ANNEX 1

WORLD TRADE ORGANIZATION

WT/DS412/10
WT/DS426/9

6 February 2013

(13-0616)

Page: 1/1

Original: English

CANADA – CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR

CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM

NOTIFICATION OF AN APPEAL BY CANADA UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following notification, dated 5 February 2013, from the Delegation of Canada, is being circulated to Members.

_____

Pursuant to Article 16.4 and Article 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Rule 20 of the *Working Procedures for Appellate Review*, Canada notifies its appeal of certain issues in the Reports of the Panel in *Canada – Certain Measures Affecting the Renewable Energy Generation Sector* (WT/DS412/R) and *Canada – Measures Relating to the Feed-In Tariff Program* (WT/DS426/R) and certain legal interpretations developed by the Panel in these Reports.

Canada seeks review by the Appellate Body of the Panel's findings and conclusion that the Government of Ontario's FIT Program, as implemented through the FIT and MicroFIT Contracts[1], is not covered by the terms of Article III:8(a) of GATT 1994.[2] This conclusion is in error and is based on erroneous findings on issues of law and legal interpretation including the Panel's finding that the Government of Ontario purchases renewable electricity "with a view to commercial resale".[3]

Canada also requests the Appellate Body to find that the Panel acted inconsistently with Article 11 of the DSU by failing to make an objective assessment of the facts related to this issue, specifically with respect to the Panel's finding that the resale of electricity purchased under the FIT Program is "commercial" in nature, and by using this faulty factual finding to support its conclusion about the applicability of Article III:8(a) of GATT 1994 to the FIT Program.[4]

Canada also requests the Appellate Body to find that the Panel failed to find that the Government of Ontario does not purchase renewable electricity "with a view to use in the production of goods for commercial sale".

[1] For a summary of the measure at issue, see paras. 7.6 and 7.7 of the Panel Reports.
[2] See e.g., para. 7.152 of the Panel Reports.
[3] See e.g., paras. 7.147-7.151 of the Panel Reports.
[4] Ibid.

ANNEX 2

WORLD TRADE ORGANIZATION

WT/DS412/11

15 February 2013

(13-0863)

Original: English

CANADA – CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR

NOTIFICATION OF AN OTHER APPEAL BY JAPAN UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following notification, dated 11 February 2013, from the Delegation of Japan, is being circulated to Members.

_____

Pursuant to Article 16.4 and Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 23(1) of the Working Procedures for Appellate Review ("Working Procedures"), Japan hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report in *Canada – Certain Measures Affecting the Renewable Energy Generation Sector* (WT/DS412/R) ("Panel Report"), and certain legal interpretations developed by the Panel in this dispute.

For the reasons to be elaborated in its submissions to the Appellate Body, Japan appeals the following errors of law and legal interpretation contained in the Panel Report, and requests the Appellate Body to reverse, modify, or declare moot and of no legal effect the related findings, conclusions and recommendations of the Panel, and where indicated to complete the analysis.[1]

1. With respect to Japan's claims under the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"):

    a. The Panel erred in its interpretation and application of Article 1.1(a) of the SCM Agreement in concluding that the appropriate legal characterization of the FIT Program and Contracts[2] is "government … purchases [of] goods".[3] Japan requests the Appellate Body to reverse the Panel's finding in this regard, and complete the analysis to find instead that the FIT Program and Contracts are appropriately characterized as "a government practice [that] involves a direct transfer of funds … [or] potential direct transfers of funds" or "any form of income or price support" or

[1] Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures, this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of Japan to refer to other paragraphs of the Panel Report in the context of its appeal.

[2] Throughout this Notice of Other Appeal, Japan uses the term "FIT Program and Contracts" to refer to the Government of Ontario's feed-in tariff program (including microFIT), and the FIT and microFIT contracts entered into by the Government of Ontario under that program, that are at issue in this dispute – i.e., the "challenged measures".

