TURKEY – MEASURES AFFECTING THE IMPORTATION OF RICE

(WT/DS334)

EXECUTIVE SUMMARY OF THE REBUTTAL SUBMISSION OF THE UNITED STATES OF AMERICA

December 15, 2006

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

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

3. With respect to the over-quota rates, MARA has imposed restrictions on the issuance of Control Certificates to import rice. The United States has provided extensive documentary evidence that Turkey denies these import licenses pursuant to so-called "Letters of Acceptance," in which the Minister of Agriculture orders the blanket denial of Control Certificates to those importers who do not purchase domestic paddy rice. When importers have challenged MARA's denial of Control Certificates in Turkish court, Turkey has successfully defended its failure to issue Certificates. At least two courts have agreed with Turkey that the Letters of Acceptance are binding, and that MARA is acting in accordance with Turkish law in not granting the Certificates.

4. Turkey has completely ignored this documentary evidence in its submissions. In fact, Turkey's arguments before this Panel are diametrically opposed to the arguments it advances in Turkish court. Turkey's arguments in this proceeding are inconsistent with the Letters of Acceptance, the rejection letters MARA issued to importers, and recent domestic court decisions. Instead, Turkey focuses on its unverified Control Certificate data. However, such data only serve to confirm that the restrictions on the issuance of Control Certificates at the over-quota rates are in place and being enforced. Further, the United States has provided evidence, in the form of the Letters of Acceptance, rejection letters, and court documents, that Turkey's import licensing system for rice is discretionary, which is all that is needed to support findings

that MARA's Control Certificates constitute a restriction on importation under Article XI:1 of the GATT 1994 and a breach of Article 4.2 of the Agreement on Agriculture.

5. With respect to in-quota quantities of rice, Turkey makes the receipt of import licenses from FTU contingent upon the purchase of large quantities of domestic paddy rice (the "domestic purchase requirement"). This domestic purchase requirement is an additional import restriction that is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agriculture Agreement. And because only domestic rice qualifies for the purchase requirement, Turkey's requirement alters the conditions of competition in a manner that discriminates against imported rice. Consequently, imported rice receives treatment less favorable than domestic rice and Turkey's requirement is inconsistent with Article III:4 of the GATT 1994.

The Control Certificate is an "Import License" Under Article XI:1 of the GATT 1994

6. The Certificate of Control is an "import license" for purposes of Article XI:1 of the GATT 1994 because MARA requires a Certificate in order for importation to take place. In paragraphs 59-62 of the U.S. First Submission, the United States noted that the ordinary meaning of the term "import license" was "formal permission from an authority to bring in goods from another country." In order to import rice into Turkey, an importer has to obtain a Certificate of Control from MARA. To obtain the Certificate, an importer must follow certain procedures, including completing an application form and attaching an invoice. Because a Certificate of Control from MARA constitutes formal written permission from the Government of Turkey to import goods – in this case, rice – from another country, a Certificate is an "import license" within the ordinary meaning of that term. Footnote 1 to Article 1 of the Import Licensing Agreement, which provides relevant context for interpreting the term "import license" in Article XI:1, clarifies that a Member's characterization of a particular procedure as something other than "licensing" cannot be used to evade the disciplines of the Import Licensing Agreement.

7. Turkey has attempted to characterize the Certificate of Control as something other than an import license by arguing that the Certificate "amount[s] to administrative forms that are required exclusively for '*customs purposes*'." Turkey set forth a list of customs-related items that, if requested by a document, would allegedly prove that document was exclusively for customs purposes (and hence should not be considered an import license). It then asserted that, since MARA requests that importers provide such customs-related information in their applications for Control Certificates, such Certificates are clearly used for customs purposes and, as a consequence, are not import licenses for purposes of Article XI:1.

8. Of course, the question is not what information is requested for a document, but rather what is the function of the document. It would not be difficult for Members to provide that every import license asked for nothing more than some subset of the information normally requested for customs purposes. That would not render every import license exempt from the disciplines of the covered agreements. In this instance, if the Control Certificate were truly no more than ordinary customs documentation, the United States would not be proceeding with this dispute.

But clearly Control Certificates are very different from ordinary customs documentation. Not only are they separate and apart from the ordinary customs documentation that Turkey also requires; in fact, they are not even documents of Turkish Customs, but of MARA. And they do not serve to facilitate customs entry. To the contrary, they serve to restrict entry.

