## Introduction

1. By a !"#at"on f"!ed on 2\$ De#em%e& 2012' t(e A !"#ant' a )ega! Affa"&s \*ff"#e& +P,4- at t(e \*ff"#e of t(e D"&e#to&' D"."s"on of /nte&nat"ona! T&ade "n Goods and 0e&."#es and Commod"t"es +1D/TC2-' Un"ted Nat"ons Confe&en#e on T&ade and De.e!o ment +1UNCTAD2-' #ontests t(e de#"s"on not to "n#!ude ("m "n t(e s(o&t!"st of #and"dates "nte&."e3ed fo& a P,4 ost of 0en"o& 5#onom"# Affa"&s \*ff"#e&' UNCTAD' Va#an#y Announ#ement +1VA2-No. 10,5C \*,UNCTAD,14\$46,7,G5N5VA +1t(e #ontested ost2-.

### Facts

2. \*n 24 No.em%e& 2010' t(e #ontested ost 3 as ad.e&t"sed "n Inspira' and t(e A !"#ant a !"ed fo& "t on 1\$ Janua&y 2011. T(e VA ment"oned t(at t(e ost 3 as !o#ated "n t(e T&ade Negot"at"ons and Comme&#"a! D" !oma#y B&an#( +1TNCDB2-' D/TC' UNCTAD' and !"sted t(e fo!!o3"ng #om eten#"es8 1 &ofess"ona!"sm2' 1#ommun"#at"on2' 1 !ann"ng and o&gan"9"ng2' 1manag"ng e&fo&man#e2 and 1!eade&s(" 2. T(e &e:u"&ed 3 o&; e< e&"en#e #ons"sted "n</p>

1=A>t !east 10 yeaks of & og & ess".e!y & es ons"%!e ost, g & aduate e< e & "en#e at t(e nat"ona!/"nte&nat"ona! !e.e! dea!"ng 3"t( ana!yt"#a! 3 o &; on t & a de and de.e!o ment "ssues and "nte&nat"ona! t & ad"ng system' t & a e o!"#y fo & mu!at"on and "m !ementat"on' t & a de, & e!ated te#(n"#a! #oo e & at"on a#t"."t"es and mon"to & mon"to & a de e.a!uat"on. Demonst & a a#"ty fo & !eade & (" and & & es ons"%"!"ty. 5< e & "en#e of 3 o &; 3"t( go.e & nment off"#"a!s' "n a & t"#u!a & 3"t( t(ose f & om de.e!o "ng #ount & es' and ot(e & "nte & go.e & nment a! o & gan"9at"ons2.

6. /n tota!' 6? a !"#at"ons 3e&e su%m"tted %y t(e &es ons"%!e @uman 7esou&#es \*ff"#e& to t(e @"&"ng Aanage& +1@A2-' t(e @ead' TNCDB' D/TC' UNCTADB s"< a !"#ants 3"t(d&e3 t(e"& a !"#at"on du&"ng t(e &e#&u"tment &o#ess.</li>

4. U on assessment %y t(e @A' s"< #and"dates ot(e& t(an t(e A !"#ant 3 e& "n"t"a!!y s(o&!"sted and "n."ted fo& a #om eten#y,%ased "nte&."e3. T(e @A (ad dete&m"ned t(at t(e A !"#ant d"d not meet a!! t(e & :u"& ements of t(e ost' "n a& "#u!a& 3"t( & e e#t to 3 o&; e< e& "en#e. To Cust"fy (e& de#"s"on' t(e @A 3& ote "n Inspira&</p>

\$. Do!!o3"ng &e#e" t of t(e #!a&"f"#at"ons' t(e C7B endo&sed t(e &e#ommendat"on &esented to "t' and on 22 June 2012' "ts a &o.a! 3 as su%m"tted to t(e 0e#&eta&y,Gene&a! of UNCTAD' not"ng t(at (e #ou!d &o#eed 3"t( t(e f"na! se!e#t"on' 3 ("#( (e d"d.

9. By e,ma"! of 29 June 2012' t(e @ A "nfo&med t(e A !"#ant of t(e de#"s"on to se!e#t anot(e& #and"date fo& t(e #ontested ost. By e,ma"! of 22 Ju!y 2012 and su%se:uent &em"nde& of \$ August 2012' t(e A !"#ant &e:uested feed%a#; f&om t(e @ A on ("s non,se!e#t"on' "n#!ud"ng t(e &eason 3 (y (e (ad not %een "n."ted fo& an "nte&."e3.

10. \*n 21 August 2012' a gene&"# e,ma"! 3 as sent to t(e A !"#ant f&om t(e a##ount <u>("&"ngGde a&tmentHun.o&g</u>' "nfo&m"ng ("m t(at ("s a !"#at"on fo& t(e #ontested ost 1=3 ou!d> not %e #ons"de&ed fu&t(e&2.

