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

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

**April 13, 2016**

1. Good morning, Mr. Chairman and members of the Panel. We would like to begin by again thanking the Panel and the Secretariat staff assisting you, for its work in helping the parties to resolve this dispute.

## I. INTRODUCTION

2. The co-complainants have demonstrated in their previous submissions that Indonesia imposes numerous prohibitions and restrictions on the importation of certain horticultural products and of animals and animal products that are, on their face, inconsistent with Indonesia's WTO obligations. In the interest of time, we will not describe Indonesia's import regimes or recite all the restrictions that we have set out in the U.S. first and second written submissions and oral statements.[1] The co-complainants have shown that Indonesia's import licensing regimes, as a whole, and each of the restrictions and prohibitions are inconsistent with Indonesia's WTO obligations.

3. For the most part, Indonesia does not contest the existence of the measures, as described by the co-complainants and does not attempt to rebut the evidence setting out the co-complainants' *prima facie* case. Instead, Indonesia asserts that its measures are insulated from review by the Panel and, in the alternative, that the evidence submitted by the co-complainants is insufficient to meet the co-complainants' burden of proof.

4. But Indonesia's arguments fail. First, its arguments are based on incorrect interpretations of Article XI:1 and Article 4.2 and a misunderstanding of how those provisions are to be applied. Second, the evidence put forward by the co-complainants – including evidence of the text, structure, and operation of Indonesian laws and regulations, importer statements, statements by

[1] *See* U.S. First Written Submission, paras 2-3. U.S. First Oral Statement, para. 3, U.S. Second Written Submission, paras. 2-3.

Indonesian officials, and trade data – is more than adequate to make out the co-complainants' claims under the correct understanding of Articles XI:1 and 4.2. And third, the defenses that Indonesia has asserted under Article XX of the GATT 1994 and, for the first time in its second written submission, under Article XI:2 of the GATT 1994, do not meet the elements of those provisions or are unavailable, and also must fail.

5. In this statement, we will first address Indonesia's arguments regarding the co-complaints' Article XI:1 and Article 4.2 claims. Next, we will explain why Indonesia cannot avail itself of a defense under Article XI:2 of the GATT 1994. And finally, we will show that Indonesia has failed to provisionally justify the measures at issue under Articles XX (a), (b), and (d), as well as to meet the requirements of the chapeau of Article XX.

## II. THE CO-COMPLAINANTS HAVE DEMONSTRATED THAT EACH OF THE CHALLENGED MEASURES IS INCONSISTENT WITH ARTICLE XI:1 AND ARTICLE 4.2

6. In their first and second written submissions, the co-complainants presented evidence and legal analysis establishing that each of the challenged measures is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture. Indonesia, in its second written submission, responds with three main arguments: (1) that its import licensing regimes are "automatic," and are, therefore, outside the scope of Articles XI:1 and 4.2; (2) that co-complainants have not established a *prima facie* case under Article XI:1 because they have not sufficiently quantified the challenged measures' effect on trade flows; and, (3) that co-complainants have not met the standard of Article 4.2 because, *inter alia*, they have not shown that the measures impose absolute quantitative limits on imports. These arguments rest on incorrect interpretations of Article XI:1 and Article 4.2, are factually inaccurate, and should be rejected.

### A. Indonesia Errs Both as a Matter of Law and of Fact in Arguing That Its Import Licensing Measures Are "Automatic" and, as Such, Are Outside the Scope of Article XI:1 and Article 4.2

7. In its second written submission, Indonesia again argues that its import licensing regimes are not inconsistent with Article XI:1 or Article 4.2 because they constitute "automatic" import licensing, which "is expressly permitted under Article 2.2(a)"of the *Agreement on Import Licensing Procedures* ("ILA") and, therefore, "is excluded from the scope" of those provisions.[2] In making this argument, Indonesia considers "automatic" to mean that "[t]he relevant agencies have no discretion to reject import applications that meet the legal requirements," and also makes selective reference to the definition in Article 2 of the ILA.[3] Indonesia's argument is legally and factually wrong in several respects.

8. As the United States explained in its second written submission, Indonesia's assertion that "automatic" import licensing procedures are outside the scope of Article XI:1 and Article 4.2 is refuted by the text of both provisions.[4]

9. Moreover, the text of the ILA also contradicts Indonesia's argument. Article 2(a) does not "expressly permit" "automatic" import licensing in the manner suggested by Indonesia. In fact, Article 2(a) states that automatic import licensing that has "restricting effects on imports" is *not* permitted and that automatic licensing procedures "shall be deemed to have trade-restricting effects unless" they comply with an illustrative list of criteria. That is, "automatic" import licensing procedures, as defined in the ILA, are presumptively administered in a manner having trade-restrictive effects unless demonstrated otherwise. Other provisions of the ILA confirm that

[2] Indonesia's Second Written Submission, para. 67; *see also id.* paras. 42-66.
[3] Indonesia's Second Written Submission, paras. 67, 29; *see also* paras. 45-47.
[4] *See* U.S. Second Written Submission, paras. 95-96.

import licensing procedures, including automatic procedures, are not excluded from Members' obligations under the covered agreements. For example, the preamble recognizes that automatic import licensing "should not be used to restrict trade" and recognizes "the provisions of GATT 1994 as they apply to import licensing procedures." It also expresses the Members' desire to "ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994." Similarly, Article 1.2 states that Members must ensure that import licensing procedures "are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols." Thus, the ILA is clear; compliance with the ILA does not limit a Member's obligations under the covered agreements.

10. We also note that Indonesia's argument is based on the assumption that all of its import licensing measures are "import licensing procedures" within the meaning of the ILA; they are not. Article 1.1 of the ILA defines "import licensing" for purposes of the ILA as "administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation . . . to the relevant administrative body as a prior condition for importation." Thus, the ILA distinguishes between "procedures" used to operate import licensing regimes, which are covered by the ILA, and the substantive rules themselves. The Appellate Body confirmed this interpretation in *EC – Bananas III*, finding that the title, the preamble, and Article 1.1 of the ILA make it clear that the "agreement relates to import licensing procedures and their administration, not to import licensing rules."[5]

11. Indonesia's import licensing regimes *include* procedures for administering the regimes – *i.e.*, the procedures for applying for recommendations and Import Approvals – but the measures

[5]*EC – Bananas III (AB)*, para. 197.

challenged by the co-complainants are much broader, encompassing substantive rules and requirements, including restrictions and prohibitions on importation. The co-complainants' challenge to Indonesia's regimes is directed against these substantive restrictions and prohibitions. Thus, Indonesia is wrong that its substantive import licensing measures – including nearly every measure at issue in this dispute – fall within the scope of the ILA at all.