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

10. Article 31(1) of the *Vienna Convention* provides that: "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." For purposes of the Article XI:1 analysis, one relevant term whose ordinary meaning must be discerned is "import license." The United States has shown that the ordinary meaning of the term "import license" is "formal permission from an authority to bring in goods from another country" and the United States has gone on to explain the text in its context and in light of the Agreement's object and purpose. Turkey, however, has ignored the ordinary meaning of the term "import license."

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

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

13. The definition of "import licensing" in Article 1 is prefaced with the phrase "[f]or purposes of this Agreement," which acts to limit that specific definition to the provisions of the Import Licensing Agreement. That definition is not a definition for purposes of Article XI:1 of

the GATT 1994 nor is it an exemption to Article XI nor does it restrict the scope of Article XI. Rather, the definition is relevant context for interpreting the meaning of the term "import license" in Article XI:1 of the GATT 1994. And in any event the context provided by the Article 1 definition confirms that the term "import license" in Article XI:1 covers the Certificate of Control. That definition of "import licensing" contains two key phrases that are relevant for the Panel's Article XI:1 analysis. The definition (1) covers administrative procedures "used for the operation of import licensing regimes" but (2) exempts from its scope those administrative procedures that require the submission of documentation "required for customs purposes."

14. With respect to the first point, the fact that a document is necessary in order to clear customs does not mean that it is not an import license. Indeed, the very nature of an import license is that it will be used for customs purposes since importation cannot occur without it. The relevant inquiry is simply this: what else is the form in question actually used for? In this case, the Certificate of Control, which is approved by the Turkish Ministry of *Agriculture*, not Turkish Customs, is being used as an import license: the document, when issued, constitutes formal written permission from the Government of Turkey to import rice. Turkey is not granting these Certificates outside the TRQ for imports of non-EC origin rice in order to enforce restrictions on such imports. Regarding the second point, the question is what is "required" for "customs" purposes. According to the ordinary meaning of those terms, this provision provides an exemption from the disciplines of the Import Licensing Agreement for administrative procedures requiring the submission of documentation that is necessary for purposes of a government's levying of duties on imports.

15. Customs authorities throughout the world collect information from importers with respect to the type of good being imported, quantity, value, and country of origin. All of these pieces of information are "required" in order for a customs authority to make a determination as to how much of a duty to levy upon the import of a particular good. MARA's Control Certificate does not contribute to this process, since it is completely duplicative of what Turkish Customs already requires importers to provide separately. As would be expected, Turkish Customs requires that importers supply information that is necessary for a customs authority to be able to levy duties on imported merchandise, including: importer identification information, HTS number, description of the merchandise, quantity, country of origin, value, country where the merchandise was loaded, and the port. MARA requires that an importer submit much of this same information on its application for a Control Certificate. It is clear that MARA's Control Certificate is not "required" for customs purposes when Turkish Customs itself already collects this information. Thus, the context provided by Article 1 supports a finding that the Control Certificate is an import license within the ordinary meaning of that term under Article XI:1 of the GATT 1994.

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

17. Turkey also has argued that one of the purposes of the Control Certificate is to ensure the fitness and compatibility of goods with health standards and that MARA will only approve a Certificate when the product to be imported has met certain requirements, including "fitness for use." But Turkey and the United States agree that MARA does not even collect the phytosanitary certificate and make its inspection until after MARA has already granted the Control Certificate. Accordingly, Turkey's argument that the Control Certificate process is meant to ensure the fitness and compatibility of imported products with health standards is not supported by the facts.

Recent Court Decisions Confirm That the "Letters of Acceptance" Are Legal Restrictions Under Turkish Law and That Turkey Prohibits or Restricts Importation of Rice in Contravention of Article XI:1 of the GATT 1994

18. Turkey has continued to advance the argument that the Letters of Acceptance are internal, informal documents that are unenforceable and have no legal status in Turkey, and that the instances where the United States has documented that MARA has denied the issuance of Control Certificates, such as the Torunlar case, are exceptions from the norm. In making this argument, Turkey has ignored the contents of the Letters, which impose a blanket denial of Control Certificates outside the TRQ governing all imports of rice into Turkey. Turkey has also ignored the content of the rejection letters and the court documents submitted by the United States, which make clear that the denials of Control Certificates are not based on importers' failure to meet particular administrative requirements in individual cases, but rather that MARA simply does not issue Control Certificates unless an importer purchases domestic paddy rice. Turkey's argument also fails to accord with the fact that, in April 2006, a Turkish court agreed with MARA's position that the Letters of Acceptance provided for a blanket denial of Control Certificates to importers who do not purchase domestic paddy rice. In sum, Turkey's arguments before the Panel regarding the legal validity and enforceability of the Control Certificates stand in sharp contrast to the arguments it has made in domestic court and contradict the facts.