[3] Panel Report, paras. 7.220-7.249.

alternatively modify the Panel's finding in this regard to find that these measures may also be characterized as "direct transfer[s] of funds", "potential direct transfer of funds", or "income or price support" under Article 1.1(a) of the SCM Agreement.

b. The Panel erred in its interpretation and application of Article 1.1(a)(1) of the SCM Agreement by concluding that government "purchases [of] goods" under Article 1.1(a)(1)(iii) could not also be legally characterized as "direct transfer[s] of funds" or "potential direct transfers of funds" under Article 1.1(a)(1)(i).[4] Japan requests that the Appellate Body declare this finding to be moot and of no legal effect, and to find that the Government of Ontario provides financial contributions in the form of "direct transfer[s] of funds" or "potential direct transfers of funds" through the FIT Program and Contracts, regardless of whether they may be characterized as government "purchases [of] goods".

c. The Panel failed to make an objective assessment of the matter as required by Article 11 of the DSU by improperly exercising judicial economy, and failing to make findings with respect to Japan's claim that the FIT Program and Contracts may be legally characterized as "income or price support" under Article 1.1(a)(2) of the SCM Agreement.[5] Japan requests the Appellate Body to find that the Government of Ontario provides "income or price support" through the FIT Program and Contracts, regardless of whether they may be characterized as government "purchases [of] goods".

d. The Panel erred in its interpretation and application of Article 1.1(b) of the SCM Agreement, and failed to make an objective assessment of the matter as required by Article 11 of the DSU, when it found that it cannot resolve whether the challenged measures confer a benefit by applying a benchmark derived from the conditions for purchasing electricity in a competitive wholesale electricity market, particularly in disregarding Japan's argument that the challenged measures confer a benefit because the objective design, structure and operation of the FIT Program demonstrates that solar PV and wind generators would not be present in Ontario's wholesale electricity market absent the FIT Program.[6] Japan requests the Appellate Body to reverse these findings by the Panel and instead to find that the challenged measures confer a "benefit".

e. The Panel failed to make an objective assessment of the matter, including an objective assessment of the facts of the case, as required by Article 11 of the DSU, in failing to resolve the question of benefit under Article 1.1(b) of the SCM Agreement based on its preferred comparison between the relevant rates of return of the challenged FIT and microFIT Contracts with the relevant average cost of capital in Canada.[7] Japan requests the Appellate Body to complete the analysis, and find that the FIT Program and Contracts confer a benefit under the Panel's preferred approach. However, this appeal is conditional on the Appellate Body rejecting Japan's argument that the challenged measures confer a benefit pursuant to item 1.d above.

f. Should the Appellate Body find the FIT Program and Contracts to be a subsidy within the meaning of Article 1.1 of the SCM Agreement, Japan requests the Appellate Body to complete the analysis, and find the FIT Program and Contracts to be inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement.

g. In addition to its error in failing to find the FIT Program and Contracts to be prohibited subsidies, the Panel erred in failing to recommend, pursuant to Article 4.7 of the SCM Agreement, that Canada withdraw the subsidies without delay, by eliminating the domestic content requirement of the FIT Program and Contracts, and erred in failing to specify the time period within which the measures must be withdrawn. Accordingly, if the Appellate Body completes the analysis and makes the findings requested by Japan in item 1.f above, Japan further requests that the Appellate Body make the

[4] Panel Report, paras. 6.83-6.85, 7.243-7.248, particularly paras. 7.246-7.247.
[5] Panel Report, paras. 6.88, 7.249.
[6] Panel Report, paras. 6.94-6.95, 7.271-7.313, 7.315, 7.317, and 7.319-7.320, particularly paras. 7.308-7.313.
[7] Panel Report, paras. 7.322-7.327.

recommendation, and specify the time period within which the measure must be withdrawn, pursuant to Article 4.7 of the SCM Agreement.