11. \*n 24 August 2012' t(e A !"#ant &e:uested adm"n"st&at".e &e."e3 of t(e de#"s"on to se!e#t anot(e& #and"date fo& t(e #ontested ost.

12. By !ette& of 9 \*#to%e& 2012 f&om t(e Unde&,0e#&eta&y,Gene&a! fo& Aanagement' #ommun"#ated to t(e A !"#ant %y e,ma"! of 11 \*#to%e& 2012' t(e !atte& 3 as "nfo&med t(at t(e #ontested de#"s"on 3 as u (e!d.

16. \*n 2\$ De#em%e& 2012' t(e A !"#ant su%m"tted ("s a !"#at"on to t(e T&"%una!. /n ("s su%m"ss"on' (e &e:uested t(e T&"%una! to o&de& t(e 7es ondent to &o."de do#uments &ega&d"ng t(e se!e#t"on &o#ess.

14. \*n 2 Janualy 2016' t(e a !"#at"on 3 as sel.ed on t(e 7 es ondent and on
1 De%l767(,) 1(!)-2t594l7leon t10(n)lu%01 do#D [(((")-2.1 20 781594@la67!97((e) 3.84769)

assessment t(at on!y ("s ass"gnment 3"t( t(e \*ff"#e of t(e D"&e#to& of D/TC 3 as &e!e.ant 3 as "n#o&&e#t' on t(e #ont&a&y' (e (as 22 yea&s of ost,g&aduate e< e&"en#e on t&ade "ssues"

#. @"&"ng Aanage&s (a.e no su%Ce#t".e d"s#&et"on "n de#"d"ng 3 (et(e& t(e e< e&"en#e of a !"#ants 3 (o (a.e assed t(e &e,s#&een"ng &o#ess "s sat"sfa#to&y o& notB t(ey #an on!y !a#e a !"#ants on t(e 1not,su"ta%!e !"st2 %ased on 3 o&; e< e&"en#e "f' 1as a matte& of o%Ce#t".e fa#t' "t "s se!f,e."dent t(at su#( e< e&"en#e "s unsat"sfa#to&y2' and t("s s(ou!d %e .e&"f"ed %y @7 A 0/UNCTAD' 3 ("#( 3 as not done "n ("s #aseB</li>

d. T(e #&"te&"a set "n t(e VA 3e&e a !"ed "n a mo&e !en"ent 3ay to t(e su##essfu! #and"date 3"t( &ega&d to t(e &e!e.an#e of (e& 3o&k; e< e&"en#eB

#### 20. T(e 7es ondentFs &"n#" a! #ontent"ons a&e8

T(e se!e#t"on &o#ess 3 as #okke#t!y #akk"ed outB t(e de#"s"on of t(e a. @A not to "n."te t(e A !"#ant to an "ntek."e3 3as !a3fu! and Cust"f"ed on o%Ce#t".e g&ounds8 ("s 3ok; e< e&"en#e does not fu!f"! t(e &e:u"&ements st" u!ated "n t(e VA as (e 1does not (a.e t(e &e:u"&ed 10 yea&s of &og&ess".e!y &es ons"%!e ost,g&aduate e< e&"en#e t(e at nat"ona!/"nte&nat"ona! !e.e! dea!"ng 3"t( ana!yt"#a! 3 o&; on t&ade and de.e!o ment "ssues and "nte&nat"ona! t&ad"ng system' and t&ade o!"#y fo&mu!at"on and "m !ementat"on2B (e (as on!y one yea& and e!e.en mont(s of &e!e.ant e < e&"en#e and ("s a&ea of <math>3o&; e < e&"en#e "s 1ma"n!y!a3/"nte&nat"ona! t&ade !a32;

%. T(e @A assessed t(e #and"dates "n #onfo&m"ty 3"t( t(e a !"#a%!e &o."s"ons' and 1"n t(e #ase of t(e A !"#ant s(e dete&m"ned t(at ("s a#adem"# and !anguage s;"!!s 3e&e sat"sfa#to&y %ut t(at ("s &e."ous 3o&; e< e&"en#e 3 as on!y a&t"a!!y sat"sfa#to&y2' t(e&efo&e' 1t(e o.e&a!! &at"ng 3 as I a&t"a!!y sat"sfa#to&y4' t(e do t(e #on#!us"on t(at t(e A !"#ant 3 as not su"ta%!e fo& t(e os"t"on2' and (en#e (e 3 as 1not "n."ted to a #om eten#y %ased "nte&."e32B su#( an assessment 3 as 3"t("n t(e @AFs %&oad d"s#&et"ona&y o3e&B</p>

