Indonesia – Importation of Horticultural Products, Animals, and Animal Products
(DS477 / DS478)

CLOSING STATEMENT OF THE UNITED STATES OF AMERICA AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES

April 14, 2016

1. We would first like to thank the Panel and the Secretariat for their efforts in this dispute.

2. As noted by New Zealand, Indonesia has raised many issues in its submissions in this dispute that do not need to be addressed by the Panel to resolve the matter at issue. The legal issues in this dispute are in fact quite straightforward. These are the interpretations of Article XI:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 4.2 of the *Agreement on Agriculture*, and Article XX of the GATT 1994. The Panel therefore can decide the legal issues before it in a relatively narrow manner, and we would encourage the Panel to do so.

3. On the issue of "automatic licensing", Indonesia has spent many pages in both its written and oral submissions to demonstrate that its regime is "automatic" under the *Agreement on Import Licensing Procedures* ("ILA") based on a theory that, if it is automatic, it is immune from challenge under Article XI:1 and 4.2. However, we have pointed out in our submissions and before the Panel during these meetings that the text of Article X1:1, Article 4.2, and the ILA confirm that the provisions of the covered agreements apply regardless of whether the measures at issue constitute "automatic licensing" or not. Therefore, the Panel need not determine whether Indonesia's regime is automatic at all. It can simply end its analysis there.

4. Similarly, with Indonesia's new defense under Article XI:2(c)ii, if the Panel determines that the exception provided in this paragraph is not available based on the operation of Article 21 of the Agreement on Agriculture, it does not need to address any of the substantive elements of this provision. Again, it can simply end its analysis there.

5. Finally, we would also like to note the suggestion in Indonesia's opening statement that it is reforming its licensing regime. We hope that eventually the regime is reformed and that the measures at issue in this dispute are eliminated. But not all of Indonesia's current actions indicate

a move towards liberalization.

6. For example, we understand that Indonesia has recently implemented a new import licensing system for corn. Based on our review of the new regulation, in addition to authorizing quotas, it appears to contain several of the very restrictions at issue in this dispute, including limited application windows and validity terms, fixed license terms, end use restrictions, and storage ownership requirements.

7. The history of this dispute in particular also demonstrates that changes to Indonesia's licensing regime do not translate into liberalization. While Indonesia has changed its measures many times, the restrictive effect of the new measures often remains substantively the same.

8. In this respect, we note that Indonesia emphasizes the elimination of the 80% realization requirement for horticultural products. But while MOT/71 eliminated the 80% realization requirement for horticultural products after panel establishment, the same law also re-imposed a quota system on horticultural products. Therefore, while the form of the restriction has changed, the restrictive nature of the measures has not changed.

9. Again, we thank the Panel and the other parties for their participation in this dispute, and look forward to answering any additional question the Panel may have.