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

20. For example, the court's decision in the Helin case makes clear that MARA is correct under Turkish law in relying on the Letters of Acceptance to deny Control Certificates to applicants. MARA argued that it was simply following "the letter and spirit of the law" when it relied on the Letters of Acceptance to deny a Control Certificate to Helin, and the court agreed, finding no basis for Helin's claim that MARA acted illegally. It is also clear from the court decision that the Letters are sweeping in scope; they apply to all rice imports, not simply those

covered by Helin's case. Further, it is clear from the decision that the denial in Helin's case had nothing to do with any alleged failure on the part of the importer to provide certain documents or comply with the applicable administrative requirements. MARA did not issue a Control Certificate for the simple reason that, pursuant to Ministerial approvals by the Minister of Agriculture, it does not issue them.

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

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

22. As just discussed, Turkey's Minister of Agriculture has ordered officials in his Ministry not to grant Control Certificates in clearly-worded, unambiguous documents. When importers have sued the government in Turkish court to demand that they be issued Control Certificates, Ministry lawyers have argued that MARA is bound by such orders. The Turkish courts have ruled in favor of the government's position. These facts alone demonstrate that Turkey is in breach of Article XI:1 of the GATT 1994. Thus, an examination of import and Control Certificate data is unnecessary to establish that Turkey is in breach of Article XI.. Nevertheless, the U.S. analysis of that data only serves to confirm that Turkey has imposed restrictions on the importation of non-EC origin rice outside the TRQ regime.

23. As a preliminary matter, the United States notes that Turkey has not provided copies of the actual Control Certificates, as the Panel requested, or even identified the importers. As a result, the United States is unable to confirm that the data are accurate. Further, the data leave many questions unanswered. Nevertheless, the data strongly support the U.S. claim that there is a prohibition or restriction on imports at the over-quota rates of duty. Second, Turkey argues that it has granted a certain number of Certificates of Control over a given period of time. But that does not address the fact that Turkey is prohibiting or restricting imports at the *over-quota* rates. Thus, the question is not whether Certificates are being granted in general, but whether Certificates are being granted for MFN trade (that is, not involving in-quota quantities or imports of EC origin milled rice which, under the EC Quota Arrangement, enter Turkey duty free and are exempted from Turkish import restrictions).

24. Turkey's own data on Control Certificates reveal that, from September 10, 2003 through April 1, 2006, MARA in fact did not grant Control Certificates for non-EC origin imports of rice outside the TRQ regime, except for two brief periods of time, covering minuscule amounts of

rice. The data indicate that, with few, relatively small exceptions, the Certificates MARA granted were for rice under the TRQ. When the TRQ closed, imports of non-EC-origin rice declined to very low levels, or ceased altogether. Therefore, the data submitted by Turkey lend additional confirmation to the U.S. claim that MARA is enforcing a prohibition or restriction on MFN trade in rice.

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

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

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

27. Further, there are restrictions in place on their face in the form of the Letters of Acceptance; Turkey has relied upon those documents in open court as the legal basis for denying Control Certificates; and the Turkish courts have agreed with the Turkish government that the petitioning importers have no grounds for their lawsuit because the Letters of Acceptance are clear that Certificates are not to be granted. The fact that a few Certificates may have been issued does not change the fact that there is a legal prohibition or restriction in place. The

Letters of Acceptance are an order from Turkey's Minister of Agriculture to the Provincial Agricultural Directorate that Control Certificates are not to be granted to importers who do not purchase domestic paddy rice. If importers were not already dissuaded by the Letters, it is unlikely that importers would have mis-read the significance of the court decisions described above.

28. Even if Turkey's data had demonstrated that the Letters of Acceptance were not enforced at all, that would not change the conclusion that the Letters breach Article XI:1 of the GATT 1994. A mandatory measure may still be found WTO-inconsistent even if it is not being enforced. In the *US – 1916 Act* dispute, the Appellate Body agreed that the panel could find a statute inconsistent "as such" with provisions of the covered agreements, despite the fact that the United States had never successfully prosecuted a case under the statute and had never imposed the criminal penalties provided in case of a violation. And in the *Malt Beverages (GATT)* dispute, the panel found that mandatory legislation that was either not being enforced or only being enforced nominally did not shield measures from being found in breach of the GATT 1947.