12. Finally, as the United States also has explained in previous submissions, Indonesia's import licensing regimes are not, in any event, "automatic."[6] The regimes impose substantive prohibitions and restrictions on the type and quantity of products that can be imported, as well as restrictions on, *inter alia*, who can apply to import, when importation can occur, and the purposes for which imports can enter. Regardless of the number of applications approved, or the lack of discretion on the part of Indonesian officials in reviewing these applications, such measures cannot be considered "automatic" in any sense of the word.

### B. Indonesia's Argument that the Co-Complainants Have Not Established a *Prima Facie* Case under Article XI:1 Rests on an Incorrect Interpretation of that Provision

13. Regarding the interpretation of Article XI:1 of the GATT 1994, Indonesia acknowledges in its second written submission that, under Article XI:1, the complaining party does not need to "quantify the effects of the measure at issue" and that the standard is whether a measure has a "limiting effect" on importation.[7] However, Indonesia also asserts that that the co-complainants have not made a *prima facie* case because they "failed to present sufficient pre- and post-implementation import data" to support their Article XI:1 claims.[8] Indonesia's argument is

[6] U.S. Response to Panel Question 11, paras. 47-49, U.S. Second Written Submission, section III.A.
[7] Indonesia's Second Written Submission, para. 72.
[8] Indonesia's Second Written Submission, para. 73; *see also id.*, para. 24.

doubly incorrect. To the extent Indonesia suggests that actual trade effects are required for a showing under Article XI:1, it is legally incorrect. Indonesia's argument is also factually inaccurate because, despite its not being required, the co-complainants have in fact submitted substantial amounts of import data demonstrating the restrictive effects of Indonesia's import licensing measures.

14. First, as the United States explained previously, Article XI:1 does not require a demonstration of trade effects.[9] The text of Article XI:1, including the ordinary meaning of the term "restriction," which includes a "limiting condition" or "limitation on action", does not suggest that a complaining Member must quantify an actual effect of a challenged measure on trade flows. The Appellate Body confirmed this explicitly in *Argentina – Import Measures,* finding that a measure's limiting effect on importation "need not be demonstrated by quantifying the effects of the measure" but "can be demonstrated through the design, architecture, and revealing structure of the measure at issue considered in its relevant context."[10] Thus, complainants can demonstrate a measure's inconsistency with Article XI:1 by showing that its design, structure, and operation, in themselves, impose limitations on importation (whether actual or potential).

15. In this dispute, the co-complainants have met the standard of Article XI:1 with respect to the challenged measures, demonstrating that each imposes a "limiting condition" or "limitation on action" with respect to importation and thus has a "limiting effect" on importation.[11] The U.S. showing included: (1) evidence from the text, structure, and operation of the measure; (2) statements from importers and exporters attesting to the restrictive effect of the challenged

[9] *See* U.S. Second Written Submission, section. II.A.
[10] *Argentina – Import Measures (AB)*, para. 5.217.
[11] *See* U.S. First Written Submission, sections IV.B.1-9, IV.D.1-8, and IV.F.1; U.S. Second Written Submission, section II.A.2(a)-(k).

measure;[12] (3) Indonesian government documents;[13] and (4) public statements by Indonesian officials explaining the challenged restrictions.[14]

16. Further, although not legally required, the co-complainants also have presented extensive evidence demonstrating the quantitative effect of Indonesia's import licensing measures on imports of the covered products. In particular, the trade data on the record demonstrates that:

- The imports of *20 out of 21* of the fresh horticultural products covered by Indonesia's import licensing regime fell dramatically in 2013, when the measures went into effect, and have remained below 2011/2012 levels;[15]

- In 2015, total imports into Indonesia of all listed horticultural products was only 43.6 percent of imports of those products in 2011;[16]

- Imports of numerous horticultural products – bananas, mangoes, other citrus, other melons, papayas, pineapples, and frozen potatoes were all *zero* in 2015, and imports of many of these products, which had been significant in the past, have been *zero* or nearly zero since 2013;[17]

- Indonesian imports of fresh and frozen chicken cuts and edible offal and fresh and frozen turkey cuts and edible offal – unlisted products under Indonesia's import licensing regulations – were 0 kg in 2015, and have been zero or nearly zero since the import

[12] *See* Letter from Christian Schlect, President of the Northwest Horticultural Council (NHC) Enclosing Statements from NHC Members, Nov. 3, 2015 (Exh. US-21); Letter from the Exporter-Importer of Fresh Fruit and Vegetable Indonesian Association (ASEIBSSINDO), Oct. 22, 2015 (Exh. US-28); Letter to Mr. Bob Macke, Acting Deputy Administrator of the Foreign Agriculture Service, U.S. Department of Agriculture, from Representatives of the American Meat Industry, Oct. 27, 2015.

[13] *See, e.g.*, RI Notification of Distribution Plan to Ministry of Agriculture, May 2015 (Exh. US-24); Letter from Dr. YulSarry Bahar, Secretary to the Director General for Horticulture to the Secretary to the Director General of Processing and Marketing of Agricultural Products, May 6, 2015 (Exh. US-25); Letter from Ministry of Trade, Director of Import to RIs Regarding the Audit of Storage Facility and Transportation Vehicles, Feb. 16, 2015 (Exh. US-29); Ministry of Trade, Notification Regarding the Results of Audit of RI's Storage Capacity (Exh. US-30); Letter from the Directorate General to GM PT MultirasaNasantara in Jakarta in Response to an Application on the Importation of Frozen Beef-Short Place, Feb. 4, 2015 (Exh. US-41); Ministry of Agriculture, "Absorption Presentation Powerpoint," Aug. 25, 2015 (Exh. US-57).

[14] *See, e.g.*, Ministry of Industry, "Minister of Agriculture: Agricultural Imports Will Be Tightened," (Exh. US-10); "Chief Economic Minister Defends Ban on Horticultural Imports," *Antaranews*, Feb. 7, 2013 (Exh. US-13); WarisGusmiati, "Ministry of Agriculture: Horticulture Imports Not Prohibited but Regulated," *Berita 2 Bahasa*, Mar. 2, 2013 (Exh. US-14); "Minister of Agriculture: Food Import Dependence Threatens State Sovereignty," *Kompas*, Apr. 27, 2015 (Exh. US-15).