2. With respect to Japan's claims under the General Agreement on Tariffs and Trade 1994 ("GATT 1994"):

   a. The Panel failed to make an objective assessment of the matter as required by Article 11 of the DSU by exercising false judicial economy and failing to separately examine Japan's claims under Article III:4 of the GATT 1994.[8] Japan requests the Appellate Body to complete the analysis, and find that the FIT Program and Contracts are inconsistent with the terms of Article III:4 independent of the Panel's findings under the Agreement on Trade-Related Investment Measures ("TRIMs Agreement").

   b. The Panel erred in its interpretation and application of Article III:8(a) of the GATT 1994 in the following respects:

      i. The Panel erred when it found the FIT Program and Contracts to involve "procurement by governmental agencies of products purchased" under Article III:8(a) of the GATT 1994, based on its conclusion that these measures are "government … purchases [of] goods" under Article 1.1(a) of the SCM Agreement.[9]

      ii. The Panel erred when it interpreted the term "governmental purposes" in isolation, rather than the entire term "purchased for governmental purposes", and failed to separately assess whether purchases under the FIT Program and Contracts were "for" governmental purposes.[10] Japan requests the Appellate Body to complete the analysis, and find that the FIT Program and Contracts are not "purchase[s] [by governmental agencies] for governmental purposes". However, this appeal is conditional on the Appellate Body rejecting Japan's argument pursuant to item 2.b.i above.

      iii. The Panel erred when it found evidence of profit earned by the Government of Ontario and Ontario's municipal governments may be a relevant consideration in determining that the FIT Program is undertaken "with a view to commercial resale".[11] In this regard, Japan seeks only modification of the Panel's findings to conclude that the Government of Ontario's procurement of electricity under the FIT Program and Contracts is undertaken "with a view to commercial resale" by virtue of the fact that the electricity "is resold to retail consumers through Hydro One and the LDCs"[12], without regard to whether those entities make profits. However, this appeal is conditional on the Appellate Body rejecting Japan's arguments pursuant to items 2.b.i and 2.b.ii above.

[8] Panel Report, paras. 6.72, 7.155-7.167. *See also id.*, para. 7.70 ("in the section that follows we will simultaneously evaluate the merits of both of the complainants' claims under Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994").

[9] Panel Report, paras. 7.129-7.136, particularly paras. 7.135-7.136.

[10] Panel Report, paras. 7.138-7.145, particularly paras. 7.140, 7.144-7.145.

[11] Panel Report, paras. 7.146-7.151, particularly paras. 7.149-7.151.

[12] Panel Report, para. 7.147.

ANNEX 3

WORLD TRADE ORGANIZATION

WT/DS426/10

15 February 2013

(13-0866)

Original: English

CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM

NOTIFICATION OF AN OTHER APPEAL BY THE EUROPEAN UNION UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following notification, dated 11 February 2013, from the Delegation of the European Union, is being circulated to Members.

_____

Pursuant to Article 16.4 and Article 17.1 of the *DSU* the European Union hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *Canada – Measures Relating to the Feed-In Tariff Program* (WT/DS426). Pursuant to Rule 23(1) of the *Working Procedures for Appellate Review*, the European Union simultaneously files this Notice of Other Appeal with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submissions to the Appellate Body, the European Union appeals, and requests the Appellate Body to modify, reverse and/or declare moot and with no legal effect the findings and conclusions of the Panel and complete the analysis with respect to the following errors of law and legal interpretations contained in the Panel Report.[1]

- The European Union submits that the Panel erred in the interpretation and application of Articles 2.1 and 2.2 of the TRIMs Agreement read in conjunction with Paragraph 1(a) of the Illustrative List in the Annex to the TRIMs Agreement when finding that they do not preclude the application of Article III:8(a) of the GATT 1994 to the challenged measures.[2]

- The European Union requests the Appellate Body to reverse the Panel's finding in paragraph 7.121, complete the analysis and find that Article III:8(a) of the GATT 1994 was not applicable in the present case. As a consequence, the European Union requests the Appellate Body to uphold, although modifying the reasoning, the Panel's ultimate finding in paragraph 7.166 that the challenged measures are TRIMs falling within the scope of Paragraph 1(a) of the Illustrative List, and that in the light of Article 2.2 and the chapeau to Paragraph 1(a) of the Illustrative List, they are inconsistent with Article III:4 of the GATT 1994, and thereby also inconsistent with Article 2.1 of the TRIMs Agreement.