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

30. Lastly, Turkey's failure to issue Control Certificates for the import of rice at the over-quota rates of duty breaches both Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture because it constitutes discretionary import licensing. The Communiqués provide that, in order to apply for a Control Certificate, importers must submit the Certificate application form, the pro forma invoice or invoice, and "other documents which may be asked for, depending on product, by the Ministry." This language appears to provide MARA with the discretion not to grant Control Certificates if an importer does not present certain unspecified documents – for example, a receipt showing that the importer has procured the appropriate quantity of domestic paddy rice. The Letters of Acceptance, even if they are, as Turkey implausibly argues, "informal internal documents" that are never enforced, provide strong evidence of this discretion. In each Letter cited by the United States, Turkey's Minister of Agriculture accepts recommendations from the Provincial Agricultural Directorate to delay the start date for issuance of Control Certificates. Therefore, it is certainly clear that *Turkey* believes it has the discretion not to grant Control Certificates if it wants to, and the United States

has provided documentary evidence highlighting instances where Turkey has denied or failed to grant such Certificates. Discretionary import licensing is prohibited under Article 4.2 of the Agreement on Agriculture as well as Article XI:1 of the GATT 1994. Accordingly, Turkey's discretionary import licensing system for rice is a prohibited measure under Article 4.2 of the Agreement on Agriculture, as well as a restriction on importation under Article XI:1.

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

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

32. The United States also has argued that the domestic purchase requirement imposes an additional cost on importing rice, thereby constituting a restriction on importation contrary to Article XI:1 of the GATT 1994. In sum, the United States has argued that it is more expensive to purchase one, two, or three tons of domestic rice as a condition upon importation, than to purchase zero tons of domestic rice in order to import. Turkey has been unable to rebut the U.S. argument because it is a mathematical impossibility that it would cost an importer more to purchase zero tons of rice than it would to purchase x tons of rice, where x is any number greater than zero. Turkey completely ignores this fact, instead focusing its analysis on the cost of each ton that is purchased, when the relevant question is the total cost to the importer of having to comply with the domestic purchase requirement in order to import rice.

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

34. Turkey has argued that the U.S. calculation of the cost of domestic purchase in Exhibit US-52, where the United States set forth several possible domestic purchase scenarios under the third TRQ opening, is inaccurate. Yet Turkey has failed to identify which specific figures in the model it finds objectionable. This is not surprising, since the United States utilized numbers that were supplied by Turkey or are consistent with data provided by Turkey.

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

35. The United States has argued that the TRIMs Agreement does not require that a Member demonstrate the existence of a TRIM, in addition to showing that a measure satisfies the elements of the illustrative list contained in the Annex to that agreement, in order to prove a breach of the TRIMs Agreement. However, even if it were necessary for the United States to show that the domestic purchase requirement is a TRIM in order to prevail on the Article 2.1 claim, the United States has done so. Turkey's professed inability to understand how the TRQ could have possibly affected investment in the domestic rice sector is not credible. The TRQ regime serves to aid in the development of the Turkish rice industry and this effect is intended. Turkey is forcing rice importers to purchase large quantities of domestic rice as a condition upon importation. This scheme makes it much more likely that rice produced by Turkish farmers will be purchased, and at higher prices. The Letters of Acceptance, as well as the substantial increase in Turkish production of paddy rice since 2003, confirm that Turkey instituted the domestic purchase requirement in order to strengthen the domestic rice industry.

36. The reasoning of the *Indonesia Autos* panel on the investment issue supports the U.S. argument that the domestic purchase requirement is a TRIM. The panel found that the Indonesian measures met the alleged "investment requirement" because they "aimed at encouraging the development of a local manufacturing capability for finished motor vehicles and parts and components in Indonesia. Inherent to this objective is that these measures necessarily have a significant impact on investment in these sectors." Turkey notes that the references in the Indonesian legislation to investment objectives differentiates that measure from the TRQ regime, because the TRQ legislation does not mention such objectives.

37. But the panel report also provides that "there is nothing in the TRIMs Agreement to suggest that a measure is not an investment measure simply on the grounds that a Member does not characterize the measure as such." In other words, the fact that Turkey did not specifically state investment objectives in the TRQ legislation does not preclude the conclusion that the domestic purchase requirement has an investment component. If the legal test rested upon a Member's characterization of a measure, then nothing would qualify, because a respondent in WTO dispute settlement would always characterize the measure at issue as not an investment measure. The relevant inquiry is what the measure in fact does. Nonetheless, Turkey did indicate in its Letters of Acceptance that the domestic purchase requirement had investment objectives, and one of those objectives – strengthening the competitiveness of the domestic industry – was cited by Indonesia as one of the investment objectives of the Indonesian measure that was the subject of a successful TRIMs claim in the *Indonesia Autos* dispute.