, the price declared by the TMO is the ceiling price determined for the best quality product. It is not necessarily the purchase price through which the TMO buys rice from the producers. In fact, the average TMO purchase price ends up being close to the commercial market price.

Q8. (Turkey) In addition to the information requested in the previous question, can Turkey also indicate the volume of imports of, separately, paddy, brown and milled rice, for the

indicated period (July 2003 to 2006), by country of origin, which were made within the tariff-rate quota (TRQ) and those that were made outside the TRQ, specifying the periods for which the TRQ was opened in each of these years.

In-tariff quota and over-tariff quota importation figures by volumes, values, and countries of origin are provided by Turkey in Annex TR-8.

Q9. (Turkey) Can Turkey provide detailed data on rice sales and purchase by the Turkish Grain Board since September 2003, in particular the prices and customers involved in the individual transactions, and whether the transactions in question were linked to imports in any way?

Turkey submits that, in this respect, reference should be made to its Annexes TR-29 and TR-30.

Q10. (Turkey) Can Turkey please provide the source of data that it has used to determine relative average import cost of a tonne of rice as set out in paragraph 95 of its submission.

The FOB value of paddy rice is taken as 295 US$/MT from paragraph 51 of the first submission by the United States. To reach the CIF value of 370 US$/MT, the cost of insurance and freight from the USA to Turkey amounting to 75 US$/MT, which is taken from importers' declarations, is added to the FOB value. Moreover, to be able to calculate the average mixed cost of importation and domestic purchase to the importer, the average price (640 YTL/MT or 457 US$/MT) of domestic paddy sales is provided by TMO (reference must be made to Annex TR-27). The relative average import costs for both MFN and TRQ trade have been calculated on the basis of these data.

Q12. (Turkey) In the course of the first substantive meeting, Turkey has indicated that the figures used by the United States in its calculations (*inter alia,* in Exhibit US-52) are not an adequate reflection of Turkey's domestic prices for rice. Can Turkey indicate a source that, in its view, would provide a more adequate estimate of the monthly domestic prices of milled, paddy and brown rice in its market.

Turkey considers that the data provided in its Annex TR-27, which indicates the average price that emerged in the market (i.e., 640 YTL/MT), is a more accurate and reliable source. In fact, although the price that emerged from the domestic purchase involving the TMO is 612 YTL/MT, Turkey submits that the average price of 640 YTL/MT better reflects the actual market price, since the share of TMO only represents 2.4% of purchases.

Q13. (Both Parties) In paragraph 4 of its closing statement during the first substantive meeting with the Panel, the United States referred to "a bilateral agreement between the European Union and Turkey [under which] the European Union has an annual quota of 28,000 tonnes of milled rice".

(a) Please provide the provisions of that agreement, relevant to the importation of rice into Turkey.

Under Article 3 of Decision No: 1/98 of the EC-Turkey Association Council of 25 February 1998 on the trade regime for agricultural products,[1] Turkey commits to open annually a tariff quota for 28,000 tonnes of rice originated in the EC.[2]

[1] Decision No. 1/98 of the EC-Turkey Association Council of 25 February 1998 on the trade regime for agricultural products, Official Journal of the European Communities, 20.3.98, L 86/15.

[2] See Annex TR-31.

(b) Explain whether European imports of rice into Turkey are treated differently from other imports.

Imports of rice from the EC are treated like all other MFN rice imports into Turkey. However, for the volumes of rice imported from the EC under the TRQ provided by the Bilateral Agreement, a preferential tariff applies.

(c) More specifically, explain whether importers of European rice are required to obtain Certificates of Control in order to import rice into Turkey.

Yes. Certificates of Control are required for all rice imports, irrespective of the country of origin, type of rice, MFN or TRQ trade, and nature of importer.

Q14. (Both Parties) Can the Parties describe, in chronological order, the steps that are necessary to import rice into Turkey, in terms of the different documents that must be obtained and other formalities that have to be completed, identifying the authorities involved in each step. Please make reference to the relevant legal instruments and provide evidence where appropriate.

In general Turkey points out that all products set out in Annex VI-A[3] of the Communiqué No. 2006/5 on the Standardization in Foreign Trade[4] are subject to Certificates of Control. The products set out in Annex VI-A of Communiqué No. 2006/5 are products which are considered to be risky from a health and safety or environmental perspective. On the food side, these products include animal products, fresh and dried fruits and vegetables, cereals, processed products, etc. Certificates of Control are not required for products set out in Annex VI-B of the Communiqué on the Standardization in Foreign Trade. The reason for this difference is that, in general, the products indicated in this latter list are not considered to pose a risk for health or the environment. On this point, see in more detail the answers to question 35 below.

Certificates of Control for agricultural and food products are approved by MARA and, subsequently, are required by the Customs Administration for the importation of food and feed products of animal and non-animal origin in accordance with Communiqué No. 2006/5 on Standardization of Foreign Trade.

The steps for the approval of Certificates of Control for products agriculture and food products are outlined in Communiqué No. 31 on the Approval of Control Certification at the Importation of Foodstuffs and Packaging Materials that come into Contact with Foodstuffs and on Control Procedures at Importation Stage. Turkey wishes to emphasize that Certificates of Control are not import licences. These certificates are approved as a part of process of customs control and verification. They pursue, *inter alia*, sanitary and phytosanitary objectives.

According to Communiqué No. 2006/5 on Standardization of Foreign Trade, Certificates of Control approved by MARA should be presented to the Customs Offices at the point and time of importation. Turkey considers that the relevant procedures can be divided into two stages: the "approval of the Certificate of Control" stage and the "importation of the products" stage.

[3] See Annex TR-3.
[4] See Annex TR-1.

(i) Approval of the Certificate of Control

For the products set out in Annex VI-A of the Communiqué No. 2006/5 on the Standardization in Foreign Trade, the procedures requested at the approval stage of the Certificate of Control are the following:

Step 1: The owner/authorized person of the importing company must present the following documents to the Ministry of Agriculture and Rural Affairs (MARA) during the application:

- Form of the Certificate of Control, duly compiled (*i.e.*, properly typed or filled-out by computer), containing no erasures or abrasions, signed and sealed by the authorized person/persons of the company under their name/names and surname/surnames;
- *Proforma* invoice;
- Legal entity form: the company must declare, in its first application after 30 June 2002 and upon the request by MARA, that it is officially carrying-out activities in relation to the product it wishes to import;
- Other documents that must be presented according to the type of the product: no other additional documentation is required at this stage for the approval of the Certificate of Control for importation of rice.

In practice, the form of the Certificate of Control must be filled by the importing company. A *proforma* invoice, together with other eventual additional documents, must be attached therewith. The form, together with the *proforma* must be put forward to MARA for approval.

Step 2: If all information and documentation put forward by the importer to MARA complies with the requirements set by the law (*inter alia*, the product name, the CN code of the product, relevant information about importing and exporting companies, country of origin, etc.), the Certificate of Control is automatically approved by MARA.

Should the form and/or its attachments miss any the required information, the importing company is notified of this shortcoming by MARA. This importing company is then granted additional time to complete and submit again its application (if it so chooses). In these cases, the file and its attachments are inspected again by MARA's officials. If all documentation and information comply with the requirements set by the law, the Certificate of Control is automatically approved. If the documentation and the information required do not comply with the requirements set by the law the application is again rejected.

(ii) Importation of the Product

After the approval of the Certificate of Control, importers must submit to the provincial directorate of MARA the following documents.

- Approved Certificate of Control and the attachments thereof;
- Customs Entry Declaration;
- Sanitary or Phytosanitary Certificate, as applicable (this is the phytosanitary certificate for rice provided by exporters).

For products that are not subject to the Certificates of Control listed in Annex VI-B of the Communiqué on the Standardization in Foreign Trade, when the importation of a product is desired, importers must submit to the provincial directorate of MARA the following documents.

- Customs Entry Declaration;
- List of Ingredients;
- Sanitary or Phytosanitary Certificate
- Legal entity form: the Company establishes, in its first application after the publication of the Communiqué and upon the request of the Ministry that it is officially carrying-out activities in relation to the product it wishes to import.

Control procedures at import stage are conducted in a three-step process for products falling within both Annex VI-A and Annex VI-B. This control is conducted on the basis of Sanitary and Phytosanitary requirements. These steps are:

- Documentation control: Customs authorities will control the documentation required by the legislation, which accompanies the products. However, the control of the documentation is a process which, for the products listed in Annex VI-A, already starts from the approval of the Certificate of Control;
- Identity checks: Customs authorities will compare whether the imported product is identical and corresponds to the customs declaration;
- Physical inspections: MARA's officials will operate controls on the products, including organoleptic controls up to the laboratory analyses.

During the importation stage all products are examined according to a process of risk assessment. Imported products can be subjected to laboratory analyses, on the basis of Turkish food legislation. Furthermore, the safety of products is assessed on the basis of quarantine procedures as provided by Turkey's laws on Plant Protection and Agricultural Quarantine. If the results of the analyses are in compliance with the relevant legislation, the products are released for free circulation.

Importation under the TRQ regime

When an importer wishes to import within the TRQ, the relevant documents (including the document showing purchase of domestic rice) had to be submitted to the Under-Secretariat for Foreign Trade in order to obtain the import licence and import at reduced duty rates. Obviously, importers also had to submit all relevant documentation to MARA for approval of the Certificate of Control. The rest of the import procedure followed what explained in detail above.

Turkey submits that the import procedure which applies for imports at both MFN and TRQ rates is described in the scheme provided in Annex TR-32.

Q15. (Turkey) Regarding the current status of Turkey's import regime for rice,

(a) Can Turkey describe the current status of that import regime.

Communiqué No. 2006/05, which provides the legal basis for the current system, entered into force on 1 January 2006 and repealed Communiqué No. 2005/05. The legal basis of this Communiqué is

Decree No. 2005/9454 on "*The Regime for Technical Regulations and Standardization for Foreign Trade*"[5] (published on 13 October 2005 in the Official Gazette and numbered 25965). Communiqué No. 2006/05 is currently in force.

(b) Are Certificates of Control being issued at present (after September 2006)?

Yes. Certificates of Control have always been approved, including in and after September 2006.

(c) If so, can Turkey provide any evidence of Certificates of Control issued after September 2006.

Reference must be made to Annex TR-33, which contains the available data compiled by MARA in relation to the Certificates of Control that have been approved between 2003 and 9 November 2006. These data have been organized on the basis of country of origin, individual Certificate of Control code, date of application, date of approval, HS code, requested amount of rice for which the Certificate of Control was approved, date of importation, actual amount of imported rice (i.e., realized imports), type of rice, and applicable import regime (i.e., MFN and TRQ).

Turkey submits a "coded" version where the company-specific references are encrypted in order to comply with Turkish legislation protecting privacy and secrecy of sensitive commercial information.

(d) Can Turkey provide any relevant information on whether it has plans to modify its import regime of rice in the future.

Turkey has no plans to modify its import regime for rice. In particular, Turkey wishes to remind the Panel that is has not opened a new tariff rate quota for rice in 2006 and has stated both in consultations and before this Panel that it has no intention to do so in the future.

Q16. (Both Parties) Does Turkey's import system for rice affect imports from the United States in particular, or does it apply to all imports in the same way?

Turkey's import system for rice applies to all imports in the same way. In particular, Turkey's MFN and applied rates of duty apply to imports of rice of any origin in a non-discriminatory fashion. Importers are free to import from any source at the bound and applied rates, and to market the rice into Turkey, provided that a Certificate of Control has been approved. The relevant Turkish law requires importers to obtain a Certificate of Control irrespectively of the country of origin of the rice they wish to import.

With respect to the TRQ regime, Turkey has already pointed out that its automatic import licensing regime, while in force, also applied in a strictly non-discriminatory fashion and that any person, firm or institution importing rice from any source was equally eligible to apply for, and obtain, an import license.

Turkey therefore submits that the relevant legislation (i.e., the one envisaging the MFN and applied rates, the Certificate of Control and the TRQ) applies and/or applied to imports of rice from any origin in a non-discriminatory fashion. In any event, Turkey's import regime for rice, as evidenced by the trade statistics and import data, has not been shown to have been put in place to affect any specific country exports. Trade flows and imports have always been dictated by business considerations and free market choices.

[5] See Annex TR-2.

Q18. (Both Parties) It would seem that in some respects Turkey's import regime for rice has changed since the initiation of this dispute before the WTO in November 2005. If this is correct, could the Parties specify:

(a) The nature of those changes, including their dates and relevant legal instruments.

(b) The specific reasons for these changes.

(c) The potential effects of these changes.

Turkey submits that no change was introduced into its import regime for rice in November 2005 or as a consequence of the initiation of WTO dispute settlement proceedings.

The only aspect of Turkey's import system for rice that has undergone changes between 2006 and the present is that of the TRQ regime. This lapsed on 31 July 2006. The TRQ regime was opened only for a limited amount of time and served a market-stabilization role. The TRQ regime was naturally phased-out. It was not repealed as a consequence of the initiation of WTO dispute settlement proceeding. The validity periods of the TRQ systems were always clearly indicated in the relevant decrees and communiqués.

Q19. (Turkey) Could Turkey specify the reasons for the following statement, formulated in paragraph 72 of its first submission: "Having conclusively demonstrated that there is no violation of GATT Article XI, Turkey believes that no further scrutiny should be conducted under the Agreement on Agriculture."

Turkey believes that the United States has failed to establish a *prima facie* violation of Article 4.2 of the Agreement on Agriculture for two reasons. First, Turkey believes that caution is needed in establishing an automatic violation of Article 4.2 of the Agreement on Agriculture in every instance where a violation of GATT Article XI:1 is found. According to Turkey, a violation of GATT Article XI:1 does not automatically constitute a violation of Article 4.2 of the Agreement on Agriculture, unless it is positively established that the measure at stake falls within the scope of, and is inconsistent with, footnote 1 of Article 4.2 of the Agreement on Agriculture.