[15] "Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised" (Exh. US-87 Corr.1).

[16] "Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised" (Exh. US-87 Corr.1).

[17] "Total Imports into Indonesia of Listed Fresh Horticultural Products – Revised" (Exh. US-87 Corr.1); *see also*Exh. IDN-29, p. 1.

licensing regimes came into effect;[18]

- Imports of bovine livers, which were dropped from the list of permitted products in 2015, dropped to 6,960 kg in that year, after having been 2.9 million in 2014;[19] and
- In 2012, Indonesian imports of listed bovine products from the United States fell 89.4 percent from 2011 levels and, in 2014, were still less than half of the 2011 figure.[20]

17. Thus, under the correct interpretation of Article XI:1, the co-complainants have met, and even gone beyond, their burden of establishing a *prima facie* case that Indonesia's import licensing regimes are inconsistent with Article XI:1 of the GATT 1994.

### C. Each of the Challenged Measures Is a "Quantitative Import Restriction" or "Similar Border Measure" under Article 4.2

18. With respect to Article 4.2 of the Agreement on Agriculture, Indonesia asserts that the co-complainants have not shown that the challenged measures are inconsistent with Article 4.2 for two reasons: (1) because "measures that qualify as import licensing, particularly automatic import licensing, cannot also fall within the scope" of the measures listed in footnote 1 or be "similar border measures";[21] and, (2) for a measure to be a "quantitative import restriction," it must impose "an absolute limit on imports."[22] Indonesia's arguments are again legally incorrect.

19. First, Indonesia is wrong that "import licensing" measures cannot fall within the scope of the measures listed in Article 4.2. Indonesia's error is evident, first, from the text of Article 4.2, which lists "discretionary import licensing" as one of the proscribed types of measures, and also includes "other similar border measures". As the panel in *Turkey – Rice* found, an import

[18] "Total Imports into Indonesia of Certain Animal Products" (Exh. US-89); Exh. IDN-32, p. 2.
[19] "Total Imports into Indonesia of Certain Animal Products" (Exh. US-89); Exh. IDN-32, p. 2
[20] Exh. IDN-32, p. 1 (showing that the total import volume of Appendix I products from the United States, in 1,000 kg, was 12,198.071 in 2011, 1,290.433 in 2012, 3,488.372 in 2013, and 6,015.6 in 2014).
[21] Indonesia's Second Written Submission, paras. 80-81, 81.
[22] Indonesia's Second Written Submission, para. 69.

licensing measure could also serve as a "quantitative import restriction" within the meaning of Article 4.2.[23] In evaluating whether an "import licensing" measure is prohibited by Article 4.2, as the Appellate Body found in *Chile – Price Band System*, it is the *substance* of a measure – not the form – that determines whether it falls within the scope of the measures listed in footnote 1.[24]

20. Second, Indonesia is wrong that, to be a "quantitative import restriction" under Article 4.2, a measure must include an "absolute limit" on the quantity of imports. The text of Article 4.2, as a previous panel report confirms, refutes Indonesia's argument.

21. The ordinary meaning of "quantitative" is: "(1) Possessing quantity, magnitude, or spatial extent; (2) That is or may be considered with respect to the quantity or quantities involved; estimable by quantity, measurable."[25] The ordinary meaning of "restriction," as discussed elsewhere, is "a limiting condition or regulation" and "refers generally to something that has a limiting effect."[26] The ordinary meaning of "quantitative import restriction" thus suggests that it refers to a "restriction" on imports that "possess[es] quantity [or] magnitude" or that "may be considered with respect to the quantity." That is, a restriction affecting the quantity of imports.

22. Consistent with this ordinary meaning of the term, the panel in *Turkey – Rice*, focused its analysis on whether the challenged measure was "liable to restrict the volume of imports" or "restricted the importation" of the covered product.[27] Specifically, the panel found that Turkey's

---

[23] *Turkey – Rice*, paras. 7.121, 7.133.
[24] *Chile – Price Band System (AB)*, para. 216. The Appellate Body in *Peru – Agricultural Products* confirmed that panels should focus on "the operation and impact" of a measure, as well as its "design and structure" in analyzing whether the measure falls within one of the types of measures listed in Article 4.2. *Peru – Agricultural Products (AB)*, paras. 5.129; *see id.*, paras. 5.141, 5.40-5.41,
[25] *See The New Shorter Oxford English Dictionary* 4thedn., Lesley Brown et al. (eds.) (Oxford University Press, 1993), vol. 2, p. 2439.
[26] *See China – Raw Materials (AB)*, para. 319; *Argentina – Import Measures (AB)*, para. 5.217.
[27] *Turkey – Rice*, paras. 7.120-121.

decision not to grant permits for rice imports during certain periods of time was "enough in itself to conclude that this conduct constitutes a quantitative import restriction."[28]

23. Thus, Indonesia's assertions that the co-complainants have not established a *prima facie* case that the challenged measures are "quantitative import restrictions" or "similar border measures" inconsistent with Article 4.2 reflect a misinterpretation of the requirements of Article 4.2. As set out in previous submissions, the co-complainants have more than met their burden under the correct standard of Article 4.2,[29] and Indonesia has not submitted any evidence or argumentation to rebut that showing.

## III. INDONESIA HAS NOT ESTABLISHED THAT ANY OF THE CHALLENGED MEASURES IS JUSTIFIED UNDER ARTICLE XI:2 OF THE GATT 1994

24. Indonesia puts forward a new defense in its second written submission, and now asserts that its Reference Price and domestic harvest period restrictions are justified under Article XI:2(c)(ii) of the GATT 1994. This article stipulates that the provisions of Article XI:1 do not extend to "import restrictions on any agricultural or fisheries product" necessary to enforce government measures which operate to remove a temporary surplus of the like domestic product.

25. We welcome Indonesia's recognition that the Reference Price and domestic harvest period restrictions are "import restrictions" within the meaning of Article XI:1. But, even aside from the fact that Indonesia has not provided any evidence to show that its restrictions conform with all the elements of Article XI:2(c)(ii), Indonesia cannot avail itself of Article XI:2(c)(ii) of the GATT 1994 because the obligations of the GATT 1994 apply "subject to" the obligations of the Agreement on Agriculture.[30]

---

[28] *Turkey – Rice*, para. 7.118.
[29] *See* U.S. First Written Submission, secs. IV.C.1-9, IV.E.1-8, IV.F.2; U.S. Second Written Submission, sec. III.C.
[30] *See* Article 21 of the Agreement on Agriculture.