[1] Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures for Appellate Review this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of the European Union to refer to other paragraphs of the Panel Report in the context of its appeal.

[2] Panel Report, paras. 7.114-7.121, and in particular, paras. 7.119 and 7.120.

- The Panel erred in its interpretation and application of Article III:8(a) of the GATT 1994 when finding that that the "Minimum Required Domestic Content Level" contained in the FIT Programme should be properly characterised as one of the "requirements governing" the alleged procurement of electricity for the purpose of Article III:8(a) of the GATT 1994.[3]

- The European Union requests the Appellate Body to reverse such finding, complete the analysis and find instead that the "Minimum Required Domestic Content Level" are not "requirements governing the procurement … of the products purchased" in the present case. As a consequence of the Appellate Body's reversal of the Panel's finding in paragraph 7.128, the European Union requests the Appellate Body to reverse the Panel's finding in paragraph 7.152 that "(ii) the "Minimum Required Domestic Content Level" prescribed under the FIT Programme, and effected through the FIT and microFIT Contracts, is one of the "requirements governing" the Government of Ontario's "procurement" of electricity", and find instead that the "Minimum Required Domestic Content Level" does not constitute "requirements governing the procurement … of the products purchased" in the present case.

- The Panel erred in its interpretation of Article III:8(a) of the GATT 1994 when stating that the ordinary meaning of the terms "governmental purposes" is relatively broad and may encompass the meaning proposed by Canada, i.e., that a purchase for "governmental purposes" may exist whenever a government purchases a product for a stated aim of the government.[4] The European Union requests the Appellate Body to reverse this statement or, at the very least, to declare it moot and with no legal effect. In addition, should the Appellate Body reverse the Panel's finding that the Government of Ontario's procurement of electricity under the FIT Programme is undertaken "with a view to commercial resale",[5] the European Union requests the Appellate Body to modify and/or reverse the Panel's reasoning[6] as to the meaning of "governmental purposes" in view of the arguments raised by the European Union as to the proper interpretation of those terms, complete the analysis and find that the Government of Ontario's procurement of electricity under the FIT Programme is not undertaken for "governmental purposes". As a consequence, the Panel's findings in paragraph 7.152 should also be amended accordingly to reflect another reason why Canada could not rely on Article III:8(a) of the GATT 1994 to exclude the application of Article III:4 of the GATT 1994 to the "Minimum Required Domestic Content Level".

- The Panel erred in its application of Article 1.1(b) of the SCM Agreement as well as did not make an objective assessment of the matter in accordance with Article 11 of the DSU when finding that the European Union had failed to established that the FIT Programme and its related contracts confer a "benefit" under Article 1.1(b) of the SCM Agreement.[7] In particular:

  (a) the Panel erred in the application of Article 1.1(b) of the SCM Agreement to the facts of this case.[8] The "prevailing market conditions" in Ontario, as evidenced by the purpose of the FIT Programme, showed that the FIT generators would not be able to obtain the necessary remuneration to be present in such marketplace;

  (b) the Panel did not make an objective assessment of the matter in accordance with Article 11 of the DSU by failing to consider the totality of the evidence, by providing incoherent reasoning and exercising false judicial economy, when finding that, even on the basis of a hypothetical "market" counterfactual as the one suggested in its observations, the European Union had failed to establish the existence of "benefit".[9]

[3] Panel Report, paras. 7.126-7.128, and 7.152.
[4] Panel Report, para. 7.139, first sentence (and the follow-up statement in para. 7.140, second sentence).
[5] Panel Report, para. 7.151.
[6] Panel Report, paras. 7.138-7.145.
[7] Panel Report, para. 7.328(ii).
[8] Panel Report, paras. 7.276-7.327.
[9] Panel Report, paras. 7.322-7.328(ii).