Turkey believes that the appropriate legal methodology should require a separate scrutiny of the measures under the Agreement on Agriculture. A violation cannot simply be assumed. Turkey submits that the United States has failed to prove or even adequately argue in which way Turkey's measures would be inconsistent with Article 4.2 of the Agreement on Agriculture, other than by means of an automatic extension of their GATT Article XI arguments.

Turkey is not in violation of Article 4.2 of the Agreement on Agriculture. Turkey noted that the United States' arguments are based on the incorrect assumption that Turkey's alleged denial of Certificates of Control and the operation of its TRQ regime amounted, individually or jointly, to violations of GATT Article XI:1. On this basis, the United States further argued that the measures resulted into quantitative restrictions, discretionary import licensing and non-tariff barriers maintained through state trading enterprises within the meaning of Article 4.2 of the Agreement on Agriculture.

Turkey believes that it has shown that there has never been a denial of Certificate of Controls, that its TRQ regime was not based on discretionary import licensing, and that it is not correct to claim that non-tariff measures were maintained through state trading enterprises. Turkey believes it has shown to the Panel that there is no violation of GATT Article XI:1. Therefore, even following the reasoning put forward by the United States, according to which a violation of Article XI:1 in relation to agricultural products constitutes *ipso facto* a violation of Article 4.2 of the Agreement on Agriculture,

Turkey believes that no further scrutiny of the specific claim should be conducted and that, on the basis of the factual evidence that has been offered, the Panel should reject these claims, both in relation to the individual instruments and in their joint operation.

Q20. (Turkey) In paragraph 62 of its first submission, Turkey states that: "[t]he essential element to establish whether or not any measure introduced by a WTO Member results in a quantitative restriction, is the existence of a 'prohibition' or 'restriction' of imports. This must be analyzed and proved both in terms of the de jure and de facto operation of the measure being reviewed. Only when a de jure and de facto 'prohibition' or 'restriction' of imports can be demonstrated, the specific measure being considered would amount to an 'other measure' of the type that GATT Article XI:1 considers illegal because it institutes or maintains a quantitative restriction." Does Turkey argue that determining the existence of <u>both</u> de jure <u>and</u> de facto "prohibition" or "restriction" is a necessary precondition to find a violation of Article XI:1 of GATT 1994?

Turkey argues that, in order for a measure to be in violation of GATT Article XI:1, it is necessary to establish whether that measure causes a *de jure* or *de facto* "prohibition" or "restriction". Clearly, if there is no *de jure* or *de facto* "prohibition" or "restriction", the nature of the measure is of no relevance and a violation of GATT Article XI:1 cannot be found.

Turkey believes that the test under GATT Article XI:1 is twofold and requires a proper assessment of the existence of either a *de jure* or a *de facto* "prohibition" or "restriction." In particular, Turkey believes that, alternatively, a *de jure* or a *de facto* "prohibition" or "restriction" must be found in order to establish a violation of GATT Article XI:1. Turkey does not believe that the cumulative determination of both *de jure* and *de facto* "prohibition" or "restriction" is necessary.

In any event, Turkey believes to have provided ample evidence showing that neither a *de jure* nor a *de facto* "prohibition" or "restriction" is to be found in relation to the approval of Certificates of Control, or its TRQ regime, or their joint operation. In particular, Turkey rejects the existence of a *de jure* or a *de facto* "prohibition." With respect to the *de jure* scrutiny, Turkey believes that the United States failed to prove that anything in the relevant Turkish law institutes or maintains an import prohibition. With respect to the *de facto* scrutiny, Turkey has provided conclusive evidence in relation to the high number of Certificates of Control that were approved by MARA, both in relation to MFN and TRQ trade. Turkey has also shown that, while the TRQ was providing an advantage to Turkey's trading partners, MFN trade was never impaired.

Similarly, Turkey rejects all claims put forward by the United States in relation to the existence of a *de jure* or *de facto* "restriction." Again, under the *de jure* scrutiny there is nothing in the relevant Turkish legislation which restricts or affects importation of rice. Under a *de facto* perspective, Turkey submits that Certificates of Control were always approved and rejects any instance of inconsistency with GATT Article XI:1. Turkey also wishes to respectfully remind this Panel that the scrutiny with respect to the existence of a *de facto* restriction must be particularly balanced.

The United States has not provided any factual evidence supporting its claims. The number of Certificates of Control approved, together with the lack of any factual evidence provided by the United States in support of its complaint, suggests that the case brought by the United States is largely centred on individual rejections, perfectly compatible with Turkish legislation and with Turkey's obligations under the WTO.

Q23. (Turkey) In paragraphs 22 and 23 of its first submission, the United States has identified the existence of documents that it calls "letters of acceptance", which would "follow a standard template, in which Turkey's Minister of Agriculture accepts recommendations from MARA's General Directorate of Protection and Control to 'delay' the start date for the period in which

Certificates of Control will be granted." Could Turkey explain what is the legal nature of the "letters of acceptance" referred to in the United States' first submission?

As indicated in its First Submission[6], Turkey wishes to reaffirm that these documents are mere instruments of internal communication among Turkish administrators and public officials. These communications often contain confidential positions and/or political statements which are aimed at developing unofficial policy recommendations.

There is no "standard template" through which the so-called "Letters of Acceptance" are recommended or accepted. Nor is there any rule, procedure or hierarchical legal value that, under Turkish law, makes the "Letters of Acceptance" enforceable by any party within the Turkish legal or administrative system. Turkey believes that this is a key aspect which should be given adequate consideration.

The so-called "Letters of Acceptance" are internal communications which are aimed at developing unofficial policy recommendations. They are not the official policy measures and should not even be used to interpret or imply a certain *de facto* attitude by Turkish authorities. The official trade policy measures of the Turkish Government are always duly made public and transparent. The *de facto* attitude of the Turkish Government in relation to trade must be determined and judged on the basis of actual trade figures and volumes. Turkey believes that the trade data and statistics which have been offered[7] clearly indicate that there has never been a *de facto* restriction (let alone a prohibition) to rice imports, which was mandated by the Government. Lower imports may have occurred during certain times, but that was always consequence of private choices made by importers on the basis of their commercial considerations and calculations.

The fact that the existence and alleged legal value of the so-called "Letters of Acceptance" were claimed by certain parts of the Turkish administration during the course of domestic judicial proceedings doesn't change their nature of unofficial, unenforceable and informal communications which are internal to the administration and aimed at developing or debating policy recommendations.

Q24. (Turkey) If Turkey's Ministry of Agriculture and Rural Affairs (MARA) is the competent authority to issue Certificates of Control for the importation of rice,

(a) What purpose do the "letters of acceptance" serve?

Turkey confirms that these documents are mere instruments of internal communication among Turkish administrators and public officials. They are aimed at developing unofficial policy recommendations both at intra-ministerial and inter-ministerial levels.

(b) What is the rationale for the Directorate General of MARA sending such a letter to the Minister?

The rationale is that of an internal administrative communication and policy recommendation which in no way reflects actual policy measures. Internal administrative communications occur predominantly in written form and follow hierarchical and administrative protocol.

(c) What legal consequence, if any, would arise from the fact that the Minister signs such a "letter of acceptance"?

[6] See paragraph 78 of Turkey's First Submission.
[7] See Annex TR-33.

No legal consequence ensues. There is only an administrative consequence, namely that a certain administration has put forward a policy recommendation by means of a ministerial-level communication. This may or may not provide greater strength to the actual communication, but it does not change the nature of the communication from that of an informal, unofficial and unenforceable administrative policy recommendation to that of a binding legal act and enforceable trade measure.

Q25. (Both Parties) Can the "letters of acceptance" constitute a valid legal basis to override provisions contained in Decrees and Communiqués issued by the Turkish Foreign Trade Undersecretariat (FTU)?

No, the so-called "Letters of Acceptance" do not constitute valid legal basis to override any legal act, including the Decrees and Communiqués issued by UFT.

For purposes of this question, Turkey wishes to recall that the legislation regulating foreign trade, which is issued by the Foreign Trade Undersecretariat, sets out the general principles which are applicable. The legislation prepared by MARA in relation to foreign trade sets out specific rules of conduct and control. This legislation is then issued by UFT. Therefore, the two sets of legislation can never "override" each other. In any event, as already indicated, the so-called "Letters of Acceptance" are neither legislation nor regulation, but simply internal communications within the administration.

Q27. (Turkey) In paragraph 78 of its first submission, referring to the documents identified by the United States as "letters of acceptance", Turkey has stated that "[t]hese communications often contain confidential positions and/or political statements which are aimed at developing unofficial policy recommendations".

(a) Can Turkey elaborate on this statement.

Please see reply to question 23.

(b) More specifically, could Turkey elaborate on the reasons why its "letters of acceptance" cited by the United States should qualify as confidential.

The confidential nature of these internal communications derives from their character of informal, unofficial and unenforceable policy recommendations. Any country's administration needs to have the ability to communicate internally on the basis of confidentiality in order to circulate, discuss, question, evaluate and ultimately suggest policy recommendations that the Government may decide to adopt into formal, official and enforceable legislation or executive measures.

These internal communications must remain, as much as possible (and particularly so when politically and/or commercially desirable), outside of the reach of the media, of market speculators, and of powerful commercial lobbies. Only confidentiality may offer this protective shield.

(c) Could Turkey also specify in what sense the policy recommendations contained in the "letters of acceptance cited by the United States would be "unofficial".

These policy recommendations are mere internal communications among MARA or UFT administrators and public officials. As long as they do not become policy decisions or legal acts which are enforceable, they remain "unofficial" communications and policy recommendations.

When (and only if) they become "official", they must be duly and timely published, they must be consistent with domestic law and international commitments, and they can be challenged. The so-

called "Letters of Acceptance" lack this "official" and binding nature both vis-à-vis the public and the other parts of the administration.

Q28. (Turkey) In paragraphs 22 and 23 of its first submission, the United States has asserted that the so-called "letters of acceptance" would "follow a standard template, in which Turkey's Minister of Agriculture accepts recommendations from MARA's General Directorate of Protection and Control to 'delay' the start date for the period in which Certificates of Control will be granted." Turkey has responded that the so-called "letters of acceptance" are only "mere instruments of internal communication among Turkish administrators and public officials".

(a) Can Turkey indicate how many Certificates of Control have been granted despite a contrary recommendation contained in the "letters of acceptance" cited by the United States in its first submission.

(b) Can Turkey provide the dates of the Certificates of Control granted despite a contrary recommendation contained in the "letters of acceptance" cited by the United States in its first submission.

During period of existence of the alleged "contrary recommendation" contained in the first "Letter of Acceptance" referred to by the United States[8] in its submission, 214 Certificates of Control were approved by Turkey. This information can be clearly evidenced by a review of the confidential table provided in Annex TR-33.

In particular, Turkey submits that this information is clear and conclusive testimony to the following three issues:

- Despite the existence of a "contrary recommendation" contained in a so-called "Letter of Acceptance", 214 Certificates of Control were, in fact, approved between 10 September 2003 and 30 June 2004. This is further proof that the so-called "Letters of Acceptance" were (and are) only internal communications suggesting policy recommendations and not formal trade policy measures binding on the administration. The fact that the administration did, in fact, approve 214 Certificates of Control during that period underlines the weak and non-binding value of the policy recommendations contained in the so-called "Letters of Acceptance". This is contrary to the allegations and assumptions made by the United States.

- 214 Certificates of Control were, in fact, approved between 10 September 2003 and 30 June 2004. Evidence shows that their approval always followed, by very minimal delays, the applications for approval of Certificates of Control made by importers. This is contrary to what the United States claimed in its First Submission at paragraph 24 thereof, where it stated that "the letter then recommends that the MARA once again 'delay' the period for issuing Certificates of Control until July 1, 2004".

- The fact that the compiled data show that Certificates of Control were not approved during certain periods (i.e., between 26 December 2003 and 20 May 2004) does not prove that the approval of the Certificates of Control was being delayed (certainly not until 1 July 2004) and does not prove that trade did not take place. It only proves that, during certain periods, Certificates of Control were not approved. This may have been the result of the combination of two factors, namely the absence of

[8] See paragraph 24 and Exhibit US-12.

applications for approval and/or the existence of considerable "left-over" approved volumes in the hands of the importers as a result of the difference between the approved and realized quantities of rice imports. It should be noted, in particular, that the applications for approval of Certificates of Control were, and remain, formal acts made by importers on the basis of business considerations and commercial calculations (i.e., profit margins, competitiveness of imported over domestic rice, speculative positions, currency fluctuations, etc.). These business determinations may have resulted in the lack of requests for approval of Certificates of Control during certain periods, but were never the result of specific policy decisions by the Government of Turkey.

Q29. (Turkey) In paragraph 84 of its first submission, Turkey asserts that the "letters of acceptance" are never enforced, and in fact, cannot be legally enforced by any party (i.e. the importers, the administration, or the courts)." However, the United States, in paragraph 69 of its first submission, asserts that officials from Turkey's Ministry of Agriculture and Rural Affairs (MARA) followed the wording of the letters of acceptance. In support of its assertion, the United States argues that, in a letter to a Turkish importer of US rice (dated 1 May 2005), a Provincial Agriculture Directorate denied the importer's request for a Certificate of Control on the grounds that "... it is not possible to prepare a control certificate according to our laws and regulations" (see, United States' Exhibit US-22).

(a) In Turkey's understanding, which were the laws and regulations the Provincial Directorate was referring to? Was the Directorate referring to the "letters of acceptance"?

The laws and regulations mentioned in US Exhibit 22 refer to the Communiqués stipulating the specifications of rice and paddy rice and those which set the rules and procedures for the approval of the Certificates of Control. The Provincial Agriculture Directorate was not referring to the so-called "Letters of Acceptance" as "law and regulations", but to specific shortcomings and procedural deficiencies that individual importers' applications for approval of Certificates of Control may have shown.

(b) If so, how can this be reconciled with Turkey's statement that the "letters of acceptance" are never enforced by the administration?