26. Measures falling under Article XI:2(c)(ii) include import restrictions on agricultural or fisheries products that would otherwise be inconsistent with the prohibition of Article XI:1. Article 4.2 of the Agreement on Agriculture, however, prohibits Members from maintaining quantitative import restrictions and similar border measures altogether. As the provisions of the GATT 1994 apply "subject to" the provisions of the Agreement on Agriculture, the exclusion in the GATT 1994 of certain measures from the obligation in Article XI:1 could not create an implicit limitation on the scope of a provision of the Agreement on Agriculture covering similar matters. Rather, these obligations would apply cumulatively.

27. Further, footnote 1 to Article 4.2 provides that Article 4.2 does not extend to measures maintained under "general, non-agriculture-specific provisions of the GATT 1994." But given its applicability is limited to "agricultural and fisheries products", Article XI:2(c)(ii) is not a "general, non-agriculture-specific provision." Therefore, because Indonesia's import licensing measures fall within the scope of Article 4.2 of the Agreement on Agriculture, and because pursuant to Article 21 of the Agreement on Agriculture the provisions of GATT 1994 and of other Multilateral Trade Agreements are subject to the provisions of the Agreement on Agriculture[31], Indonesia cannot seek to justify restrictions not consistent with Article 4.2 under Article XI:2(c)(ii).

## IV. INDONESIA HAS NOT ESTABLISHED THAT ANY OF THE CHALLENGED MEASURES IS JUSTIFIED UNDER ARTICLE XX OF THE GATT 1994

28. Indonesia also has asserted numerous defenses under subparagraphs (a), (b), and (d) of Article XX of the GATT 1994. However, even taking account of the evidence submitted by Indonesia in its second written submission, none of these defenses satisfies the relevant legal

[31] Agreement on Agriculture, Article 21.

standards to succeed under these subparagraphs.

29. One fatal flaw pervading all of Indonesia's defenses is that it claims that the challenged measures meet the first element of the subparagraphs – that they are "adopted or enforced" to pursue the covered objective – consist almost *entirely* of unsupported assertions that this is the case.[32] Indonesia submits no relevant evidence – from the text or history of the measures or any other source – suggesting that the challenged measures were in fact adopted in pursuit of the covered objectives. The Appellate Body made clear in *EC – Seal Products* that mere assertion does not satisfy the first element of the Article XX subparagraphs.[33] Further, Indonesia does not address the evidence submitted by the co-complainants demonstrating that the objective of Indonesia's import licensing measures is to protect domestic producers from competition.[34]

30. Another critical failing that cross-cuts Indonesia's defenses is that, without exception, the exhibits Indonesia has submitted purporting to show each measure's contribution to its purported objectives do not support the points for which they are cited. Indeed, they often serve to *confirm* the evidence and argumentation submitted by the co-complainants that the challenged measures do *not* meet the standard of Article XX.

31. One example is Exhibit IDN-51, a Canadian government market analysis report on Indonesia consumer preferences on food products that Indonesia offered in support of its defense of the horticultural import licensing measure as a whole under Article XX(b). Not only does this document not support Indonesia's defense, it contains evidence that instead confirms the co-complainants' case. This report states that the Indonesian government "recently announced its

[32] *See* Indonesia's Second Written Submission, paras. 96, 110, 130,
[33] *EC – Seal Products (AB)*, para. 5.144.
[34] *See* U.S. First Written Submission, Sec. III.a and III.b. *See also* Exhs. US-25 and US-70 to 72.

intention to attain 90% self-sufficiency in beef production by 2014, reducing imports from 40% to 10%" and that, despite "promising economic growth and a populous consumer market, persistent corruption and complex regulatory bureaucracy have rendered the business environment in Indonesia somewhat challenging."[35]

32. In this section, we address Indonesia's individual defenses, including specific examples of the themes just mentioned, and focus on the new arguments presented in Indonesia's second written submission.

### A. None of the Challenged Measures Is "Necessary To Protect Public Morals" under Article XX(a)

33. In its second written submission, Indonesia submitted additional arguments and exhibits in an attempt to justify certain measures under Article XX(a) as necessary to protect halal requirements. Neither the arguments nor exhibits are availing.

34. Indonesia asserts that several of its import licensing measures fall "under the scope of public morals."[36] However, Indonesia's arguments and evidence in support of this assertion are devoted entirely to establishing the *existence* of halal as a public moral in Indonesia.[37] But the existence of halal as a public moral is not in dispute.

35. To the contrary, the co-complainants have great respect for the observance of halal and go to great lengths to comply with Indonesia's halal requirements, including ensuring that all animal products exported to Indonesia are halal certified.[38] The fact that halal is a public moral in

[35] *See* Agriculture and Agri-Foods Canada, *The Indonesian Consumer – Behaviour, Attitudes and Perceptions Toward Food Products*, at 28-29 (Jan. 2011) (Exh. IDN-51).
[36] Indonesia's Second Written Submission, para. 92.
[37] Indonesia's Second Written Submission, para. 92-96.
[38] U.S. First Opening Statement, para. 32; U.S. Second Written Submission, paras. 207, 229.

Indonesia, however, is not sufficient to establish that any of its import licensing measures was taken "to protect" that public moral.

36. With respect to horticultural products, Indonesia has not even identified the halal standards for horticultural products that the import licensing measures purportedly protect. Further, nothing in the text, structure, or history of the legal instruments establishing the horticultural products measures even mentions halal, let alone suggests that the objective of the regime is to uphold halal standards.[39] Although Indonesia asserts that "Law 13/2010" (the Horticultural Law) "refers to the halal provisions in Law 18/2012,"[40] this statement appears to be inaccurate. Law 13/2010 does not refer to halal or to any provisions of Law 18/2012.[41]

37. Even aside from the fact that there is no evidence that Indonesia's import licensing measures were adopted or enforced to protect the halal requirements, Indonesia has failed to demonstrate that they are necessary to achieve that objective. Other than an unsupported and vague assertion that its measures are "necessary to ensure that imported products…will comply with halal requirements",[42] Indonesia has not explained *how* its measures contribute to the protection of halal requirements, much less made its case that their contribution is approaching "indispensable" on the continuum of assessing necessity.