In view of these errors, the European Union requests the Appellate Body to *reverse* the Panel's finding in paragraph 7.328(ii) that the European Union failed to establish the existence of benefit in the present case, that the challenged measures conferred a "benefit" under Article 1.1(b) of the SCM Agreement, *complete the analysis* on the basis of the Panel's findings and uncontested facts on the record, and *find* that the challenged measures conferred a "benefit" under Article 1.1(b) of the SCM Agreement. As a consequence, the Panel's ultimate conclusion that the European Union had failed to establish that the FIT Programme and its related contracts constitute subsidies or envisage the granting of subsidies inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement is also in error.[10] The European Union requests the Appellate Body to also *reverse* such a conclusion, *complete the analysis* on the basis of the Panel's findings and uncontested facts on the record, and *find* that the challenged measures amount to subsidies prohibited under Articles 3.1(b) and 3.2. Accordingly, the European Union requests the Appellate Body to *recommend* that Canada withdraws its prohibited subsidies without delay (and, in no case, no more than within 90 days), as required by Article 4.7 of the SCM Agreement. Should the Appellate Body be unable to complete the analysis under any of the requests made by the European Union, the European Union requests the Appellate Body to declare *moot and with no legal effect* the Panel's findings and conclusions in paragraphs 7.328(ii) and 8.7.[11]

[10] Panel Report, para. 8.7.

[11] The European Union observes that on 11 February 2013 Japan appealed the panel report in *Canada – Certain Measures Affecting the Renewable Energy Generation Sector (WT/DS412)*. That report contains identical findings and conclusions as those contained in para. 7.328(ii) and para. 8.7 in the Panel Report in DS426. The European Union incorporates hereto Japan's Notice of Other Appeal dated 11 February 2013 with respect to the errors of law and legal interpretations, including any request for completing the analysis, made in connection with para. 7.328(ii) of the panel report in DS412.

ANNEX 4

ORGANISATION MONDIALE DU COMMERCE | **ORGANIZACIÓN MUNDIAL DEL COMERCIO**

WORLD TRADE ORGANIZATION

APPELLATE BODY

Canada – Certain Measures Affecting the Renewable Energy Generation Sector
Canada – Measures Relating to the Feed-in Tariff Program

AB-2013-1

Procedural Ruling

1. On 12 February 2013, we received letters from Canada, Japan, and the European Union requesting that the Appellate Body Division hearing the above appeal allow observation by the public of the oral hearing in these appellate proceedings.

2. Specifically, Canada requested that the Division allow public observation of the oral statements and answers to questions of the participants, as well as those of third participants that agree to make their statements and responses to questions public. Canada proposed that public observation be permitted via simultaneous closed-circuit television broadcasting with the option for the transmission to be turned off should the participants find it necessary to discuss confidential information, or if a third participant has indicated its wish to keep its oral statement confidential.

3. In its letter, Japan supported Canada's request, indicating that it also wished to make public its statements and answers to questions by the Division in the course of the Appellate Body hearing, and that it agreed with Canada's request that the Division hold an open hearing in this appeal. Japan further agreed that public observation be allowed by means of simultaneous closed-circuit video broadcasting. For its part, the European Union stated that it agreed and associated itself with Canada's request for an open hearing. The participants referred to the rulings by the Appellate Body in nine previous proceedings authorizing public observation of the oral hearing.[1]

[1]These proceedings are:
- *United States / Canada – Continued Suspension of Obligations in the EC – Hormones Dispute* (WT/DS320/AB/R / WT/DS321/AB/R);
- *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador* (WT/DS27/AB/RW2/ECU) and *Recourse to Article 21.5 of the DSU by the United States* (WT/DS27/AB/RW/USA);
- *United States – Continued Existence and Application of Zeroing Methodology* (WT/DS350/AB/R);
- *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities* (WT/DS294/AB/RW);
- *United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan* (WT/DS322/AB/RW);
- *Australia – Measures Affecting the Importation of Apples from New Zealand* (WT/DS367/AB/R);
- *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* (WT/DS316/AB/R);
- *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)* (WT/DS353/AB/R); and
- *United States – Certain Country of Origin Labelling Requirement* (WT/DS384/AB/R / WT/DS386/AB/R).