This is perfectly in line with the statement that the so-called "Letters of Acceptance" are never enforced by the Administration. It would not be possible (and not legally valid) for the Administration to provide, as a ground for rejection of an application for approval of a Certificate of Control, an internal policy recommendation which is not official, not published, and not enforceable.

Q30. (Turkey) In paragraph 3 of its first submission, Turkey refers to the documents known as "Certificates of Control".

(a) Can Turkey provide the formal definition of the "Certificates of Control" under the relevant Turkish legislation.

No formal definition of the Certificate of Control is provided under Communiqué of Standardization for Foreign Trade No. 2006/5 where the Certificate of Control is introduced and its purpose and approval conditions are clearly stated.[9] According to Communiqué No. 2006/05, the Certificate of

[9] A definition is provided under Article 4(d) of Communiqué No.31, according to which: "Certificates of Control means the model (i.e., a form) which is given in the annex of the relevant Communiqué on Standardization of Foreign Trade in force" (see Annex TR-21).

Control is an official document through which the importer submits certain information to MARA in relation to the particular product that it wishes to import into Turkey. It is a reference document needed to process the customs clearance of any particular consignment of produce and, it is ensuring that imported products will meet the legitimate standards for the protection of human health and safety, animal or plant life or health, and the environment.

(b) Can Turkey identify the appropriate domestic legislation under which Turkey's Ministry of Agriculture and Rural Affairs (MARA) is empowered to issue Certificates of Control.

The relevant legal instrument providing for MARA's competence to issue Certificates of Control is the Communiqué No. 2006/05. In particular, according to Article 1 thereof, "*[…] the conformity of the substances which are on the annex lists of this Communiqué and which are subject to the Entry into The Free Circulation Regime, The Internal Process Regime, The Regime On The Process Under The Customs Control and The Temporary Import Regime, in respect of human health and safety, animal and plant existence and health shall be determined by the Ministry of Agriculture and Rural Affairs*."

(c) Does every import of rice require a separate Certificate of Control? Could more than one shipment of rice be imported under a single Certificate of Control? Could shipments of rice from different origins be imported under a single Certificate of Control? Please make reference to the appropriate legislation to support your response.

The duration of an approved Certificate of Control for imports of rice is 12 months. Once a Certificate of Control is approved by MARA, a trader can import the full quantity of rice in different instalments within that period of time without having to apply for a new Certificate of Control for each instalment. The importation must be realised from the country stated in the Certificate of Control. See Annex TR-33 for evidence of the fact that often Certificates of Control were approved for amounts larger than what the importers later cleared customs with. This is an indication that actual importation (i.e., realised importation) was conducted on the basis of business determinations that belonged solely to the traders and were not imposed or influenced by the Government.

Q31. (Turkey) Once a Certificate of Control has been issued, what additional actions and formalities, if any, would be needed from Turkish authorities, in order to allow the importation of a particular shipment of rice?

The approval procedure of the Certificates of Control is part of process of customs control and verification to be conducted at the stage of importation. Once a commodity is brought to customs for clearance, MARA and the customs authorities are competent for carrying-out certain customs control procedures.

In particular, as Turkey mentioned in its reply to question 14 above, control procedures taking place at the stage of importation are conducted in a three-step process for products falling within both Annex VI-A and Annex VI-B. The control is conducted on the basis of sanitary and phytosanitary requirements. These steps are:

- Documentation control: customs authorities will control the documentation required by legislation, which accompanies the products. However, the control of the documentation is a process which, for the products listed in Annex VI-A, already starts from the approval of the Certificate of Control;

- Identity checks: customs authorities will compare whether the imported product is identical and corresponds to the customs declaration;

- Physical inspections: MARA's officials will operate controls on the products, including organoleptic controls up to the laboratory analyses.

As also mentioned in Turkey's reply to question 14, during the importation stage all products are examined according to a process of risk assessment. Imported products can be subjected to laboratory analyses, on the basis of Turkish food legislation. Furthermore, the safety of products is assessed on the basis of quarantine procedures as provided by Turkey's laws on Plant Protection and Agricultural Quarantine. If the results of the analyses are in compliance with the relevant legislation, the products are released for free circulation.

Q32. (Turkey) If an importer can demonstrate the fulfilment of the separate requisites that are normally verified through a Certificate of Control, would the import be allowed, even in the absence of a Certificate of Control?

No. The relevant Turkish legislation currently in force (i.e., Communiqué No. 2006/05) requires importers to present a valid Certificate of Control approved by MARA in order for the necessary control and inspection procedures to be carried-out at point of entry.

Q33. (Turkey) Could Turkey explain how, on the one hand, Certificates of Control and, on the other hand, what Turkey claims are separate import licenses, interact in relation to rice imports under the tariff-rate quotas? Is obtaining a Certificate of Control a precondition for obtaining an import license?

As Turkey submitted in reply to question 14 above, importers that wish to import under the TRQ must present the relevant documents to the Undersecretariat for Foreign Trade in order to obtain the import licence and import at the reduced duty rates. These importers must also submit all relevant documentation to MARA for approval of the Certificate of Control. As detailed by Turkey in Annex TR-32, importation under the TRQ requires importers to submit an application to the UFT to obtain the import license at reduced rates and then present all the documentation to MARA for the automatic approval of the Certificate of Control.

Q34. (Turkey) What is the difference, in terms of their legal regime (requirements, procedures, etc.) between a Certificate of Control for an agricultural product and a Certificate of Control for a non-agricultural product?

Turkish legislation does not envisage any difference between agricultural and non-agricultural products in terms of the procedures necessary for the automatic approval of a Certificate of Control. In both cases, importers are required to present to the competent authority (i.e., MARA for agricultural products) all necessary documentation before the actual importation of the products.

Q35. (Turkey) In paragraph 8 of its closing statement during the first substantive meeting with the Panel, Turkey asserted that "To the extent that they [relate to] agricultural products, [Certificates of Control] are approved by MARA". Can Turkey identify what agencies would be involved in the approval of Certificates of Control for other products.

Turkey respectfully provides few examples of other Ministries involved in the approval of Certificates of Control for other products.

Under Communiqué of Standardization for Foreign Trade No. 2006/3, the Ministry of Environment and Forestry is the competent authority for the approval of Certificates of Control for the importation of wastes and scrap metal. This Communiqué is based on the Basel Convention on the Control of Trans Boundary Movements of Hazardous Wastes and Their Disposal. Under this Communiqué, the importer is required to present to the Ministry of Environment and Forestry certain documents, such as the certificate of analysis and certificate of radiation, for the importation of the products.

The importation of chemical products, listed at the Annexes of Communiqué on Standardization for Foreign Trade No. 2006/6, requires the Ministry of Environment and Forestry to approve either the Certificate of Control or the Certificate of Control for the Import of Chemical Products, depending on the products. The documents that importers are required to present for approval of the Certificate of Control, *inter alia*, the *pro forma* invoice, the certificate of analyses, the label of the products, are listed under the Communiqué mentioned above. The Certificate of Control or the Certificate for the Import of Chemical Products must be submitted to the customs authorities.

Similarly, importers wishing to import certain (solid) fuels, listed in Annex 1 of Communiqué of Standardization for Foreign Trade No. 2006/7, must obtain approval of the Certificate of Control from the Ministry of Environment and Forestry. The Communiqué specifies which documents, *inter alia*, the *pro forma* invoice and the certificate of analyses, must be presented for the approval of the Certificate of Control. The Certificate of Control should be submitted to the customs authorities.

Finally, under Communiqué of Standardization for Foreign Trade No. 2006/4, the importation of certain goods such as pharmaceutical products, medicines, certain chemicals, etc., requires the approval of Certificates of Control by the Ministry of Health. For the importation of these goods, the importer shall submit certain documents, such as the *pro forma* invoice, or the invoice, the health certificate and the certificate of analysis, to the Ministry of Health before the import stage.

Q36. (Turkey) What are the specificities that justify, in the case of certain products, the requirement for a Certificate of Control, which is not required for other products? Why would the customs authorities not be able to process the same information included in a Certificate of Control for certain agricultural products through the ordinary procedures applicable to other products?

Turkey respectfully notes that the products the importation of which requires approval of the Certificates of Control are determined on the basis of legitimate concerns such as their sanitary and phytosanitary risk potential. These concerns justify the requirement for a Certificate of Control to be approved in relation to specific products.

For the same reasons, and in light of the often complex and time-consuming procedures that these specific products must undergo at time of customs clearance, the early approval by MARA (or by the other competent authorities) of a Certificate of Control acts to facilitate and render uniform the control exercised at customs.

Q37. (Turkey) In paragraph 19 of its first written submission, Turkey asserts that the Certificate of Control "allows customs authorities to verify, on a single document, all required customs information, including the product's compliance with relevant standards and technical regulations". If that is the case, why is it that Turkey's Ministry of Agriculture and Rural Affairs (MARA) "is the competent [authority] to certify compliance of the imported goods [in this case rice] with the applicable requirements" (see paragraph 17 of Turkey's first submission), rather than the Turkish customs authorities?

The Certificate of Control is a document that is meant to ensure that the product being imported is in compliance with the relevant legislation. This document contains all the information which is meant

to provide the basis of the evaluation carried-out by the customs authorities for clearance. Customs authorities work in close cooperation with MARA.

Turkey respectfully submits that the system is designed to centralize the competence and the responsibility of the products' compatibility in the agency (i.e., MARA for agricultural products) which is best suited to verify compliance with all the relevant legislation, and which will ultimately be liable for the products' safety. The approval by MARA of the Certificates of Control is, therefore, meant to grant a safe, uniform and consistent application of the requirements envisaged by the relevant legislation for food products, pursuing, at the same time, trade facilitation objectives through the predictability of customs inspections, at the benefit of the importers. Turkey would like to emphasize that the approval of the Certificates of Control has always been and is automatic in all required information is provided by importers at time of application. As indicated above, this is clearly evidenced in the data compiled in Annex TR-33.

Q38. (Both Parties) In paragraph 25 of its first written submission, Turkey asserts that "[a]n approved Certificate of Control for rice importation will be valid, contrary to the claims from the United States, for a period of twelve months on the basis of Article 9(c) of the Communiqué No. 2006/05".

(a) Can Turkey identify the legal support for this assertion, identifying the relevant domestic legislation.

Turkey submits that Article 9 of Communiqué No. 2006/05[10] provides that:

> "The duration of the control certificate is,
>
> (a) 4 months for the substances within the scope of the annex lists (Annex I, Annex II/A-B),
>
> (b) 6 months for the substances within the scope of the annex lists (Annex III, Annex IV, Annex V/A-B),
>
> (c) 4 months for the substances with 04th and 16th customs code chapter within the scope of the annex list (Annex VI-A); and 12 months for the other substances in the same list."

The reference made by Article 9(c) of Communiqué 2006/5 to the products listed in Annex VI-A thereof, clearly provides that the validity of all Certificates of Control is of 12 months, except for products falling within Chapters 04 and 16 of the Turkish Customs Code. Certificates of Control approved for products falling under Chapters 04 and 16 have a validity period of 4 months.

Therefore, given that rice is classified under Chapter 10 of the Turkish Customs Code, it is legally incorrect and misleading for the United States to allege that the duration of the approved Certificates of Control for rice imports is limited to 4 months. It is also wrong and misleading to allege, as the United States did during the oral hearing, that the 12-month validity rule is the result of a recent amendment transposed into the 2006/5 Communiqué. In reality, the same rule and the same wording are to be found in Article 9(c) of Communiqué No. 2005/5 (i.e., the previous legal instrument).[11]

[10] See Annex TR-1.
[11] See Exhibit US-7 of the First Submission by the United States.

Q39. (Turkey) In paragraph 54 of its first submission, Turkey asserts that, through the Certificates of Control, the domestic authorities determine the compliance of importers with "standards and technical regulations (i.e., human health and safety, animal or plant life or health, environmental protection, fitness for use, product safety, public policies, etc.)". Do any additional procedures take place to verify compliance of importers with the same "standards and technical regulations"? Do physical inspections of imported products take place upon importation, i.e., after the Certificates of Control have been approved? If so, then what is the purpose of the pre-approval of the Certificates of Control, vis-à-vis a later physical inspection?

As already explained by Turkey in its replies to questions 14 and 31 above, the process of customs control procedures includes physical inspections of the products carried-out by customs authorities. The statement that "domestic authorities determine the compliance of importers with standards and technical regulations" can be used to summarize both the initial review carried-out by MARA for purposes of approval of the Certificates of Control and the verifications and inspections conducted at customs point of entry on the physical consignments being imported.

It is not correct, however, to refer to "additional procedures". In fact, the procedures that take place at central level (i.e., with MARA in order to successfully apply for a Certificate of Control) and the ones that are exhausted at border level (i.e., the physical checks on the rice being imported which must show compliance "in practice" with all requirements, standards and technical regulations certified "in theory" by MARA when approving the Certificate of Control on the basis of the information provided by the importers) are all part of the same process of certification, verification, inspection and customs clearance.

Physical inspections of imported products do take place upon importation (i.e., after the Certificates of Control have been approved), but this must be seen as a legitimate and perfectly normal right of any Government. In particular, Turkey would like to emphasize that this is a reasonable process that must not be interpreted as trade distortive or administratively burdensome. On the contrary, this regulatory set-up must be seen against the backdrop of a country where leaner customs procedures for control and inspections cannot yet be administered because a strong system of market surveillance is missing. The process of early certification by MARA and the actual verifications and inspections at customs level are the only effective instruments for Turkey to guarantee that the products placed in free circulation on its market are safe and fit for consumption.

Q40. (Turkey) In paragraph 54 of its first submission, Turkey states that the Certificates of Control serve the purpose of determining "compliance with all relevant specifications, standards and technical regulations (i.e., human health and safety, animal or plant life or health, environmental protection, fitness for use, product safety, public policies, etc.)".

(a) Do domestic rice producers or distributors also need to obtain a Certificate of Control in order to trade rice in the Turkish market, or are Certificates of Control only applicable to imported rice?