38. Indonesia also asserted in its second written submission that its *storage ownership restriction*, *the domestic purchase requirements*, and the *end use restrictions* are justified under Article XX(a). However, it has advanced no new arguments for the end use restrictions beyond

[39] *See* U.S. Second Written Submission, para. 208-209.
[40] *See* Indo Second Written Submission, para. 101.
[41] Law of the Republic of Indonesia Number 13 of Year 2010 Concerning Horticulture ("Horticulture Law") (JE-1).
[42] Indonesia's Second Written Submission, para. 101.

what it said in its first written submission, and provided no arguments at all for the domestic purchase requirements. Thus, the United States will focus on the new argument and evidence Indonesia submitted regarding the storage ownership restriction.

39. As the United States explained in its first and second written submissions, the storage capacity requirement that the co-complainants are challenging applies only to importation of horticultural products.[43] However, virtually Indonesia's entire defense of the "storage ownership" requirement relates to requirements or incidents relating to animal products.[44] As already noted, to date, Indonesia has not identified *any* relevant halal requirements for horticultural products, let alone presented evidence demonstrating that the protection of halal standards is, in fact, the objective of the storage ownership requirement for horticultural products.[45]

40. Indonesia now cites two new exhibits to in an attempt to prove that the storage ownership requirement for horticultural products is meant to protect the halal standard. The attempt fails, however, as both exhibits relate only to *animal products*. Exhibit IDN-71, an Indonesian newspaper article, concerns a meat plant in Australia's failure to segregate halal and non-halal meats during processing and the alleged corruption among Indonesian halal certification officials. Exhibit IDN-72, another Indonesian newspaper article, concerns domestic Indonesian producers not applying for halal certification of their meat products. Neither exhibit supports Indonesia's defense.

41. More importantly, the United States recalls that the measure at issue requires importers to *own* the storage they use and *limits the total quantity* of the imported products to the owned storage

[43] *See* U.S. First Written Submission, paras. 186-191; U.S. Second Written Submission, paras. 25-27.
[44] *See* Indonesia's Second Written Submission, paras. 213-216.
[45] *See* U.S. Comments on Indonesia Response to Panel Questions 68 and 69, paras. 46-52; U.S. Response to Panel Questions 76, para. 179; U.S. Second Written Submission, paras. 208-210.

capacity. Indonesia has not even attempted to show how these requirements could relate to halal. Thus, Indonesia has not shown that the storage ownership requirement is necessary to protect public morals.[46]

### B. None of the Challenged Measures Is Necessary to Protect Human Health under Article XX(b)

42. In its second written submission, Indonesia asserts that its import licensing regimes, as a whole, and seven of the individual requirements, are necessary to protect human health under Article XX(b) because they are food safety measures.[47] However, Indonesia does not demonstrate that any of the measures either (1) pursues the objective of food safety or (2) is "necessary" to the achievement of that objective.[48]

43. With respect to the first element of Article XX(b), Indonesia asserts that the fact that the import licensing regulations refer to the Food Law shows that the challenged measures are food safety measures.[49] Based on the text of that law, however, this would not appear to be correct.

44. The Food Law is a broad statute that covers a variety of topics. As stated in Article 4, its objectives include food planning, food safety, supervision, food research and development, and community participation.[50] "Food planning" includes "import of food."[51] Chapter IV, Part 5 covers "Import of Food" and provides, *inter alia*, that it "can only be done if the domestic Food Production is insufficient" or food "cannot be produced domestically."[52] Part 5 also states that

---

[46] *See Brazil – Retreaded Tyres (AB)*, para. 210; *EC – Seal Products (AB)*, para. 5.180 (citing *EC – Seal Products (Panel)*, para. 7.633).
[47] Indonesia's Second Written Submission, paras. 89, 207(b).
[48] *Brazil – Retreaded Tyres (AB)*, paras. 144-145; *see also EC – Seal Products (AB)*, para. 5.169.
[49] *See* Indonesia's First Written Submissions, paras. 107-111.
[50] Law 18/2012, art. 5 (JE-18).
[51] Law 18/2012, art. 11 (JE-18).
[52] Law 18/2012, art. 36(1) (JE-18).

the government must determine policies and regulations for food imports that do not "negatively impact the sustainability of farming" or the "welfare of farmers."[53] The title of Part 5, the text, structure and operation of Indonesia's import licensing regimes, and statements by Indonesian officials all show that this is the section of the Food Law relevant to Indonesia's import licensing regimes.[54] Food safety is covered in Chapter VII of the Food Law, and Indonesia has submitted no evidence tying the import licensing regimes to the requirements of that part of the law.[55]

45. The rest of the evidence and argument put forward by Indonesia also does not support the assertion that the import licensing regimes are "to protect food safety."[56] Indonesia submits several exhibits showing that food can spoil without proper care and storage, for example, but *no evidence* connecting the challenged measures to these potential problems.[57] Indeed, only one of Indonesia's exhibits, Exhibit IDN-55, even mentions Indonesia's import policies, and it focuses on requirements that would not appear to be relevant to the challenged measures, principally labeling and a now-expired requirement restricting imports to certain ports of entry.[58]

46. Indonesia also submits in support of its Article XX(b) defense evidence from the United Nations World Food Program that malnutrition remains a serious problem in Indonesia.[59] However, it appears illogical that import restrictions on food could address the problem of malnutrition.

47. With respect to the second element of Article XX(b), none of the evidence or

---

[53] Law 18/2012, art. 39.
[54] *See* U.S. Second Written Submission, paras. 133, 172; U.S. First Written Submission, paras. 16, 84-85.
[55] Law 18/2012, ch. VII (JE-18).
[56] *See* Indonesia's Second Written Submission, para. 110.
[57] *See* Indonesia's Second Written Submission, para. 110
[58] *See* Linda Yulisman, "Gov Tightens Grip on Horticulture Imports," *Jakarta Post* (May 14, 2012) (Exh. IDN-55).
[59] *See* Exh. IDN-52.

argumentation put forward by Indonesia suggests that the import licensing regimes, as a whole, are "necessary" to food safety, even if that were their objective. Indonesia's arguments for the regimes, as a whole, under the "necessary" prong focus on the importance of cold storage for meat.[60] However, the co-complainants are *not* challenging the cold storage requirement for animal products either as an individual measure or as part of the licensing regimes as a whole. The majority of Indonesia's defense, therefore, is not relevant to the measures at issue in this dispute.