e. T(e se!e#ted #and"date meets a!! t(e &e:u"&ements set fo&t( "n t(e VA fo&t(e #ontested ost and 3 as t(e 1on!y su"ta%!e #and"date fo&t(e os"t"on2B t(e &"n#" !e of 1e:ua! t&eatment2 a !"es on!y 1"n #om a&a%!e s"tuat"ons' 3 ("#( (a.e not %een demonst&ated o& su%stant"ated %y t(e A !"#ant2' as t(e su##essfu! #and"dateFs e< e&"en#e "s 1not #om a&a%!e2 to ("sB fu&t(e&mo&e' 1t(e &"n#" !e of e:ua! t&eatment may not %e &e!"ed on fo& t(e u& ose of &e:uest"ng e:ua!!y "na &o &"ate o& "!!ega! t&eatment2B

f. T(e C7B 1d"d not & e: uest fu&t(e& s e#"f"# #!a&"f"#at"ons 3"t( & ega&d to t(e A !"#antFs #ase %ut 3 as sat"sf"ed t(at ("s #and"datu&e (ad %een e.a!uated on t(e %as"s of t(e & e,a & o.ed e.a!uat"on #&"te&"a and t(at t(e a !"#a%!e & o#edu&e (ad %een fo!!o3ed2B

g. T(e a !"#at"on s(ou!d %e &eCe#ted "n "ts ent"&ety.

### Consideration

#### Scope of the application

21. At t(e outset' t(e T&"%una! notes t(at "n ("s &e:uest fok management e.a!uat"on of 24 August 2012' t(e A !"#ant "nd"#ated t(at (e #(a!!enged t(e de#"s"on to se!e#t anot(e& #and"date fo& t(e #ontested ost' 3 (e&eas "n ("s a !"#at"on %efo&e t(e T&"%una!' (e "dent"f"ed t(e #ontested de#"s"on as t(e de#"s"on not to "n#!ude ("m "n t(e s(o&t!"st of #and"dates "nte&."e3ed fo& t(e ost. At a !ate& stage "n t(e &o#eed"ngs' t(e A !"#ant &e:uested !ea.e to amend ("s a !"#at"on to a!so #o.e& t(e de#"s"on to se!e#t t(e su##essfu! #and"dateB (o3e.ek' (e e< &ess!y ment"oned t(at (e 3as not &e:uest"ng &es#"ss"on of t(at de#"s"on' %ut me&e!y to %e a%!e to su%m"t t(e a&gument t(at t(e su##essfu! #and"date (ad %enef"ted f&om a mo&e !en"ent "nte& &etat"on of t(e 3o&; e< e&"en#e &e:u"&ement t(an ("mse!f. Do& ("s a&t' "n ("s &e !y to t(e a !"#at"on' t(e 7es ondent fo#used on t(e de#"s"on not to se!e#t t(e A !"#ant fo& t(e ost' and stated at t(e (ea&"ng t(at (e d"d not &a"se any o%Ce#t"on to t(e fa#t t(at t(e A !"#ant a!so 3"s(ed to #ontest t(e se!e#t"on of t(e su##essfu! #and"date fo& t(e ost. 22. T(e T&"%una! &e#a!!s 3(at t(e A ea!s T&"%una! (e!d "n Massabni 2012,UNAT,26\$8

2. T(e dut"es of a Judge & "ok to ta; "ng a de#"s"on "n#!ude t(e ade:uate "ntek & etat"on and #om & e(ens"on of t(e a !!"#at"ons su%m"tted %y t(e akt"es' 3 (ate.ek t(e"k names' 3 okds' stku#tuke ok #ontent t(ey ass"gn to t(em' as t(e Cudgment must ne#essak"!y & efek to t(e s#o e of t(e akt"esF #ontent"ons. \*t(ek 3 "se' t(e de#"s"on, ma;ek 3 ou!d not %e a%!e to fo!!o3 t(e #okke#t & o#ess to a##om !"s( ("s ok (ek tas;' ma;"ng u ("s ok (ek m"nd and e!a%okat"ng on a Cudgment mot".ated "n & easons of fa#t and !a3 & e!ated to t(e akt"esF su%m"ss"ons.

6. T(us' t(e aut(o&"ty to &ende& a Cudgment g".es t(e Judge an "n(e&ent o3e& to "nd"."dua!"9e and def"ne t(e adm"n"st&at".e de#"s"on "m ugned %y a a&ty and "dent"fy 3 (at "s "n fa#t %e"ng #ontested and so' su%Ce#t to Cud"#"a! &e."e3 3 ("#( #ou!d !ead to g&ant o& not to g&ant t(e &e: uested Cudgment.