Turkish legislation requires domestic producers to obtain from MARA a "permission of production" for the domestically-produced rice before the distribution, marketing and sale of the products. Furthermore, Turkish legislation provides that the products' label must contain "the number of the permission of production" if the marketed rice is domestic rice. For imported rice, the law requires the label to indicate "the date and number of the Certificate of Control." The relevant Turkish legislation is embodied in the Turkish Food Codex Communiqué on Rules for General Labelling and Nutritional Labelling for Foodstuffs.[12] On required labelling information, Article 6 of the Communiqué provides, in relevant part, that:

[12] Communiqué No. 2002/58, Official Gazette, 25.08.2002, No. 24857.

"Compulsory information which must be included in the labelling of the foodstuffs is indicated below:

(a) Name of the foodstuff

(b) List of ingredients

(c) Net quantity

(d) Names, registered mark, addresses of the manufacturer and packager and place of production

(e) Expiry date

(f) Lot number and/or serial number

(g) Date and number of production permission, registration number or date and number of import control certificate

(h) Country of origin

(ı) Instructions for use and / or storage conditions if necessary

(j) Quantity of alcohol for beverages containing more than 1.2 % alcohol by volume

Information covered by subparagraphs (a), (c), (e) and (i) must be on the same place of the labelling of the foodstuffs."

(b) How and under what rules does Turkey ensure that domestically-produced rice fulfils the minimum conditions in regard to the same aspects addressed by the Certificates of Control?

Turkey respectfully submits that Article 13 of the Turkish Food Codex Communiqué of paddy rice No. 2002/11[13] and of brown rice and milled rice No. 2001/10[14] both provide that "*the establishments producing and selling the products covered in this Communiqué are obliged to obey the provisions of this Communiqué during registration, authorization, importation, control and inspection*". Therefore, under Turkish legislation, the same specifications are required for imported and domestically-produced rice and are evaluated in the light of the same requirements.

(c) During the first substantive meeting with the Panel, Turkey asserted that all domestic producers undergo a registration system, which has been in place for the past three years. In this respect, can Turkey: (i) Provide the relevant legal instrument upon which that registration is based; (ii) Detail the requirements domestic producers need to comply with in order to be registered; (iii) Specify the objectives and purpose behind that system of registration; and, (iv) Identify the system in place before the enactment of the registration system.

[13] See Annex TR-6.
[14] See Annex TR-5.

Turkey respectfully submits that, in relation to point (i) of the question, the relevant legal instrument envisaging the registration system for farmers is embodied under Regulation on National Farmers' Registration System[15] and included in Annex TR-34.

In relation to point (ii), reference should be made to Article 6 and 7 of the relevant Regulation included in Annex TR-34.

In relation to point (iii), Turkey submits that the Farmers' Registration System was introduced in 2001 with the purposes of: setting-up the necessary infrastructure in view of harmonization with the relevant EC legislation; establishing a more efficient and effective distribution system for the direct income support payments and other subsidies; and assuring an accurate supply of data to be taken into consideration during the agricultural policy formulation process. The Farmers' Registration System contains information on products; on the land registration; on the land ownership, on the irrigation status of the land; on the farmer; on the village district, city and regions. Turkey submits that 90% of all the farmers and 91% of all the farm areas are registered within the system.

Finally, in relation to point (iv), Turkey submits that all farmers are obliged to be registered with the Union of Turkish Chambers of Agriculture. Before the Farmers' Registration System was in place, the major source of information for MARA was the record kept by the Union of Turkish Chambers of Agriculture.

(d) Can Turkey identify what are some of the "public policies" – different from human health and safety, animal or plant life or health, environmental protection, fitness for use and product safety – for which the Certificates of Control would serve the purpose of determining compliance.

Turkey respectfully submits that there are no other legitimate public policies other than the ones mentioned by the Panel in the question that the Certificate of Control is aimed at pursuing. In general terms, however, as indicated above, the approval of Certificates of Control also aims at guaranteeing consistency and uniformity in the customs clearance procedures, it provides greater commercial predictability and legal certainty to importers (in relation to what they can expect to happen at border control), and it reduces the possibility for goods to be blocked at customs with the potential for costly and time-consuming customs litigation. All these are clearly trade-facilitation benefits that Turkey considers to be provided by the Certificate of Control.

Q41. (Turkey) What is the analysis of "fitness and compatibility" with respect to human health and safety and other concerns that Turkey's Ministry of Agriculture and Rural Affairs (MARA) conducts when deciding to issue a Certificate of Control? Is that analysis limited to the declaration made by the applicant? Otherwise, when does this analysis take place and how is it done? When and where does a physical inspection of the imported products take place, if it does?

MARA's analysis of the "fitness and compatibility" of the product is made on the basis of the documents which must be attached to the Certificate of Control. The documents required for the approval of the Certificate of Control varies according to the specifications required by law for the product. The importer declares that the product is in compliance with legislation by filling out the relevant parts on the form of the Certificate of Control. For example, importers of rice must declare that the product conforms, *inter alia*, to the relevant legislation on Production, Consumption and Inspection of Foodstuffs, to the relevant legislation on Agricultural Pest Control and Agricultural Quarantine, to the specifications of the EC, the World Health Organization and the FAO Codex Alimentarius.

[15] Official Gazette, 16.04.2005, No. 25778.

As already explained in the reply to question 14, the approval of the Certificate of Control is part of a process of customs control and verification. The "documentation control," which represents the first of the three-step process for customs control procedures, already starts from the approval of the Certificate of Control for products which are subject to it.

Once they have verified that the documents presented by the importer comply with the requirements established by the law, customs authorities and MARA's officials will carry-out the identity checks and the physical inspections. As Turkey mentioned above, at the importation stage products are examined according to a process of risk assessment. Imported products can be subjected to laboratory analyses, on the basis of Turkish food legislation. Furthermore, the safety of products is assessed on the basis of quarantine procedures as provided by Turkey's laws on Plant Protection and Agricultural Quarantine. Products will be released for free circulation if the results of the analyses are in compliance with the relevant legislation.

Q44. (Turkey) Turkey has provided information on the 2,223 approved Certificates of Control between 2003 and September 2006 in Exhibit 20 attached to its first submission.

(a) Can Turkey provide information on the number of monthly applications filed for Certificates of Control to import rice, during the same period, by country of origin, indicating for each month the amounts requested and countries of origin.

(b) Can Turkey provide a monthly break-down of the Certificates of Control approved during the same period, indicating for each month the amounts requested and countries of origin.

(c) Can Turkey clarify whether all of the 2,223 approved Certificates of Control were issued for rice.

(d) Can Turkey provide an official list of each of the 2,223 Certificates of Control approved between 2003 and September 2006, indicating the date of request, the date of approval, the beneficiary (indicating whether it is a trader, a miller, a retailer or a final consumer), and the amount and type of rice (paddy, brown and milled).

(e) Can Turkey provide a copy of each of the 2,223 Certificates of Control approved between 2003 and September 2006.

(f) Can Turkey indicate the number of applications for Certificates of Control received between 2003 and September 2006, and how many of those were rejected and approved. Can Turkey identify the reason for rejection in each case. Can Turkey identify the country of origin and the amounts requested in the Certificates of Control that were rejected.

Reply to question 44(a), (b) and (d):

Firstly, Turkey respectfully wishes to clarify to the Panel that the total number of approved Certificates of Control has increased and is therefore higher than the one specified in the previous submissions (i.e., 2,223) due to the fact that the figures presented in the table included in Annex TR-33 have been updated to 9 November 2006. The number of approved Certificates of Control until 9 November 2006 is of 2,244.

In relation to the data requested under questions 44(a), (b) and (d), Turkey refers to Annexes TR-33, 35 and 36, where all the information on Certificates of Control can be found.

Reply to question 44(c):

This is correct. The number of approved Certificates of Control that was indicated refers to consignments of milled, paddy and brown rice.

Reply to question 44(e):

Turkey respectfully confirms to the Panel that photocopies of Certificates of Control are available. The relevant Ministries are not, however, authorized to provide all the copies to the Panel. In any event, Turkey submits that it will be able to provide to the Panel in strict confidence copies of any individual Certificate of Control listed in Annex TR-33 upon request from the Panel.

Reply to question 44(f):

Turkey refers to Annex TR-35 for the percentage of approved and rejected Certificates of Control and to Annex TR-36 for the list of rejected Certificates of Control, including the reasons for denial. Turkey would like to clarify to the Panel that the statistics provided in Annexes 35 and 36 cover the period until 21 September 2006.

Q45. (Both Parties) In paragraph 72 of its first submission, the United States asserts that "Turkey fails to grant Certificates of Control 100 per cent of the time" and, similarly, that "Turkey never grants Certificates of Control."

(b) If Turkey disputes this assertion, can it provide evidence of Certificates of Control granted in the last three years (since July 2003).

Turkey categorically rejects the United States' assertion, and it respectfully refers, for the necessary evidence, to Annex TR-33 and to the available copies of the approved Certificates of Control, as specified in its reply to question 44(e).

Q49. (Both Parties) During the first substantive meeting, Turkey asserted that once an importer obtains a Certificate of Control, the actual importation depends on market-related factors, such as relative exchange rates, demand, prices, etc.

(b) Can Turkey confirm that the discrepancy between the quantity of rice imports addressed in approved Certificates of Control and actual rice imports may be exclusively due to the above market-related factors? Or could an importer holding a valid Certificate of Control still be prevented from importing rice in full compliance with the relevant Certificate for reasons not related to market-related factors, such as not holding some additional document or permission from Turkish administration or not complying with some additional requirement? If that is the case, could Turkey specify the proportion of unrealized imports that can be accounted to such non market-related factors?

Turkey wishes to confirm that the discrepancy between the quantity of rice imports addressed in approved Certificates of Control and actual rice imports is due exclusively to market-related factors. In relation to this, Turkey submits that the system allows importers to use the Certificates of Control for the importation of the total amount indicated therein or just for a part of it. In this latter case, the importers are free to use the same Certificate of Control several times, up to the approved amount of rice, within the period of the duration of the Certificate of Control (i.e., 12 months from approval).

Turkey also confirms that, once the importers show to the customs authorities the Certificate of Control, there is no other additional document or permission required from any other public administration to realize the importation of the remaining part of the quantity stated therein. Importers may also choose not to use the Certificate of Control at all, according to their commercial evaluations, based on the market conditions for rice imports.

Products that fail to be in full conformity with the specifications cited in the Certificate of Control, and products which are found, during the physical inspections conducted at the customs, not to be in compliance with the SPS requirements, are rejected. Therefore, rejection of the consignments at border control can constitute another reason for the discrepancy between the quantity of rice imports addressed in the approved Certificates of Control and actual rice imports.

(c) Can Turkey provide the average monthly exchange rates applicable from July 2003 to September 2006. In addition, can Turkey indicate any other events, which in its opinion affected trading of rice in Turkey during that period.

In relation to the average monthly exchange rate *per* 1 US Dollar, Turkey refers to the Annex TR-37 herewith.

Turkey wishes to explain that the Turkish rice market is shaped by supply and demand, as for any free market economy. The main factors determining the demand side are domestic and world prices of rice, domestic consumption, and exchange rates. On the supply side, the level of domestic and world production and the level of the stocks are the substantial elements. Turkey has always been a net importer of rice. Although these data largely vary in the years depending on market conditions, Turkey submits that, for the last ten years, 33-62% of its total rice supply originated from foreign sources.

Despite the fluctuations in the total supply derived from the domestic production and rice imports, the general trend for total supply shows an increase. In particular, while the total supply in 1997 amounted to 436,092 tonnes, it has increased up to 643,436 tonnes in 2006. The increase in the total supply can be explained by the increase in domestic production and importation. On the other side, since there is no significant export of rice, this figure indicates also an increase in the total demand. The increase in population size and the changes in consumption attitudes have been main reasons behind this increase of the demand.

The increasing demand for imports of rice is not limited to the factors mentioned above. The proximity to the market, consumer choices and raising income levels are also important elements of the demand function. As for the first factor mentioned, the exporting countries closer to Turkey, such as Egypt, are far more advantaged than countries such as the United States and Thailand in terms of delivery. As for the second factor, since rice is not a homogeneous product in taste and quality, certain types of rice are preferred by consumers. Moreover, in Turkish market the domestic types of rice are sold at higher prices. Consumers can pay approximately US$100-US$150 more for higher quality rice. Finally, as *per capita* income has been gradually increasing since the 2001 financial crisis, the demand for importation of goods, including rice, has also increased.

A review of the production figures between 1997 and 2006 reveals a continuous increasing trend. The relatively steeper increase between 2004 and 2006 can be explained by several factors such as the renewal and modernization of farming systems and technologies (*inter alia,* more efficient irrigation systems, the utilization of high-quality seed, rehabilitation of the cultivated lands and seeds) in rice production, the change in the methods of estimation of production because of the new farmers registration system and agricultural policies of MARA. Although there is a continuous increase in the domestic rice production, generally, we also observe an increasing trend in total imports despite the fluctuations occurring in certain years. For instance, in the period between 2004 and 2006, in which

the TRQ regime was in force, rice equivalent imports have increased from 146,458 tonnes to 253,436 tonnes,[16] while the rice equivalent production has increased from 294,000 tonnes to 390,000 tonnes.

As for import fluctuations over the years, they can be partly attributed to the exchange rates of both Turkey and exporting countries, and to the production levels and stocks at the end of the previous year. For example, the decrease of imports in 2004 is to be explained by the increase in imports in year 2003, which amounted to 371,000 tonnes. This amount was the highest level of importation over the last 10 years and resulted in considerable amounts of stocked rice being carried-over to 2004. On the other hand, the 2003 increase of imports was partly due to the appreciation of the Turkish Lira and to the improvement of domestic purchase power after the 2001 financial crisis.