48. Further, Indonesia asserts that its measures will "ensure all of the imported . . . products are stored properly" but presents no evidence or argument as to how or why this would be the case.[61] The condition of the storage has no necessary relationship to whether it is owned or rented, and it is entirely unclear how requiring importers to purchase excess capacity, only to have it lie empty for most of the semester, could contribute to food safety. Further, a less trade-restrictive alternative that actually would contribute to food safety would be to require importers to obtain appropriate storage adequate to the products they import – whether or not owned by the importer – or to allow importers to ship their products directly to distributors' or retailers' warehouses.

49. Indonesia's arguments concerning the necessity of the individual challenged measures are similarly flawed. For the sake of time, we will address here only new arguments submitted in Indonesia's second written submission, which concern three of the challenged measures.

50. First, with respect to the six-month harvest restriction, the new evidence submitted simply confirms that this measure is not "necessary" for food safety because they show that certain

[60] *See* Indonesia's Second Written Submission, paras. 116-118.
[61] Indonesia's Second Written Submission, para. 119.

horticultural products could be safely stored for more than six months. In fact, Indonesia previously acknowledged that this requirement "has no bearing" on whether products can be sold to consumers more than six months after harvest, and that some products "can be stored for more than six months . . . when properly refrigerated."[62] Specifically, the evidence confirms apples, potatoes, pears, and carrots, *inter alia*, can be stored safely for longer than six months and commonly are.[63] Indonesia's exhibits also confirm the safety and widespread use of controlled atmosphere storage, stating that it is "used worldwide on a variety of fresh fruits and vegetables" and its benefits "have been amply demonstrated."[64] Thus, Indonesia has not shown with the addition of its new evidence that the six-month harvest requirement is necessary to the protection of human health.

51. Second, concerning the use restrictions on animal products, which limit where imported beef and other meat products could be sold, Indonesia submitted several new exhibits. None of this new evidence supports Indonesia's defense under Article XX(b). Indonesia's defense is based on a mischaracterization of the challenged measure. Indonesia asserts that the use restrictions apply to all frozen animal products and to non-fresh animal products, and that they are necessary "to reduce consumer deception" and "ensure the quality of meat sold in traditional markets".[65] In fact, however, the measure applies to all imported animal products – fresh and frozen – and to no domestic animal products.[66] Moreover, the measure prohibits the retail sale of

[62] Indonesia's First Written Submission, paras. 150-151.
[63] *See* Diane M. Barret, "Maximizing the Nutritional Value of Fruits & Vegetables," 61 *Food Technology* vol. 4, at 41 (2007) (Exh. IDN-54); FAO, *Small-Scale Post-Harvest Handling Practices*, at 2-4 (Exh. IDN-73).
[64] A. Keith Thompson, *Controlled Atmosphere Storage of Fruits and Vegetables* (CABI, 2010) (Exh. Ind-75).
[65] *See* Indonesia's Second Written Submission, paras. 193, 225-226.
[66] U.S. First Written Submission, para. 292; U.S. Opening Statement, para. 29. *See* MOT 46/2013, as amended, article 17 (JE-21); MOA 139/2014, as amended, articled 32(1), 32(2) (JE-28).

imported beef in modern markets as well as traditional markets.[67] Thus, Indonesia's arguments do not address the restrictive aspects of these elements of the measure at all.

52. Further, none of Indonesia's evidence suggests that frozen meat poses any different or greater health risk than fresh meat under the conditions in a traditional market. Exhibit IDN-79, a web article about thawing and freezing meat safely, states that freezing meat "won't significantly change its nutritional content" and that microbes will not grow while the meat is frozen.[68] Exhibit IDN-80, a food safety fact sheet from the University of Mississippi, does not address the specific hazards of frozen, thawed, and fresh meat. Exhibit IDN-57, an academic paper in the Journal of Agroalimentary Process and Technology, is not related to food safety at all but to the technological properties of meat such as juiciness and texture.[69] Further, as the United States explained previously, the Indonesian government's own practices suggest that frozen beef in traditional markets does not pose a food safety risk, as Bulog, the state-owned Bureau of Logistics, relieves meat shortages by selling imported frozen beef in traditional markets.[70]

53. Finally, in its second written submission, Indonesia put forward for the first time an Article XX(b) defense of the positive list for importation of animals and animal products. Indonesia asserts that, when animals have been given growth hormones, the "residue . . . is found on their internal organs," and it is "unhealthy for humans to consume animal products containing such growth hormone." In support of this assertion, Indonesia submits two exhibits – webpages of the

[67] *See* Indonesia's Second Written Submission, paras. 225.
[68] *See* Jen Morel, "Rules for Thawing and Refreezing Meat," *livestrong.com* (June 22, 2015) (Exh. IDN-79).
[69] *See* "Food Safety Fact Sheet" (2013) (Exh. IDN-80); Corina Gambuteanu, Daniela Borda and Petru Alexe, The Effect of Freezing and Thawing on Technological Properties of Meat: Review (Exh. IDN-57).
[70] *See* U.S. Opening Statement, para. 29; WijiNurhayat, "Bulog Sells 8 tons of Cheap Imported Beef in 3 Markets of Jakarta Today," *detikfinance*, July 17, 2013, (Exh. US-62).

European Commission and an organics advocacy group.[71] Neither exhibit distinguishes between the prohibited and listed beef products or discusses non-beef products at all.[72] Nor does Indonesia provide any further explanation in support of this new defense. Therefore, as with its other defenses under Article XX(b), Indonesia has failed to demonstrate that the measure taken is necessary to protect human health.

### C. None of the Challenged Measures Is "Necessary to Secure Compliance" with Any WTO-Consistent Law or Regulation Relating to Customs Enforcement or Food Safety under Article XX(d)

54. Indonesia asserts that challenged measures are justified under Article XX(d) as measures necessary to secure compliance with customs enforcement or food safety laws and regulations. Indonesia has failed to show that its measures meet the elements of Article XX(d) for the following reasons: (1) it has not adequately identified the WTO-consistent laws and regulations purportedly enforced by the import licensing measures; (2) it has not shown that the challenged measures are designed to secure compliance with any such WTO-consistent laws and regulations; and (3) it has not shown that the challenged measures are necessary to secure compliance with laws and regulations related to customs and food safety. The United States will address each point in turn.