4. On 13 February 2013, we invited the third parties to comment in writing on the requests of the participants. On 18 February 2013, we received responses from Australia, Brazil, China, El Salvador, India, Mexico, Norway, the Kingdom of Saudi Arabia, Turkey, and the United States. No comments were received from Honduras, Korea, or the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. In their respective comments, Brazil, China, India, Mexico, and Turkey stated that they do not object to allowing public observation of the oral hearing in these disputes, but emphasized that this is without prejudice to the systemic views each has on the issue of public observation of panel and Appellate Body hearings. India and China stated that they wished to keep their oral statements and responses to questions confidential. The Kingdom of Saudi Arabia stated that it does not object to allowing public observation of the oral hearing in these disputes, but also exercised its right to keep its oral statement and responses to questions confidential. El Salvador stated that it does not object to allowing public observation of the oral hearing in these disputes, based on the conditions and modalities set out in Canada's request.

5. Norway and Australia stated their support for the participants' request to allow public observation of the oral hearing, including their statements and answers to questions as third participants. The United States supported the participants' request to allow public observation of the oral hearing, arguing that opening hearings to public observation serves to strengthen the legitimacy of the WTO dispute settlement system and that increased confidence in the dispute settlement process can translate into a great acceptance of the outcome of a dispute settlement proceeding. It further noted that past experience in holding open Appellate Body hearings has been positive. The United States confirmed that, should the Appellate Body authorize public observation of the oral hearing in this appeal, the United States would make its oral statement and answers to questions open to observation by the public.

6. We recall that requests to allow public observation of the oral hearing have been made, and have been authorized, in nine previous appellate proceedings.[2] In its rulings, the Appellate Body has held that it may authorize such requests by the participants, provided that this does not affect the confidentiality in the relationship between the third participants and the Appellate Body, or impair the integrity of the appellate process. We consider that the reasons previously expressed by the Appellate Body, and its interpretation of Article 17.10 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) in this regard, apply equally to the circumstances prevailing in these appellate proceedings.

7. In this appeal, the participants have suggested that the Appellate Body allow observation by the public of the oral hearing by means of simultaneous closed-circuit television broadcasting. They have further suggested that provision be made for the transmission to be turned off should the participants find it necessary to discuss confidential information or if a third participant should wish to keep its oral statement or responses to questions confidential. We agree that such modalities would operate to protect confidential information in the context of a hearing that is open to public observation, and would not have an adverse impact on the integrity of the adjudicative function performed by the Appellate Body. We also consider that, during public observation in previous appeals, the rights of those third participants that did not wish to have their oral statements made subject to public observation were fully protected.

8. For these reasons, the Appellate Body Division in these appellate proceedings authorizes the public observation of the oral hearing on the terms set out below. Accordingly, pursuant to Rule 16(1) of the Working Procedures for Appellate Review, we adopt the following additional procedures for the purpose of this appeal:

a. The oral hearing will be open to public observation by means of simultaneous closed-circuit television broadcast, shown in a separate room to which duly registered delegates of WTO Members and members of the general public will have access.

b. Oral statements and responses to questions by the third participants that have indicated their wish to maintain the confidentiality of their submissions will not be subject to public observation.

[2]See fn 1.

c. Any request by a third participant – that has not already done so – wishing to maintain the confidentiality of its oral statements and responses to questions should be received by the Appellate Body Secretariat no later than 17:00 Geneva time on Thursday, 7 March 2013.

d. An appropriate number of seats will be reserved for delegates of WTO Members in the room where the closed-circuit television broadcast will be shown. WTO delegates wishing to observe the oral hearing are requested to register in advance with the Appellate Body Secretariat.

e. Notice of the oral hearing will be provided to the general public on the WTO website. Members of the general public wishing to observe the oral hearing will be required to register in advance with the Appellate Body Secretariat, in accordance with the instructions set out in the WTO website notice.

Geneva, 19 February 2013

_____