As for the imports by country of origin, while the milled rice imports from the United States continuously decreased, the paddy rice imports from the United States show a pattern relatively similar to that of total imports. Rice imports from Egypt maintained a rather stable and increasing curve. Turkey believes that the competitiveness of Egyptian rice accounts for this general trend. For example, the unit prices of US paddy rice was US$447/ton in 2004 and US$260/ton[17] in 2005, while the unit prices of milled rice in Egypt was US$305/ton in 2004 and US$310/ton in 2005. That's why the market share of rice from the United States has decreased and that of Egyptian rice has increased in recent years. Turkey submits that this has nothing to do with the TRQ. On the contrary, the TRQ boosted the importation of paddy rice (in which the United States maintains 98% of the market share) due to the lower rates of duty.

Q50. (Both Parties) Under what circumstances, or on what grounds, if any, would Turkey's Ministry of Agriculture and Rural Affairs (MARA) not issue a Certificate of Control?

Turkey submits that grounds for non-approval of the Certificates of Control may be found in cases of deficient information in the Certificate of Control form, or deficient documentation, as attached to the Certificate of Control form. Turkey provides below few examples of deficient/incorrect/incompatible information indicated in the Certificate of Control form and in the attached documentation:

Missing and/or wrong information on the Certificate of Control form, such as, *inter alia*:

- The incompatibility of the imported products with the customs code indicated in the Certificate of Control;
- Inappropriate or missing indication of the customs point of entry;
- Missing or inaccurate reference to the country of origin;
- Other missing information which is required on the Certificate of Control form.

Inconsistent information stated on the documents provided such as, *inter alia*:

- Name of the firm;
- Address;
- Indication of the product.

As already mentioned above, the relevant importer is promptly notified of the deficiencies and it is granted the right to remedy in the stated time frame. When the deficiencies notified by MARA to the importer are not addressed or are not properly corrected, the application will be returned to the importer, together with the official rejection. Other reasons for rejection are, obviously, the non

[16] Expected values.

[17] Although this price is not realistic because of the low declarations lodged by importers for tax-avoidance or tax-minimization purposes.

compliance of the product with the relevant legislation and the importer's withdrawal of its application for approval of the Certificate of Control.

Q53. (Turkey) In the case of rejected applications for a Certificate of Control:

(a) Does the importer have an opportunity to request some administrative or judicial review of the rejection?

Turkey submits that the importer can at any time request the administration (i.e. MARA) to review the application which was rejected. Turkey also submits that in Turkey all the acts of the public administration are subject to judicial review. In particular, this principle is set out in Article 125 of the Turkish Constitution, which also states that "*[t]he Administration shall be liable for damages caused by its own acts and actions.*" In addition, 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*."

(b) If a process for an administrative or judicial review is in fact available to the importer, please explain the procedure and provide the relevant legal basis.

The administration is obliged to redress the act which has been found in breach of the relevant legislation as a result of the litigation process initiated by the importer. The administration must comply with Court decisions and take all necessary and proper steps and actions within 30 days. (Article 28/1 of the 2577 numbered Law on the Administrative Procedure Law).

(c) Under what circumstances and on what grounds can an importer request an administrative or judicial review of the rejection of a Certificate of Control.

Turkey submits that under Turkish law the importer may always initiate the litigation process against any act of the administration.

(d) Can an importer resubmit its application for the same Certificate of Control, after having corrected the alleged failings? If so, under what circumstances would an importer choose to resubmit its application instead of requesting an administrative or judicial review of the rejection of the first application?

Turkey submits that the importer has the right to apply again for the Certificate of Control after having corrected its failings and/or having filled the requirements missing in the first application. If, however, the importer claims that the first application was in line with the requirements set in the legislation, it may choose to resort to litigation.

(e) Please provide statistics to illustrate the results of the administrative or judicial review and of the submission of new applications of rejected Certificates of Control.

Turkey submits that since 2003, 14 importers have resorted to litigation against MARA. Five of these trials were concluded with decisions in favour of MARA. For the remaining 9, the litigation before the Courts is currently ongoing.

Q54. (Turkey) In paragraph 67 of its first submission, Turkey states that "nothing in the relevant Turkish law imposes any 'denial' of the approval of Certificates of Control, with the exceptions of those legitimate instances in which the necessary customs purposes requirements have not been met by importers." Could Turkey specify which necessary customs purposes

were not met by the importers in the specific instances referenced by the United States in its first submission.

Turkey submits that reasons for the denial of the Certificates of Control have been, *inter alia*, incomplete administrative requirements, multiple usages of the invoices and failure to present all the necessary documentation.

For greater detail on the reasons for rejection, Turkey respectfully refers to Annex TR-36, which illustrates the specific reasons for denial of the single rejections of the Certificates of Control.

Q55. (Turkey) Do the Turkish customs authorities have the legal authority to reject the importation of a shipment of goods even if a Certificate of Control has been issued and approved by Turkey's Ministry of Agriculture and Rural Affairs (MARA)? Please explain.

Yes, Turkish customs authorities have the legal authority to reject the importation of a shipment of goods, even if a Certificate of Control has been issued and approved by MARA. In particular and as explained above, the Certificate of Control is a document required for the first (i.e., documentation control) of the three-step process through which control procedures at import stage take place. Following the "documentation control" phase, custom authorities and MARA's officials will carry-out identity checks and inspections. If the imports fail to comply with the specifications cited in the Certificate of Control, and if the inspections reveal that the imports are not consistent with SPS requirements, these imports are rejected.

Q59. (Turkey) In paragraph 17 of the provisional version of its oral statements, Australia indicates that "Turkey's submission ... that its Certificates of Control deal solely with customs matters -and so are not import licences- gives too great a scope to the carve out for 'customs purposes' and restricts the meaning of 'import licences' beyond that intended by either Article XI of GATT 1994 or the Import Licensing Agreement." Could Turkey comment on this statement.

Turkey notes that Article 1.1 of the Agreement on Import Licensing Procedures reads as follows:

> For the purpose of this Agreement, import licensing is defined as administrative procedures[18] used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.

Turkey considers that, under this provision, the definition of import license for the purpose of the Agreement on Import Licensing Procedures excludes administrative procedures which are required for customs purposes. Turkey submits that the Certificates of Control are forms required for customs purposes and therefore fall outside the scope of the Agreement on Import Licensing Procedures and the definition of 'import license.'

As a preliminary remark, Turkey considers that the actual scope of the so-called "carve-out" for "customs purposes" can only be clarified by an analysis of what "customs purposes" actually consist of. There is no 'narrow' or 'large' scope of the "carve-out," once it is assessed that a certain form is meant to comply with "customs purposes." The application of concept of "customs purposes" must be neutral in nature and cannot be expanded or diminished for interpretative needs, particularly in relation to the meaning of import license.

[18] Those procedures referred to as "licensing" as well as other similar administrative procedures.

This is to say that the so-called "carve-out" is not indented to provide an exception to the requirements of import licensing procedures that must be interpreted, like all exceptions, in the most restrictive way. It is also not meant to narrow the definition of import license, be it for the purposes of the Agreement on Import Licensing Procedures or for the application of the term 'import license' under GATT Article XI:1. Rather, the reference to "customs purposes" is designed to confine the scope of the rules on import licensing procedures so to avoid any interference and possible confusion between the application of those rules and the enforcement of legitimate customs policies. Turkey fails to understand how Australia would draw the boundaries of the scope of application of this so-called "carve-out".

In relation to this, Turkey wishes to emphasize that it is not the scope and the content of the information requested by MARA for approval of the Certificate of Control that can change an administrative document used for customs purposes into an import license. Turkey believes that the distinguishing factor between an "import license" and other documentation (such as that used for "customs purposes") is a matter of procedures and not of content of the documentation. In addition, Turkey already submitted that the "customs purposes" of the Certificates of Control are evident both *de jure* and *de facto*. Turkey's customs regime shows nothing considerably different from the customs regimes of other WTO Members in that the process of importation and customs clearance is more than just compliance with the obligation to pay the applicable duty and other charges.

Q60. (Both Parties) In paragraph 26 of the provisional version of its oral statements, Australia indicates that "the measure at issue is Turkey's alleged blanket denial of Certificates of Control." Could the Parties comment on this statement. If appropriate, provide evidence to support your statements.

Turkey believes that it has already conclusively demonstrated, through the provision of factual evidence,[19] that there has never been a *de jure* or *de facto* "blanket denial" in the approval of Certificates of Control. Individual instances of denial of approval in relation to specific applications made by individual importers cannot be used to imply a "blanket denial" that would amount to a measure of general application.

Turkey also believes that, in this respect, the United States has failed to prove that, either *de jure* or *de facto* Turkey ever imposed a measure of general application that resulted in a "blanket denial" in the approval of Certificates of Control.

Q61. (Both Parties) In paragraph 27 of the provisional version of its oral statements, Australia indicates that "[i]f the Panel finds that Turkey has in fact adopted a practice of denying Certificates of Control altogether ... this could constitute a 'measure of general application' for the purposes of Article X:2 [of the GATT 1994], whether or not the Letters of Acceptance themselves can be enforced". Could the Parties comment on this statement.

Turkey would like to respectfully reiterate that there has never been a *de facto* "*practice of denying Certificates of Control altogether*". Therefore, there was never a "*measure of general application*" within the meaning of GATT Article X:2. In addition, Turkey would like to emphasize that, in relation to individual instances of rejection of approval of Certificates of Control, the affected importers were always systematically notified of the reasons for rejection. This is clear evidence of the specificity of the measures (i.e., the individual rejections). These individual rejections were not, as argued by the United States, measures of general application and never amounted to a *de facto* "blanket denial". Had Turkey wished to introduce a measure of general application, it would have duly published it as it does with all its measures of general application (for example, the TRQ or the rules on the Certificates of Control).

[19] See Annexes TR-8 and TR-20 and Annex TR-33 herewith.

Q63. (Both Parties) During the first substantive meeting with the Panel, Turkey asserted that the case of the difficulties faced by Torunlar in trying to import rice was exceptional.

(a) To the extent possible, could Turkey further develop this assertion and explain on what grounds the difficulties faced by Torunlar in trying to import rice were exceptional.

(b) Can Turkey also explain to what extent the cases of the other importers cited by the United States (Mehmetoglu and ETM) were also exceptional?

(d) Can Turkey refer to the other two importers mentioned by the United States in its first submission, who were allegedly denied Certificates of Control to import rice into Turkey (Mehmetoglu, and ETM).

(e) Can the Parties provide information regarding the importance and share of these three importers (Torunlar, Mehmetoglu, and ETM) in total imports of rice into Turkey and, more specifically, in imports of US rice into Turkey during the relevant period.

Turkey preliminarily submits that, despite the exceptional problems faced in the approval of certain Certificates of Control requested by these firms, a considerable number of Certificates of Control were approved for Torunlar, Mehmetoglu and ETM. In relation to this, Turkey refers to Annex TR-38 for detailed information on the approval of Certificates of Control for these companies.

The relevant Provincial Directorate of MARA states that the rejected applications filed by these firms were due to missing documents and incorrect information.

Turkey also refers to Annex TR-39 for detailed import figures regarding the above-mentioned importers and their relative shares of total imports.

Q66. (Both Parties) In paragraph 31 of its first submission, the United States asserts that Torunlar's lawsuit against the Ministry of Agriculture and Rural Affairs (MARA) "is still pending", making reference to a letter from the Ankara Governorship Province Agriculture Department (Exhibit US-33). What is the current status of the lawsuit to date?

Turkey respectfully submits that the lawsuit has been concluded in favour of the Ministry of Agriculture and Rural Affairs. The firm chose not to appeal it at the High Court.

Q67. (Turkey) In paragraph 35 of its first submission, the United States asserted that "[i]n early April, forty rice producers visited MARA to protest that one company (Mehmetoglu Domestic and Foreign Trade) had allegedly received a Certificate of Control without procuring domestic rice". Can Turkey comment on this information.

It is evident that this information was provided from a newspaper article. Just as it happens in every other WTO Member country where freedom of expression is allowed, in Turkey interest groups meet with the relevant governmental authorities to discuss or present their concerns and problems in relation to their area of operation. These meetings may naturally lead to certain sensational media statements which do not necessarily reflect the truth or that may be used for political or demagogical ends. Turkey believes that a newspaper article, the accuracy of which is doubtful, should not be used as an evidentiary element to build a WTO dispute settlement case.

Q71. (Turkey) Can Turkey provide detailed figures on the operation of its domestic purchase requirement under the TRQ, in particular as regards to:

(a) The date, value, price and type of domestic rice purchases under the TRQ;

(b) The origin of the specific rice imports; and

(c) The specific Certificates of Control in connection with which such domestic rice purchases have been made.

In relation to question 71(a), Turkey respectfully refers to Annex TR-27. In relation to question 71(b), Turkey refers to Annex TR-8, which also includes reference to the origin of both in-quota and out-quota imports from January 2004 to August 2006. Finally, in relation to question 71(c), Turkey refers to Annex TR-33, which lists all the approved Certificates of Control, for both in-quota and out of quota imports.

Q72. (Both Parties) Can Turkey comment on the United States' assertion contained in paragraph 123 of its first submission, that "Turkey ensures that the full amount of the quotas cannot be reached by setting the domestic purchase requirement so high that the entire Turkish domestic production of rice would be purchased by importers before the in-quota amount was reached" and that, "[b]ased on the levels of domestic purchase set forth thus far, there is no way for importers to be able to import anywhere approaching the 300,000 metric ton limit on milled rice imports." If that were the case, please refer in particular to the reasons Turkey would have, if any, in setting the import quotas above the actual level of possible realisation of imports. Does the United States have any comments on the matter?

Turkey submits that the total amount of the tariff quota was determined on the basis of the production projections of each year and the conversion coefficients indicated in related Communiqués.

Turkey's estimate for 2005-2006 crop season (September – November 2005) in Turkey was about 620.000-630.000 tons of paddy rice. If all the domestic production had been purchased under the TRQ, 500.000 tons of paddy or 300.000 tons of rice equivalent would have been imported only via TRQ in 2005. These were the exact quantities, which the quota opened for.