55. First, a Member invoking Article XX(d) must demonstrate that the challenged measure at issue is "designed to 'secure compliance' with laws or regulations that are not themselves" WTO-inconsistent.[73] This entails first identifying the relevant laws or regulations with which the

[71] *See* Indonesia's Second Written Submission, para. 236.
[72] *See* European Commission, "Hormones in Meat" (accessed Mar. 1, 2016) (Exh. IDN-83); Organic Consumers Association, "Grown Hormones Fed to Beef Cattle Damage Human Health" (May 1, 2007) (Exh. IDN-84).
[73] *Korea – Beef (AB)*, para. 157.

measure is purportedly designed to secure compliance. Indonesia has not satisfied this element.

56. In its second written submission, Indonesia identified 13 legal instruments whose compliance is allegedly secured by its import licensing regimes, as a whole.[74] Indonesia submitted the text of only one of those instruments, namely Law No. 10/1995 Concerning Customs, and referred to two of its provisions – the definition of customs and a statement in the preamble.[75]

57. The mere listing of legal instruments and cursory references to general provisions fall short of identifying the relevant law or regulation the measures at issue seek to enforce. Previous panel and Appellate Body reports have found that general references to entire pieces of complex legislation are not sufficient to identify a "law or regulation" for purposes of Article XX(d).[76] In fact, Indonesia's failure to provide for the record the text of the 12 legal instruments it listed means that it is not possible for the Panel to even to begin to assess Indonesia's defense.

58. Submitting the entire text of the Customs Law is also not sufficient to meet the identification element. The Customs Law contains myriad obligations and addresses topics as wide-ranging as export declarations (art. 10), transportation of goods within Indonesia (art. 11), tariffs and import duties (arts. 12-17), anti-dumping and countervailing duties (arts. 18-23), storage of products under customs supervision (arts. 42-48), IPR infringement (arts. 54-64), and the customs appeal process (arts. 93-101). Again, a general reference to such a complex law is not sufficient to identify a WTO-consistent law or regulation under Article XX(d).[77]

59. Moreover, Indonesia's reference to the definition of "customs" and to the preamble of the Customs Law is also not sufficient because these two provisions do not set out any rule or

---

[74] Indonesia's Second Written Submission, para. 130.
[75] *See* Exhs. IDN-65 and IDN-66.
[76] *See Thailand – Cigarettes (Philippines) (AB)*, para. 179, n.271; *Colombia – Ports of Entry*, paras. 7.516-517, 7.521.
[77] *Thailand – Cigarettes (Philippines) (AB)*, para. 179, n.271.

obligation with which compliance can be secured. The Appellate Body in *Mexico – Taxes on Soft Drinks* found that the term "laws and regulations," as used in Article XX(d), refers to "*rules* that form part of the domestic legal system of a WTO Member."[78] The term "to secure compliance" also informs the interpretation of "laws and regulations." The relevant "laws and regulations" must, therefore, be "rules" with which compliance can be "secure[d]."[79] Previous panels have also found that, to satisfy the first prong of Article XX(d), it is not sufficient for a challenged measure merely to secure compliance with the *objectives* of WTO-consistent laws and regulations. Rather, "to secure compliance" "means 'to enforce obligations under laws and obligations' and *not* 'to ensure the attainment of the objectives of the laws and regulations.'"[80] A definition or a preambular statement that does not contain a relevant obligation is not sufficient, because it is not a "rule" with which compliance is capable of being secured.

60. Thus, previous panel and Appellate Body reports confirm that Indonesia has not identified a WTO-consistent law or regulation, for purposes of Article XX(d). No previous report has found that a WTO-consistent law or regulation was identified based solely on the type of general references that Indonesia has made.[81]

61. After it identifies the legal instruments, the Member invoking Article XX(d) must show that the challenged measure was, in fact, designed to secure compliance with a WTO-consistent

---

[78] *Mexico – Taxes on Soft Drinks (AB)*, para. 69 (emphasis added).
[79] *Mexico – Taxes on Soft Drinks (AB)*, para. 72).
[80] *EEC – Regulations on Imports of Parts and Components (GATT)*, para. 5.17; *see also Korea – Various Measures on Beef (Panel)*, para. 658; *Colombia – Ports of Entry*, para. 5.17; *Canada – Wheat Exports and Grain Imports (Panel)*, para. 6.248; *EC – Trademarks and Geographical Indications (US)*, para. 7.447; *Canada – Periodicals (Panel)*, para. 5.9; *Colombia – Textiles and Apparel (Panel)*, para. 7.482.
[81] *See Colombia – Textiles and Apparel (Panel)*, paras. 7.505-508; *Thailand – Cigarettes (Philippines) (AB)*, para. 179, n.271; *Colombia – Ports of Entry*, para. 7.523; *US – Shrimp (Thailand) (Panel)*, paras. 7.175-179; *DR – Cigarettes (Panel)*, para. 7.210; *US – Gambling(Panel)*, para. 6.550; *Canada – Wheat Exports and Grain Imports (Panel)*, para. 6.221; *Argentina – Hides and Leather*, para. 11.292; *Korea – Various Measures on Beef (Panel)*, para. 655.

law or regulation. Previous panels have looked to evidence surrounding the enactment and operation of a challenged measure in analyzing this element.[82] In this dispute, Indonesia has put forward almost *no* evidence that any of the challenged measures were taken "to secure compliance" with the Customs Law. Indonesia has introduced no evidence from the text, structure, or history of its import licensing regulations suggesting that they were put in place to address any customs enforcement problems or to enforce compliance with any customs requirement.

62. The only evidence to which Indonesia refers is a reference to the Customs Law in three import licensing regulations enacted after the Panel was established.[83] But this evidence is insufficient for several reasons. First, these instruments were enacted after the Panel was established and thus are not part of the measures within the Panel's terms of reference. As the panel and Appellate Body found in *EC – Customs*, they would only be relevant to the extent they bear on the legal situation as it existed as of the date of panel establishment.[84] Indonesia has provided no explanation for how these post-panel establishment measures would establish that the import licensing regimes as of the date of panel establishment were taken to secure compliance with the Customs Law.

