

8 COMPLAINT BY HONDURAS (DS435): CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, the Panel concludes that:

- a. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.2 of the TBT Agreement;
- b. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.1 of the TRIPS Agreement in conjunction with Article 6*quinquies* of the Paris Convention (1967);
- c. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 15.4 of the TRIPS Agreement;
- d. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 16.1 of the TRIPS Agreement;
- e. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 20 of the TRIPS Agreement;
- f. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.1 of the TRIPS Agreement in conjunction with Article 10*bis* of the Paris Convention (1967);
- g. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 22.2(b) of the TRIPS Agreement; and
- h. Honduras has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 24.3 of the TRIPS Agreement.

8.2. The Panel declines to rule on Honduras's claims under Article 3.1 of the TRIPS Agreement, Article 2.1 of the TBT Agreement, and Article III:4 of the GATT 1994, in relation to which Honduras presented no arguments.

8.3. In light of these findings, the Panel also declines Honduras's request that the Panel recommend, in accordance with Article 19.1 of the DSU, that the DSB request Australia to bring the measures at issue into conformity with the TRIPS Agreement and the TBT Agreement.

8 COMPLAINT BY THE DOMINICAN REPUBLIC (DS441): CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. in respect of Australia's preliminary ruling request the Panel concludes that:
 - i. Australia failed to demonstrate that the terms "including", "complement" and "add to", as used in the Dominican Republic's panel request, are, on their face, inconsistent with the requirement under Article 6.2 of the DSU to identify the specific measures at issue.
- b. in respect of the Dominican Republic's claims regarding the TPP measures, the Panel concludes that:
 - i. the Dominican Republic has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.2 of the TBT Agreement;
 - ii. the Dominican Republic has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 15.4 of the TRIPS Agreement;
 - iii. the Dominican Republic has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 16.1 of the TRIPS Agreement;
 - iv. the Dominican Republic has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 20 of the TRIPS Agreement;
 - v. the Dominican Republic has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.1 of the TRIPS Agreement in conjunction with Article 10*bis* of the Paris Convention (1967);
 - vi. the Dominican Republic has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 22.2(b) of the TRIPS Agreement; and
 - vii. the Dominican Republic has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 24.3 of the TRIPS Agreement.

8.2. The Panel declines to rule on the Dominican Republic's claims under Article 2.1 of the TRIPS Agreement in conjunction with Article 6*quinquies* of the Paris Convention (1967), Article 3.1 of the TRIPS Agreement, Article 2.1 of the TBT Agreement, and Article III:4 of the GATT 1994 in respect of which the Dominican Republic presented no arguments.

8.3. In light of the above findings, the Panel also declines the Dominican Republic's request that the Panel recommend to the DSB that Australia be required to bring its TPP measures into conformity with the above-mentioned provisions of the TRIPS Agreement and the TBT Agreement.

8 COMPLAINT BY CUBA (DS458): CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. in respect of Australia's preliminary ruling request, the Panel concludes that:
 - i. Australia failed to demonstrate that Cuba's claims under Article 16.3 of the TRIPS Agreement and Article 6*bis* of the Paris Convention (through Article 2.1 of the TRIPS Agreement) fall outside its terms of reference;
 - ii. it was unnecessary to make a determination as to whether its claims under Article 15.1 and 17 of the TRIPS Agreement are properly before the Panel;
 - iii. it was unnecessary to determine whether Cuba's panel request "presents the problem clearly" in relation to its claims under Article 15.1 and 17 of the TRIPS Agreement; and
 - iv. Australia failed to demonstrate that the terms "including", "complement" and "add to", as used in Cuba's panel request, are, on their face, inconsistent with the requirement under Article 6.2 of the DSU to identify the specific measures at issue.
- b. in respect of Cuba's claims regarding the TPP measures, the Panel concludes that:
 - i. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.2 of the TBT Agreement;
 - ii. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.1 of the TRIPS Agreement in conjunction with Article 6*quinquies* of the Paris Convention (1967);
 - iii. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 15.4 of the TRIPS Agreement;
 - iv. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 16.1 of the TRIPS Agreement;
 - v. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 16.3 of the TRIPS Agreement;
 - vi. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 20 of the TRIPS Agreement;
 - vii. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.1 of the TRIPS Agreement in conjunction with Article 10*bis* of the Paris Convention (1967);
 - viii. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 22.2(b) of the TRIPS Agreement;
 - ix. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 24.3 of the TRIPS Agreement; and
 - x. Cuba has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article IX:4 of the GATT 1994.

8.2. The Panel declines to rule on Cuba's claims under Article 2.1 of the TRIPS Agreement in conjunction with Article 6*bis* of the Paris Convention (1967), Article 3.1 of the TRIPS Agreement, Article 2.1 of the TBT Agreement, and Article III:4 of the GATT 1994, in respect of which Cuba presented no arguments.

8.3. In light of the above findings, the Panel also declines Cuba's request that the Panel recommend, in accordance with Article 19.1 of the DSU, that the DSB request Australia to bring its measures into conformity with the TRIPS Agreement, the TBT Agreement and the GATT 1994.

8 COMPLAINT BY INDONESIA (DS467): CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. in respect of Australia's preliminary ruling request, the Panel concludes that:
 - i. Australia failed to demonstrate that the terms "including", "complement" and "add to", as used in Indonesia's panel request, are, on their face, inconsistent with the requirement under Article 6.2 of the DSU to identify the specific measures at issue.
- b. in respect of Indonesia's claims regarding the TPP measures, the Panel concludes as follows:
 - i. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.2 of the TBT Agreement;
 - ii. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 15.4 of the TRIPS Agreement;
 - iii. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 16.1 of the TRIPS Agreement;
 - iv. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 16.3 of the TRIPS Agreement;
 - v. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 20 of the TRIPS Agreement;
 - vi. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 2.1 of the TRIPS Agreement in conjunction with Article 10*bis* of the Paris Convention (1967);
 - vii. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 22.2(b) of the TRIPS Agreement; and
 - viii. Indonesia has not demonstrated that the TPP measures are inconsistent with Australia's obligations under Article 24.3 of the TRIPS Agreement.

8.2. The Panel declines to rule on Indonesia's claims under Article 1.1 of the TRIPS Agreement, Article 2.1 of the TRIPS Agreement in conjunction with Article 6*quinquies* of the Paris Convention (1967), Article 3.1 of the TRIPS Agreement, Article 2.1 of the TBT Agreement, and Article III:4 of the GATT 1994, in respect of which Indonesia presented no arguments.

8.3. In light of the above findings, the Panel also declines Indonesia's request that the Panel find that the TPP measures are inconsistent with Australia's obligations under Article XXIII:1(a) of the GATT 1994 because it has nullified or impaired benefits accruing directly or indirectly to Indonesia under the TBT Agreement.

8.4. In light of these findings, the Panel also declines Indonesia's request that the Panel recommend that Australia bring its measures into conformity with its obligations under the TRIPS Agreement and the TBT Agreement.