Q73. (Both Parties) In paragraph 23 of the written version of its oral statements, Australia indicates that "... WTO jurisprudence supports the view that the imposition of an 'additional requirement' or an 'extra hurdle' on imported products, when compared to like domestic products, constitutes less favourable treatment ..." Australia adds that "these 'extra hurdles' need not be onerous in commercial and/or practical terms to be inconsistent with Article III:4 of GATT 1994". Could the Parties comment on this statement.

Turkey respectfully recalls that GATT Article III:4, as interpreted by WTO case law, requires imported products to be accorded 'competitive opportunities' no less favourable as compared to domestic products. Turkey acknowledges that the imposition of additional requirements on imported products may result in granting less favourable treatment.

However, Turkey respectfully recalls that the scope and the meaning of GATT Article III:4, as described by Australia in its oral statements, must necessarily find application within the context of Turkey's WTO MFN commitments. Turkey disagrees that such reasoning should also apply to volumes of trade within the TRQ, which provides an advantage to imported rice over domestic rice. In particular, Turkey cannot support the view that the obligations provided under GATT Article III:4 would apply beyond the scope of Turkey's actual commitments and within an advantage that Turkey was spontaneously granting to imported over domestic rice. In this respect, Turkey considers that, if

MFN trade is not impaired, hampered or otherwise affected, it is a matter for the importers' business determinations (and not a matter of governments' evaluations) whether or not the domestic purchase requirement constitutes an "extra hurdle." In relation to this, Turkey considers that within the TRQ the essence of the advantage is ultimately determined by the choice of the importers. It is the importers that must assess the convenience of the TRQ and its domestic purchase requirement. The fact that importers made great use of the TRQ and benefited of its tariff rate advantage, while MFN trade remained available, represents a clear testimony of the existence of a considerable advantage for imported products, in spite of the domestic purchase requirement.

Q74. (Both Parties) In pages 2 and 3 of the written version of its oral statements, Korea indicates that "[n]o matter how much the cost of buying domestic rice was lowered by virtue of the so called domestic purchase requirement, it can not be denied that importers had to resource additional funds to purchase domestic rice, and foreign rice could be imported more if such funds were not forced to be used to buy domestic rice. The main focus in this issue is not the price of domestic rice but the additional obligation imposed on the importers". Could the Parties comment on this statement.

The calculations made on the average prices and the scenarios provided clearly indicate that importers autonomously decided on the basis of purely commercial considerations whether or not it was advantageous to purchase domestic rice in order to benefit of the tariff preference within the TRQ.

Turkey disagrees that greater amounts of foreign rice would have been imported had there not been a domestic purchase requirement. At any time, as conclusively demonstrated on the basis of factual evidence, importers could have destined unlimited funds to purchase rice at the MFN or applied rates. The fact that most importers preferred to import within the TRQ, despite the domestic purchase requirement, was entirely an individual business decision made on the basis of purely commercial calculations.

Q75. (Both Parties) Two of the Third Parties in their oral statements have presented views on the applicability of the Agreement on Trade-Related Investment Measures (TRIMs Agreement). China in paragraphs 4 and 5 of the provisional version of its oral statement, asserted that "Turkey ignores the fact that the US fails to define what 'trade-related investment measure' is and to prove Turkey's measure constitutes a TRIM"; and adds that "[i]n no case it is proper to bring a measure out of the coverage of TRIMs Agreement under the jurisdiction of it." Korea, in page 3 of the written version of its oral statement, noted that the TRIMs Agreement can only be applied to investment measures, which must have both a trade and an investment element. In the case of the domestic purchase requirement, it asserted that "there does not appear to be an investment element", and if so, "it can not be an investment measure, therefore the TRIMs Agreement could not be applied." Could the Parties please comment on the assertions made by China and Korea in their oral statements.

Turkey notes that China and Korea raised interesting points with respect to the application and the necessary methodology for interpretation of the TRIMs Agreement. The United States seem to argue that, as the domestic purchase requirement appears to fall within the definitions provided in the Illustrative List under subparagraph 1(a), the measure constitutes *ipso facto* a trade-related investment measure, in violation of Article 2.1 of the TRIMs Agreement.

China believes that the United States has failed to identify which aspect of Turkey's domestic purchase requirement constitutes a TRIM. Basically, China argues that the United States failed to prove that the measure is a TRIM in the first place and simply made this assumption on the basis of the Illustrative List. Korea rightly points out that, for the TRIMs Agreement to apply, a measure must be a TRIM (i.e., have both a trade and an investment element). Korea believes that the Turkey's domestic purchase requirement lacked the investment element. In addition, Korea considers that a

cross-border financial movement stands out as an essential element of any investment measure. In practice, both China and Korea consider that the fundamental requirement of the existence of a TRIM has been overlooked by the United States in its claim.

Turkey shares these views and considers that the correct methodology for interpretation of the TRIMs Agreement should require a preliminary assessment of the existence of both the trade and the investment elements of an alleged TRIM. This appears to be reinforced by the reading of Article 1 of the TRIMs Agreement, according to which "*[t]his Agreement applies to investment measures related to trade in goods*."

Turkey is aware of the fact that the Panel in *Indonesia – Autos* did not consider necessary to decide "*whether any requirement by an enterprise to purchase or use a domestic product in order to obtain an advantage, by definition falls within the Illustrative List or whether the TRIMs Agreement requires a separate analysis of the nature of a measure as a trade related investment measure before proceeding to an examination of whether the measure is covered by the Illustrative List.*"[20] Turkey wishes to observe, however, that in the same case the Panel felt it appropriate to determine fist whether Indonesian measures were trade-related investment measures.[21] Turkey invites the Panel to proceed in the same way, as it seems more consistent with the provision of Article 1 of the TRIMs Agreement.

Should the Panel engage in such analysis, which Turkey considers necessary, it would indeed find that Turkey's domestic purchase requirement is not, as Korea also argued, a trade-related investment measure. Turkey considers that, so far, neither the TRIMs Agreement nor any Panel or the Appellate Body provided a definition of what a trade-related investment measure is for the purposes of the application of the TRIMs Agreement. It is clear, however, that despite not having yet been defined, a TRIM necessarily requires a trade element and an investment element.

With respect to the investment element, Turkey wishes to recall that, without intending to provide an overall definition of what constitutes an 'investment measure', the Panel in *Indonesia – Autos* has found the Indonesian measures to meet the '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.*" According to the Panel, the review of the legislative provisions related to those measures revealed "*investment objectives and investment features and which refer to investment programmes*."[22]

The Panel in *Indonesia – Autos* was encouraged to identify investment measures from few revealing expressions and words included in the Indonesian legislation, such as, *inter alia*, "effort to promote the growth of the domestic automotive industry", "a decree for the regulation of investment in the national automobile industry", "to realise the development of the national automobile industry," "within the framework of promoting the development of the automotive industry in the increased use of domestically produced automotive components." Indonesia had also argued that its programmes were aimed at, *inter alia*, improving the competitiveness of local companies and strengthen overall industrial development; encourage the development of the automotive industry and the automotive component industry, encourage car companies to increase their local content, resulting in a rapid growth of investment in the automobile industry.[23]

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[20] *Indonesia – Certain Measures Affecting the Automobile Industry*, Panel Report, para.14.71.
[21] *Indonesia – Certain Measures Affecting the Automobile Industry*, Panel Report, paras. 14.71-14.72.
[22] *Indonesia – Certain Measures Affecting the Automobile Industry*, Panel Report, para. 14.80
[23] *Indonesia – Certain Measures Affecting the Automobile Industry*, Panel Report, paras. 14.77-14.78.

Turkey notes that nothing in its expired TRQ legislation revealed or even implied 'investment objectives'. Turkey also emphasises that, if a relation to investment is the key element that characterises a measures as an "investment measure," it is clear that Turkey's domestic purchase requirement could never have been an "investment measure" because it had no relation with investment. In addition, Turkey has repeatedly stated that the TRQ, and its domestic purchase requirement, aimed at achieving the necessary supply of rice into Turkey and at stabilizing the domestic market. The TRQ has even done so providing foreign rice with an advantage. It was never aimed at protecting or distorting trade, let alone at promoting the development of the national industry. Turkey also 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. Therefore, Turkey wishes to underline that its expired TRQ system, and the domestic purchase requirement in particular, lacked any of the investment elements necessary for them to fall within the scope of the TRIMs Agreement.

Turkey also wishes to make a statement in relation to the application of the TRIMs Agreement. Turkey believes that this statement is of particular importance to further clarify its own previous statements in relation to the TRIMs Agreement, not only in the light of China's and Korea's submissions, but also in the light of the considerations made by the EC concerning the idea of the "order of analysis."

This directly calls into question the relationship between the TRIMs Agreement and the GATT, which has been the object of few Panel and Appellate Body Reports leading to mixed results. In *EC – Bananas III*, the Panel, faced with a an EC measure claimed to be inconsistent with both GATT Article III:4 and Article 2.1 of the TRIMS stated that: "*the TRIMs Agreement essentially interprets and clarifies the provisions of Article III where trade-related investment measures are concerned. Thus the TRIMs Agreement does not add to or subtract from those GATT obligations, although it clarifies that Article III:4 may cover investment-related matters.*"[24] On this basis, once it found the measures inconsistent with GATT Article III:4, the Panel decided to resort to judicial economy with respect to the claims related to the TRIMs.

The Panel in *Indonesia – Autos* came, instead, to a different conclusion. On the relationship between the TRIMs Agreement and GATT Article III:4, the Panel had this to say: "*we note first that on its face the TRIMs Agreement is a full fledged agreement in the WTO system. The TRIMs Agreement is not an 'Understanding to GATT 1994', unlike the six Understandings which form part of the GATT 1994. The TRIMs Agreement and Article III:4 prohibit local content requirements that are TRIMs and therefore can be said to cover the same subject matter. But when the TRIMs Agreement refers to 'the provisions of Article III', it refers to the substantive aspects of Article III; that is to say, conceptually, it is the ten paragraphs of Article III that are referred to in Article 2.1 of the TRIMs Agreement, and not the application of Article III in the WTO context as such. Thus if Article III is not applicable for any reason not related to the disciplines of Article III itself, the provisions of Article III remain applicable for the purpose of the TRIMs Agreement. This view is reinforced by the fact that Article 3 of the TRIMs Agreement contains a distinct and explicit reference to the general exceptions to GATT. If the purpose of the TRIMs Agreement were to refer to Article III as applied in the light of other (non Article III) GATT rules, there would be no need to refer to such general exceptions.*"[25]

On this basis, and referring to the Appellate Body Report on *EC – Bananas III* in relation to the order of examination, the Panel began its analysis of the consistency of the measures from the TRIMs Agreement, as more specific than Article III:4, as far as the particular claims were concerned. The Panel, having found the measures at issue inconsistent with Article 2.1 of the TRIMs Agreement,

[24] *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, Panel Report, para.7.185.

[25] *Indonesia – Certain Measures Affecting the Automobile Industry*, Panel Report, paras. 14.60-14.61.

bearing in mind the principle of judicial economy and considering that action to remedy the inconsistencies found under the TRIMs Agreement would also remedy any inconsistency found under the GATT Article III:4, did not consider necessary to address the claims under GATT Article III:4.

Such latter approach was, however, not followed by the Panel in the *Canada – Autos* dispute.[26] As for the other disputes cited, certain measures were claimed to be inconsistent under both GATT Article III:4 and the TRIMs Agreement. The Panel reverted to the approach followed by the Panel in *EC – Bananas III* and decided to analyse the claims under GATT Article III:4 first. This Panel was in fact not "*persuaded that the TRIMs Agreement can be properly characterized as being more specific than Article III:4 in respect of the claims raised by the complaints*."[27] Therefore the Panel, considering that from the order in which the complainants had presented their claims it was implicit that the claims under GATT Article III:4 were to be addressed first, started its analysis from the GATT Article III:4 and found the measures to be inconsistent with the obligations set therein. The Panel did not further investigate the consistency of the measures with the TRIMs Agreement, aligning its reasoning with what previously stated in the *EC-Bananas III* Panel Report.

Conversely, the same Panel found that certain other requirements were not inconsistent with GATT Article III:4. In the light of this latter finding the Panel also rejected the claim under Article 2.1 of the TRIMs Agreement.

A similar approach was followed by the Panel in *India – Autos*. Here the Panel clarified that "*[a]lthough the TRIMs Agreement has an autonomous legal existence, independent from the relevant GATT provisions, as noted in the Indonesia – Autos Panel, the substance of its obligations refers directly to Articles III and XI of the GATT, and clarifies their meaning, inter alia, through an Illustrative list. On one view, it simply provides additional guidance as to the identification of certain measures considered to be inconsistent with Articles III:4 and XI:1 of the GATT […]*."[28] The Panel considered that in this case the order of analysis was of not much relevance and, following the order of the complaints' claims, considered the claims under GATT first. In relation to the TRIMs violations, the Panel again resorted to judicial economy.

Turkey considers this statement of the Panel of particular importance: "*The order selected for examination of the claims may also have an impact on the potential to apply judicial economy. It seems that an examination of the GATT provisions in this case would be likely to make it unnecessary to address the TRIMs claims, but not vice-versa. If a violation of the GATT claims was found, it would be justifiable to refrain from examining the TRIMs claims under the principle of judicial economy. Even if no violation was found under the GATT claims, that also seems an efficient starting point since it would be difficult to imagine that if no violation has been found of Articles III or XI, a violation could be found of Article 2 of the TRIMs Agreement, which refers to the same provisions* "[29]

Turkey has previously stated that, in order to establish the existence of a violation of the TRIMs Agreement, its domestic purchase requirement must first be found to be inconsistent with the provisions of GATT Article III. Turkey believes that the United States has not established that the domestic purchase requirement is inconsistent with GATT Article III:4. For this reason, the Panel should dismiss also the United States' claim in relation to the TRIMs Agreement.