63. Second, the "refer[ence]" to the Customs Law to which Indonesia refers consists of the Customs Law being one of the 20-30 laws and regulations "Not[ed]" at the beginning of the regulations. Indonesia points to nothing else in the text of any of the instruments suggesting any connection with customs enforcement.

---

[82] *See Korea – Various Measures on Beef (Panel), paras. 657-658; Colombia – Ports of Entry (Panel), paras. 7.539-7.542); China – Auto Parts (Panel), paras. 7.299, 7.310, 7.312, 7.306-308, 7.345.*
[83] Indonesia Second Written Submission, para. 134.
[84] *EC-Customs (AB*), paras. 188-189.

64. Additionally, one of the instruments Indonesia cites, MOA 58/2015, does not actually include even this bare reference among the 20 laws that it "notes." Indeed, the regulation does not contain the word "customs" at all.[85]

65. With respect to the necessity element, Indonesia has not articulated any explanation of how its import licensing regimes and measures contribute to *securing compliance with* any requirement of a customs or food safety law or regulation. Merely asserting that the import licensing regimes "effectively contributed to the monitoring of the flow of goods through Indonesian customs" is not sufficient.[86] In short, Indonesia's argument concerning the "necessary" element rests entirely on a bare assertion that, even if substantiated, would not satisfy the standard of Article XX(d).

66. Finally, Indonesia's attempts to justify under Article XX(d) its application windows and validity periods, fixed license terms, 80 percent realization requirement, end use requirement, and storage requirement suffer from the same defects described above. Indonesia fails to identify the WTO-consistent laws and regulations with which these measures are necessary to secure compliance, or to explain why each measure is necessary to do so.

### D. The Challenged Measures Do Not Meet the Requirements of the Article XX Chapeau

67. Indonesia has failed to justify provisionally any of its measures under Articles XX (a), (b), and (d). Even if it had, however, Indonesia cannot show that its measures meet the requirements of the chapeau of Article XX. The Article XX chapeau requires the responding party to demonstrate that the measures at issue are not "applied in a manner which would constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a

[85] *See* Exh. IDN-40.
[86] Indonesia's Second Written Submission, paras. 142.

disguised restriction on international trade." Indonesia made no attempt to meet its burden under the chapeau in its first written submission, and its limited arguments in its second submission are not sufficient to sustain its claim.

68. Indonesia first argues that its measures impose no discrimination between domestic and foreign products.[87] Regarding the public morals exception under Article XX(a), Indonesia asserts that domestic products are also required to have a halal label.[88] This argument misses the point. The requirement to have a halal label or otherwise comply with halal requirements is not at issue in this dispute. The challenged measures are restrictions on the sale, use, and transfer of *imported* horticultural products, prohibition on the sale of *imported* beef and other animal products in traditional or modern markets, and limitation on the total quantities of *imported* horticultural products based the importer's ownership of storage capacity. Indonesia offered no arguments under the chapeau to address the arbitrary and unjustifiable nature of these restrictions.

69. Regarding the protection of human health under Article XX(b), Indonesia asserts that "[t]he distinctions which exist between imported and domestic products are not in any way more onerous than necessary" and cites a provision in its quarantine law as an example.[89] However, Indonesia provides no evidence or explanation of what distinctions exist between imported and domestic products under this and other laws or how these distinctions apply to the measures it seeks to justify under Article XX(b). It remains unclear for what purpose Indonesia has cited the quarantine law in particular as none of the measures at issue relate to quarantine of imports.

70. Finally, with respect to Article XX(d), Indonesia argues that there is no discrimination

[87] Indonesia's Second Written Submission, paras. 150, 249.
[88] Indonesia's Second Written Submission, para. 150.
[89] Indonesia's Second Written Submission, para. 150.

arising from any of its measures because its import licensing regimes apply equally to all importing countries. However, this argument does not address the fact that Indonesia's regimes do result in discrimination against imported products vis-à-vis domestic products. In any event, Indonesia still has not submitted all the relevant customs or food safety laws or regulations related to its Article XX(d) defenses or specified what aspects of these laws are relevant to the analysis under the chapeau. Therefore, the Panel (and the co-complainants) have no basis upon which to evaluate its assertion on discrimination.

71. Indonesia also argues that any discrimination that does exist is not arbitrary because the import licensing requirements and the rationale of the Indonesian decision-makers regarding certifications are "available to all applicants."[90] However, in assessing the arbitrary or unjustifiable discrimination element of the chapeau, one of the most important factors is whether the discrimination can be reconciled with, or is rationally related to, the policy objective with respect to which the measure has been provisionally justified under one of the subparagraphs of Article XX.[91] Indonesia's arguments do not explain how the discrimination arising from the measures it seeks to justify under Article XX is rationally related to protecting halal, ensuring food safety, or securing compliance with customs enforcement. Thus, Indonesia has failed to show that its measures do not constitute arbitrary and unjustifiable discrimination.

72. Finally, Indonesia also asserts that none of its measures constitutes a disguised restriction on international trade because Indonesia makes public the relevant import licensing laws and regulations as well as its reasons for rejecting an application.[92] Again, Indonesia's arguments

[90] Indonesia's Second Written Submission, paras. 153-154.
[91] *See EC – Seals (AB)*, para. 5.306.
[92] Indonesia's Second Written Submission, paras. 156, 250.

miss the mark. As the Appellate Body has stated, "[i]t is . . . clear that concealed or unannounced restrictions or discrimination on international trade does not exhaust the meaning of 'disguised restriction.'"[93] Instead, this element of the chapeau may be read to encompass restrictions taken under "the guise of a measure formally within the terms of an exception listed in Article XX."[94] Thus, Indonesia's mere assertion that "there is no lack of transparency" falls short of meeting this element.[95] Indeed, official government policies, the texts of the measures, and statements from government officials confirm that the true objective behind Indonesia's import restrictions is the protection of its own domestic producers.[96] Indonesia's *post hoc* justifications cannot conceal this fact.

73. Thus, Indonesia has failed to establish that the measures for which it asserts a defense under Article XX satisfy the requirement of the chapeau.

## V. CONCLUSION

74. For the foregoing reasons, the United States respectfully requests that the Panel reject Indonesia's defenses and find that the prohibitions and restrictions imposed by Indonesia are inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture.

[93] *US – Gasoline (AB)*, p. 25.
[94] *US – Gasoline (AB)*, p. 25.
[95] Indonesia's Second Written Submission, para. 250.
[96] *See* U.S. Second Written Submission, paras. 239-240.