To conclude, Turkey invites the Panel to reject the claims in relation to the alleged violations of the TRIMs Agreement on the basis of the fact that the United States has not proved how Turkey's

[26] *Canada – Certain Measures Affecting the Automotive Industry*, Panel Report.
[27] *Canada – Certain Measures Affecting the Automotive Industry*, Panel Report, para 10.63.
[28] *India – Measures Affecting the Automotive Sector*, Panel Report, para. 7.157.
[29] *India – Measures Affecting the Automotive Sector*, Panel Report, para. 7.161.

domestic purchase requirement would result in a trade-related investment measure and if so whether it would violated GATT Article III.

Q77. (Both Parties) In paragraph 122 of its first submission, Turkey asserts that the deadlines for the submission of applications for import licenses was extended twice in 2005, as "evidence that Turkey did not intend to discourage full utilization of the quotas."

(b) Can Turkey indicate whether any import licences have been granted during these extensions.

Turkey submits that 95 import licenses were issued by UFT within the extended period.

Q79. (Turkey) In paragraph 32 of its first submission, Turkey asserts that the tariff-rate quota system (TRQ) "was not introduced as an instrument to protect or distort trade, but rather as a tool to achieve the necessary supply of rice to Turkey and to stabilize the domestic market". Can Turkey confirm whether alternative mechanisms, such as a lower MFN tariff, would, in its opinion, not be capable of achieving the same objectives.

Turkey notes that through the TRQ it pursued, at the same time, two legitimate objectives, i.e., that of a greater market supply and that of market stabilization. Turkey submits that through the TRQ system, not only the supply of rice has increased, but also market and price stability was achieved.

In this respect Turkey notes that lower MFN rates would have achieved the desired increase in supply without contributing to market stabilization. In any event, Turkey submits that recourse to lower MFN rates was made as lower rates were applied within the TRQ system. Recourse to lower MFN rates would have also limited Turkey's ability to manage the market. It is well known that actual rates cannot be continuously modified (i.e., increased or lowered, as need may be) even if this occurs within the bound rate. Turkey believed that a TRQ would give greater stability, commercial predictability and legal certainty to all stakeholders, including importers or third country exporters.

Q80. (Turkey) In paragraph 50 of its first written submission, the United States asserts that "Turkey re-opens the TRQ with a domestic purchase requirement that has been adjusted to ensure that all domestically-produced rice is purchased and imports are effectively capped at the difference between projected domestic consumption and projected domestic production." Can Turkey comment on this assertion.

Turkey rejects these allegations and considers these assertions to be untrue and misleading. Turkey also submits that imports could have never been capped, given that importation at MFN and applied rates always remained available to importers.

Q81. (Both Parties) In its oral statement, Thailand has raised the issue of "the inconsistency of Turkey's rice TRQ regime with its obligations under Article II of GATT 1994 with respect to its Schedule of Concessions". Further, in paragraph 5 of the written version of its oral statement, it based its argument on "the factual evidence submitted by the United States, [according to which] the treatment actually accorded by Turkey under its TRQ regime is 'less favourable' than that provided in its Schedule to all Members." Can the Parties comment on the issue raised by Thailand in its oral statement.

Turkey believes that Thailand's analysis of the effects of the TRQ regime in relation to GATT Article II:1(a) is legally incorrect for two main reasons.

Turkey points out that GATT Article II:1(a) reads, in relevant part, that: "Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement."

In order to find a violation of GATT Article II:1(a), therefore, a comparison between the tariff commitments included in the Schedules and the treatment actually granted to trade with other contracting parties is required. To comply with the relevant GATT obligations, the treatment actually granted must not be *less favourable* than what indicated in the Schedules.

First, it appears that Thailand based its considerations on "the factual evidence submitted by the United States." Turkey maintains that, rather than on circumstantiated factual evidence, many of the United States' arguments rest on unproven assertions.

In particular, Thailand's arguments that the TRQ regime would be inconsistent with the obligations set forth under GATT Article II:1(a) must follow from the paramount assumption that MFN trade of rice is prohibited, restricted or otherwise impaired. Turkey has always rejected any allegation of this kind and repeatedly submitted that the TRQ regime was only an advantageous option available to importers. These importers have always been free to choose to import at the MFN and applied rates. Turkey has brought ample evidence, expressed *inter alia* through data on approved Certificates of Control[30] for MFN imports, which sharply contradicts "the factual evidence submitted by the United States" on which Thailand's arguments appear to be based.

Second, Thailand seems to have overlooked that the calculations submitted by Turkey in its First Submission and in its Oral Statements[31] have shown that, for both paddy and milled rice importation, the TRQ regime provided a substantial advantage vis-à-vis imports of rice at the MFN and applied rates. Remarkably, Turkey demonstrated in its First Submission and Oral Statements that this was at times even the case with respect to the average cost of the TRQ imports, had they occurred without the application of the domestic purchase requirement.

For these reasons, Turkey fails to understand where, according to Thailand, Turkey would have granted less favourable treatment than the one committed under the Schedules. Turkey therefore rejects the idea that its TRQ regime resulted into a violation of GATT Article II:1(a). In any event, Turkey submits that the review of an alleged violation of GATT Article II:1(a) was never included in the claims put forward by the United States and falls outside of the terms of reference of this dispute.

Q82. (Turkey) Both Parties have introduced claims concerning the intended and actual effects of the TRQ regime, including the domestic purchase requirement. In the light of Turkey's claim that the TRQ is no longer in force and Turkey's statement that it does not intend to reintroduce the TRQ, can Turkey specify whether and, if so, through what instruments the intended and actual objectives under the TRQ might be achieved in the future.

Turkey submits that the TRQ regime, and its domestic purchase requirement, had been introduced as temporary measures. Turkey wishes to point out that the TRQ regime provided and advantage to importers as compared to the importation at MFN rates, which always remained available. Turkey has used the TRQ regime for two years (i.e., in 2004 and 2005) after which it automatically expired. Turkey has already expressed that it has in no intention to reintroduce the TRQ regime or any similar system.

The domestic and international economic indicators also lead Turkey to the assumption that there will not be, at least for the foreseeable future, needs for market intervention and stabilization of the types

[30] See Annex TR-33.
[31] See First Written Submission of Turkey, para. 95, and Oral Statement from Turkey, paras. 27 and 28.

that the TRQ helped address. In particular, the Turkish Lira is no longer weak and unstable, plenty of rice is available internationally, and domestic rice remains competitive with predictable production forecasts.

In any event, Turkey wishes to emphasize that it will no longer have recourse to the TRQ system, if anything to lower its administrative costs and to avoid misunderstandings of the type that may have triggered this dispute settlement proceeding. The only real market stabilization instruments will remain the action of the TMO coupled with the use of appropriate MFN actual rates of duty.

Q83. (Both Parties) In page 1 of the written version of its oral statements, Korea indicates that "the disproportionate number of certificates for out-quota imports should be explained by Turkey in order to avoid the suspicion that the issuance of out-quota certificates have been deliberately controlled". In page 2, Korea also notes that "the proportion of out-quota certificates to in-quota certificates in 2006 is much higher than it is for the years 2004 and 2005" and states that "[a]n explanation for this should be sought so as to avoid the assumption that Turkey loosened its grip on out-quota certificates only after having been challenged in the WTO". Could the Parties comment on these statements.

Turkey does not consider that the number of out-of quota Certificates of Control for 2004 and 2005 is "disproportionate," given that the advantage provided by the TRQ rendered in-quota importation far more appealing. In addition, the comparison between out-of-quota and in-quota Certificates of Control in 2005 shows no disproportion at all, as figures show that 394 Certificates of Control were approved for out-of-quota imports and 432 for in-quota imports.

Turkey also submits that the different trends of 2006 are easily explained by the fact that the TRQ regime expired in July 2006, so that after this date all importations have been realized on out-of-quota basis. In any event, Turkey wishes to respectfully submit that the Certificates of Control were always approved on the basis of the requests for approval put forward by importers. The choices of importers were only ever dictated by business considerations and commercial calculations.

Q84. (Both Parties) In the hypothetical case that Certificates of Control do not qualify as import licenses under the Import Licensing Agreement, would it automatically flow that such documents cannot qualify as import licenses under GATT 1994 either?

Article 1.1 of the WTO Agreement on Import Licensing Procedures circumscribes the coverage of the Agreement by stating that:

> For the purpose of this Agreement, import licensing is defined as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.

GATT Article XI:1 and the Agreement on Import Licensing Procedures cover different issues and pursue different objectives. In particular, the Appellate Body in *EC – Bananas* clarified that the Agreement on Import Licensing Procedures "*concerns import licensing* procedures. *The preamble of the* Licensing Agreement *indicates clearly that this agreement relates to import licensing procedures and their administration, not to import licensing rules. Article 1.1 of the* Licensing Agreement *defines its scope as the* administrative procedures *used for the operation of import licensing regimes*".[32]

[32] *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, Appellate Body Report, para. 197.

However, Turkey notes that the Agreement on Import Licensing Procedures was endorsed by WTO Members, *inter alia*, with the aim of furthering the objectives of the GATT and ensuring that import licensing procedures are not utilized in a manner contrary to the principles and obligations of the GATT. These principles and obligations are, *inter alia*, those included in Article XI:1 of the GATT, so that it can be concluded that the Agreement on Import Licensing Procedures shows a substantial link with GATT Article XI:1 by aiming at further developing and clarifying the provisions therein included in a manner which is consistent with the wording and the scope of GATT Article XI:1.

In light of these considerations, Turkey believes that, in the absence of a precise definition of the concept of "import license" under GATT Article XI:1, Article 1.1 of the Agreement on Import Licensing Procedures must necessarily provide an element of interpretative guidance. Therefore, Turkey submits that, while the non-applicability of GATT Article XI:1 cannot be an automatic result of the inapplicability of the Agreement on Import Licensing Procedures, the practical result should be the same as a consequence of the recourse to the interpretative guidance on the meaning of the term "import license" offered by the Agreement on Import Licensing Procedures for purposes of the application of the GATT 1994.

Q85. (Turkey) In paragraph 28 of its first submission, Turkey explained that "Turkish law does provide for the use of import licenses [that] are required for imports of rice within the TRQ". Turkey added that these import licenses "do not serve a customs purpose, but rather aim at allocating the available quota among traders and guaranteeing predictability of the market supply". Is the approval of these import licenses the only intervention that customs authorities would have in relation with the importation of rice into Turkey?

Importers wishing to import through the TRQ, have to submit to the customs authorities the import license and their Certificate of Control in order to benefit from the reduced rates of duty. The customs authorities are not the authorities competent for the approval of import licenses. This competence belongs to UFT. Customs authorities merely check the licenses for the imposition of the duty and for dual usage prevention.

Q86. (Turkey) In relation to paragraph 2 of the United States' first submission, please provide information establishing the average time importers must wait for a response to their license applications at the MFN tariff rate.

Turkey would like to emphasize that no import licence has ever been requested for imports at the MFN rates of duty. Import licences have always only applied to TRQ in-quota trade (when this system was in force).

If the Panel is referring to the administrative delay for purposes of the approval of Certificates of Control, Turkey submits that a general administrative rule applicable to all instances of interaction between the Turkish administration and the world at large provides for a maximum delay of 15 days for a decision to be taken. In relation to the approval of Certificates of Control, Turkey wishes to refer to the dates provided in the table contained in Annex TR-33 herewith.

A general overview will clearly show that the general administrative delay is well below 15 days. Often the Certificates of Control were (and are) adopted within 1 or 2 dates from the date of first application. Other times, this delay has been up to 25 days, but those instances show repeated applications to correct mistakes or fill gaps in the first application.

Q87. (Turkey) Under the WTO Agreement on Import Licensing Procedures one of the requirements for automatic import licences to be deemed as not having trade-restricting effects

is that "applications for licences may be submitted on any working day prior to the customs clearance of the goods" (Article 2.2(a)(ii)). Could Turkey explain how the deadlines for submitting applications for import licences under its tariff-rate quota regime as contained in various communiqués from its Foreign Trade Undersecretariat (FTU) comply with this requirement?

Turkey believes that its TRQ system and the procedures for import licensing were always well within the rules and provisions of the WTO system, including those of the Agreement on Import Licensing Procedures. In particular, its licenses always had a validity which corresponded to the duration of the TRQ. Applications for licences were admitted within a time frame that ranged from three to six months from the opening of the TRQ and was often extended to ensure full utilization of quotas.[33] Finally, licences did not entail the deposit of bonded securities.

The result of such a permissive system was always one of great quota utilization. Importers never applied, in practice, at such short notice (i.e., one day from customs clearance) simply because rice trade and rice importation cannot be improvised at such short notice, but require early planning to order the rice, load it, transport it, unload it, etc.

Q88. (Turkey) In paragraph 43 of its first submission, Turkey states that the requirements for the application and evaluation procedures of the import licenses under its tariff-rate quota regime have always been clear, transparent and easy to implement for all importers.

(a) Can Turkey elaborate on what are these evaluation procedures?

The evaluation procedure consists in controlling the documents provided by the applicant and comparing them with the information required in the relevant legal instruments (i.e., the relevant communiqués). In addition, a calculation of the quantity of imported rice which the import licence should be granted for is carried-out. This calculation is based on the quantity of domestic rice purchased and the applicable coefficients.

(b) Does the application of evaluation procedures imply that the import licenses will not be granted in all cases?

(c) If so, in which cases will they not be granted?

Turkey submits that import licenses have always been granted, provided that the quota is available and all the documents and information required are duly completed.

Q89. (Turkey) In paragraph 51 of its first submission Turkey states that: "[t]here is no import licensing regime applicable to imports of rice into Turkey under MFN trade. There is an import licensing regime only in relation to rice imports under TRQ trade." To support this, in the same paragraph Turkey points out that "[t]he rules in relation to these licenses are set out in Decree No. 2005/9315 on the 'Application of Tariff Quota for the Importation of Some Species of Paddy Rice'." Could Turkey specify the relevant situation and legal rules applicable to import licences for rice prior to the entry into force of Decree No. 2005/9315.

Turkey wishes to clarify that Decree No. 2005/9315 is only related to TRQ opened in year 2005. There are two other Decrees (i.e., Decree No. 2004/7135 and Decree No. 7756, which relate to the

[33] See, in particular, Article 2 of Communiqué on Application of Tariff Quota For the Importation of Some Species of Paddy rice and Rice No. 25943, Annexe TR-13 of Turkey's First Submission and Article 2 of Communiqué on Application of Tariff Quota For the Importation of Some Species of Paddy rice and Rice No. 25577 and further amendments, in Annexes TR-17, TR-18 and TR-19 of Turkey's First Submission.

TRQ openings in 2004). For a detailed chronology of the history of the TRQ regime, reference should be made to the factual background provided by Turkey in its First Submission.[34]

Q90. (Turkey) Regarding the Turkish Grain Board:

(a) Can Turkey provide more information on the nature and role of the Turkish Grain Board.

(b) Can Turkey provide copy of the relevant legal instruments that regulate the functions and composition of the Turkish Grain Board.

(c) Can Turkey explain what are the functions of the Turkish Grain Board as regards to the production and sale of domestic rice and the importation of rice.

Turkey refers to Annex TR-40 herewith for all relevant information regarding the nature, functions and composition of the TMO.

Q91. (Both Parties) Is the Turkish Grain Board a state trading enterprise as defined in GATT Article XVII and the Understanding on the Interpretation of Article XVII of the GATT 1994?

Turkey respectfully submits that the TMO is not a state trading enterprise in that it was never granted any exclusive or special right or privilege through which it could exercise influence on the level of imports and exports. The TMO merely acts as an intervention agency to prevent grain prices from excessively falling or increasing.

Q92. (Turkey) During the first meeting with the Panel, Turkey asserted that the Turkish Grain Board plays a role, *inter alia*, in stabilising the domestic rice market. In this regard,

(a) Under what legal basis does the Turkish Grain Board perform this function?

Turkey submits that the relevant information is to be found in Annex TR-40.

(b) How is the Turkish Grain Board financed in order to participate in the market in this manner?

TMO's activities are financed by its own resources as well as by credits obtained from domestic and/or foreign financial markets.

(c) If the Turkish Grain Board buys rice at a more expensive price than that of the market, why would a domestic producer sell rice to an importer, at market price, instead of to the Turkish Grain Board, at a higher price?

Turkey submits that while it is correct that TMO declares purchasing prices which are higher than the market prices (the ceiling price is for the best quality product), received prices are much lower than what is declared (please note Turkey's reply to question 7-iii). Turkey also submits that it is received prices that must be compared with the market prices. Such comparison would indicate that TMO prices received by rice producers are similar to those formed in the domestic market. For instance, in 2005, although the TMO's declared price was 720 YTL/TON, the received price ended up being 612 YTL/TON, which is even lower than the market price, i.e. 640 YTL/TON. On the other hand, most rice producers are usually in need of receiving immediate payment for their deliveries. TMO sometimes declares purchasing with a certain amount of delay and growers in such a position seek for

[34] See paras. 35-42 of the First Submission by Turkey.

buyers other than TMO. Another factor which explains why rice producers prefer to sell to importers rather than to the TMO relates to the fact that deliveries to the TMO can be difficult and sometimes take long time, especially for those rice producers that suffer from the lack of transportation means. For all these reasons, rice producers tend to sell to the importers instead of selling to the TMO.

(d) If the Turkish Grain Board sells rice at a price above that of the market, in order to comply with the domestic purchase requirement to import under the TRQ, why would an importer purchase rice from a Turkish Grain Board instead of from a domestic producer, at the lower market price?

Since Turkey is a net importer of rice, once the harvesting season is finished, supply from the market is quite limited. Therefore, it is frequently TMO rather than domestic growers that meets the demand of rice importers. Additionally, TMO offers forward sales option to attract potential rice buyers. And this also affects buyers' preference for TMO rice.

Q93. (Turkey) The Panel has noted Turkey's letter dated 30 August 2006, in which Turkey informs the Panel that it has designated as "confidential" all its submissions concerning the current proceedings and that it would provide the United States with a non-confidential summary of its submissions in accordance with Article 18.2 of the DSU. Is the executive summary of Turkey's first submission, dated 18 October 2006, to be considered as the non-confidential summary of the information contained in Turkey's first written submission under the terms of Article 18.2 of the DSU?

Yes.

ANNEX C-3

REPLIES BY AUSTRALIA TO QUESTIONS POSED BY THE PANEL AFTER THE FIRST SUBSTANTIVE MEETING

(21 November 2006)

Q94. (For all third parties) Have any of the Third Parties who have exported rice to Turkey encountered difficulties entering the Turkish market similar to the ones described by the United States, and in particular with respect to the requirement of Certificates of Control? If so, please describe the nature of such difficulties.

Australia last exported rice to Turkey in 2003. Many of the problems the US claims to have encountered appear to date from late 2003. However, Australian exporters' experience was that import certificates were often unavailable from the start of harvest to the completion of new crop marketing so that imports were often effectively banned during the critical harvest period.

Q95. (For all third parties) In the case of Third Parties who have exported rice to Turkey, have their exports entered the Turkish market within or outside the TRQ?

The US submission states (at paragraph 39) that the TRQ was applied from April 2004. This post-dates Australia's last export of rice to Turkey.

Q96. (For all third parties) In the case of Third Parties who are at least potential exporters of rice, but have not exported rice to Turkey, what are the reasons for not exporting rice to Turkey?

Australia only exports rice to Turkey when Australia has surplus production. Australia does not normally export to Turkey as the tariff schedule rates for rice favour imports of paddy rice above milled rice. Australian exporters prefer to export branded processed and milled rice, so Turkey's tariff rates make it an unattractive export market. Since 2003, drought has constrained the Australian rice crop and Australian exporters have not had enough surplus rice to export to Turkey.

ANNEX C-4

REPLIES BY EGYPT TO QUESTIONS POSED BY THE PANEL AFTER THE FIRST SUBSTANTIVE MEETING

(21 November 2006)

Q94. (For all third parties) Have any Third Parties who have exported rice to Turkey encountered difficulties entering the Turkish market similar to the ones described by the United States, and in particular with respect to the requirement of Certificates of Control? If so, please describe the nature of such difficulties.

Turkish authorities have provided different explanations to Turkish importers of Egyptian rice when refusing their applications for Certificates of Control. As can be noted from the attached copies of letters that were provided to us by Egyptian rice exporters, the explanations given by Turkish authorities to support their decisions were not always clear.

In two letters dated 1 May 2005, the Province Agricultural Directorate of the Ankara Governership returned the applications submitted by Mehmetoğlu Iç Ve Dis Ticaret A.S. and Helin Gida Pazarlama Sanayi Ve Ticaret Ltd. Sti on 21 April and 29 March 2006 respectively. In both letters, the following laconic reason was given for not accepting the applications submitted by the Turkish importers of Egyptian rice: "*Your application file for importing middle grained rice from Egypt has been returned to you because any control document can not be arranged according to the laws*".

In another letter dated 1 May 2005, the Province Agricultural Directorate of the Ankara Governership indicated to Mehmetoğlu Iç Ve Dis Ticaret A.S. that "*Rice control document can not be arranged for your company mentioned in your written application according to the laws*". The company was then invited to submit an application for imports of paddy rice.

In a letter dated 26 May 2005, the Directorate General of Protecting and Controlling of the Ministry of Agriculture and Rural Affairs appears to confirm that the Ankara Governership rejected the application for a Certificate of Control lodged by Mehmetoğlu Iç Ve Dis Ticaret A.S. and that the importation of Egyptian rice into Turkey is, thus, impossible.

Q95. (For all third parties) In the case of Third Parties who have exported rice to Turkey, have their exports entered the Turkish market within or outside the TRQ?

Egyptian exporters of rice to Turkey have indicated to us that the great majority, if not all, imports of Egyptian rice into Turkey in the most recent years were made under the TRQ.

ANNEX C-5

REPLIES BY THE EUROPEAN COMMUNITIES TO QUESTIONS POSED BY THE PANEL AFTER THE FIRST SUBSTANTIVE MEETING

(21 November 2006)

Q94. (For all third parties) Have any of the Third Parties who have exported rice to Turkey encountered difficulties entering the Turkish market similar to the ones described by the United States, and in particular with respect to the requirement of Certificates of Control? If so, please describe the nature of such difficulties.

The European Communities have no evidence of similar difficulties to the ones encountered by the United States, when exporting rice to Turkey.

Q95. (For all third parties) In the case of Third Parties who have exported rice to Turkey, have their exports entered the Turkish market within or outside the TRQ?

1. During the marketing year 2004/2005 (September 2004-August 2005) the European Communities exported to Turkey 41248 tonnes of semi-milled and wholly milled rice. During the marketing year 2005/2006 (September 2004-August 2005), the quantities exported to Turkey amounted to total 31428 tonnes of rice, out of which 28864 of semi-milled and milled rice; 2533 of husked rice and 32 tonnes of paddy rice.

2. The European Communities enjoy a preferential TRQ of 28000 tonnes at 0 duties for semi-milled and milled rice. Rice exports outside the quota are applied MFN tariff rates.

3. The European Communities' exports of rice have entered the Turkish market both within the preferential tariff rate quota and outside the tariff rate quota.

Q96. (For all third parties) In the case of Third Parties who are at least potential exporters of rice, but have not exported rice to Turkey, what are the reasons for not exporting rice to Turkey?

The European Communities exports rice to Turkey.

Q97. (European Communities) In the course of these proceedings, the United States has referred to a bilateral agreement, under which the European Communities would enjoy an annual quota of milled rice into Turkey.

Please provide the provisions of that agreement, relevant to the importation of rice into Turkey.

The Agreement establishing an Association between the European Economic Community and Turkey establishes, inter alia, a preferential trade regime for agricultural products.

Trade preferences between Turkey and the European Communities are consolidated in Decision 1/98 of the EC/Turkey Association Council of 28 February 1998. In particular, the preferential régime applied by Turkey to products originating in the Communities is specified in Protocol 2, Annex II to Decision 1/98. Under Protocol 2, Article 2, par.2 states that "For certain products listed in the annex, the import charges shall be eliminated within the limit of the tariff quotas listed in column "D" thereof for each of them. For quantities in excess of the quotas, the import charges of the Turkish import regime to third countries shall apply". The list of products referred to in Article 2, par. 2 includes a tariff rate quota of 28 000 tonnes at 0 duty for semi-milled and wholly milled rice.

Explain whether European imports of rice into Turkey are treated differently from other imports.

Within the framework of the EC/Turkey Association Agreement, the European imports of rice entering the Turkish market enjoy preferential treatment within a tariff rate quota of 28 000 tonnes at 0 duty. Imports outside the quota are submitted to the import charges which the Turkish import regime applies to third countries.

More specifically, explain whether importers of European rice are required to obtain Certificates of Control in order to import rice into Turkey.

The European Communities confirm that importers of European rice are required to obtain Certificates of Control in order to import rice into Turkey.

Q98. (European Communities) In paragraph 5 of the written version of its oral statements, the European Communities has referred to Egypt's comments in its Third Party submission regarding the "unpublished Letters of Acceptance". In this regard, the EC expresses its view that "the issue is more subtle than as expressed by Egypt as it is important to establish whether a measure exists in the first place", adding that "the fact that a given document has not been published is relevant". Can the EC expand its comments. Can it indicate in what manner the fact that the so-called Letters of Acceptance may have not been published is relevant, in order to determine whether they may be considered as "laws, regulations, judicial decisions or administrative rulings" within the meaning of Article XI:1 of the GATT.

It would appear to the EC that the question of the Panel refers to the wording of Article X:1 of the GATT whereas the oral submission on the point referred to by the Panel related to Article XI:1.

The EC did not intend to suggest that the individual Letters of Acceptance could not qualify as "measures" within the meaning of Article XI:1of the GATT.

In its first written submission the United States considers that "Turkey's denial of import licenses to import rice at or below the bound rate of duty constitutes a prohibition or restriction on imports other than in the form of duties, taxes or other charges and thus is inconsistent with Article XI:1 of the GATT 1994". In other words, it would appear that the "measure" the US is challenging is the denial of import licences, the existence of which is demonstrated allegedly by (inter alia) the individual and unpublished "Letters of Acceptance".

The EC considers that challenging the regime as such is different from challenging the individual Letters of Acceptance addressed to individual importers of rice. It is the unpublished nature of this general denial or "unofficial ban" (see US submission paragraph 14) that the EC considers relevant to the issue of proving its existence. The Letters of Acceptance seem to be presented as evidence of the existence of the measure the US is challenging rather than as the challenged measure itself.

In deciding whether the challenged measure i.e. the denial of import licences exists in the first place, the EC considers it important whether it is manifested in some public way.

In contrast, should the US be challenging the application of the Turkish rice import regime as applied in certain instances, it could be that the individual Letters of Acceptance would qualify as "measures" within the meaning of Article XI:1 of the GATT.

ANNEX C-6

REPLY BY KOREA TO QUESTIONS POSED BY THE PANEL AFTER THE FIRST SUBSTANTIVE MEETING

(21 November 2006)

Q94. (For all third parties) Have any of the Third Parties who have exported rice to Turkey encountered difficulties entering the Turkish market similar to the ones described by the United States, and in particular with respect to the requirement of Certificates of Control? If so, please describe the nature of such difficulties.

Q95. (For all third parties) In the case of Third Parties who have exported rice to Turkey, have their exports entered the Turkish market within or outside the TRQ?

Q96. (For all third parties) In the case of Third Parties who are at least potential exporters of rice, but have not exported rice to Turkey, what are the reasons for not exporting rice to Turkey?

With respect to questions 94, 95 and 96, Korea would like to inform the Panel that Korea has never exported rice to any country, including Turkey, and has no meaningful potential to export rice in the near future.