26. Based on t(e a%o.e' t(e T&"%una! #ons"de&s t(at t(e de#"s"on #(a!!enged %y t(e A !"#ant "s t(e de#"s"on not to se!e#t ("m fo& t(e #ontested ost' #ommun"#ated to ("m %y e,ma"!s of 29 June 2012 and 21 August 2012' 3 ("#( "s tantamount "n ("s #ase to t(e de#"s"on not to "n#!ude ("m "n t(e s(o&t!"st of #and"dates 3 (o 3 e&e fu&t(e& #ons"de&ed fo& a #om eten#y,%ased "nte&."e3. /ndeed' t(e fa#t t(at (e 3 as not fu&t(e& #ons"de&ed #onst"tutes a f"na! de#"s"on on ("s #and"da#y' and t(e s#o e of t(e Cud"#"a! &e."e3 "s &est&"#ted to t(e :uest"on of 3 (et(e& o& not (e 3 as &"g(tfu!!y e<#!uded f&om t(e se!e#t"on &o#ess at t(at stage.

Legality of the contested decision

24. @a."ng def"ned t(e s#o e of t(e &esent a !"#at"on' t(e T&"%una! tu&ns to t(e A !"#antFs ma"n a&gument' 3("#( "s t(at (e 3as e&&oneous!y e<#!uded f&om t(e s(o&t!"st of #and"dates #on.o;ed fo& an "nte&."e3 %y t(e @A. T(e A !"#ant

ks ek234(75234((k)-6.99219(00)250] T J D-301.5(on)0.488281()-0.4882810078(nd)-10(e)3.84

#om a&at".e ana!ys"s &e o&t 3 as &e a&ed "n Inspira do#ument"ng t(e assessment of a!! "nte&."e3ees. T(e &e#ommendat"on of t(e su##essfu! #and"date fo& se!e#t"on 3 as fo&3 a&ded to t(e C7B' 3("#( endo&sed "t afte& &e#e" t of fu&t(e& #!a&"f"#at"ons and afte& an add"t"ona! "nte&na! ma!e #and"date (ad %een "nte&."e3ed.

60. As kegakds t(e allegation kaised %y t(e A limit t(at (is 30k; e< ekien#e 3 as "n fa#t meet"ng t(e &e:u"&ements s e#"f"ed "n t(e VA and t(at (e 3 as 3 & ong!y e<#!uded f&om t(e s(o&t!"st' t(e T&"%una! &e#a!!s t(at se#. E.4 of 0T/A//2010/6' : uoted "n fu!! a%o.e' e< &ess!y "nst&u#ts t(e @A to 1 &e a&e a s(o&t!"st of t(ose =&e!eased a !!#ants> 3 (o a ea& most : ua!"f"ed fo& t (e Co% o en"ng %ased on a &e."e3 of t(e"& do#umentat"on2 +em (as"s added-. /n t(e same .e"n' t(e /nst&u#t"ona! Aanua! fo& t(e @"&"ng Aanage& on t(e Otaff Oe!e#t"on Oystem +Inspira- +1t(e @"&"ng Aanage&Fs Aanua!2- ment"ons "n "ts C(a te& 9 t(at t(e @A "n."tes t(e 1most &om"s"ng #and"dates2 fo& a #om eten#y,%ased "nte&."e3 and/o& an assessment  $e < e \pm r$  set. /t fo!!o3s f tom t(ese to .rs ons t(at t(e @A (as  $t \ge r$ ))) as f to respect to the temperature of temperature d"s#let"onaly o3el to e<el#"se a le!"m"naly e.a!uat"on of t(e a !"#ants "n oldel to esta%!"s( t(e s(okt!"st of #and"dates to %e "n."ted fok fukt(ek assessmentB "ndeed' su#( a !"st' e& def"n"t"on' does not (a.e to "n#!ude a!! &e.s#&eened #and"dates %ut only t(e most : ua!"f"ed ok kom"s"ng ones. /n okdek to assess 3 ("#( a !!"#ants fa!! "nto t(at #atego&y' t(e @ A must e<e&#"se ("s o& (e& Cudgment and t(e T&"%una! 3"!! not eas"!y "nte&fe&e 3"t( t(e %&oad d"s#&et"on of t(e Adm"n"st&at"on "n t(ese mattels and su%st"tute "ts Cudgement folt t(at of t(e #om etent de#"s"on,ma;elt.

61. Aoleo.el' t(e Tl"%una! notes t(at "n t(e "nstant #ase' t(e 3ol; e< el"en#e le:u"led fol t(e #ontested ost as !"sted "n t(e VA 3as des#l"%ed "n lat(el %load telm66(d)-90(")-2.16797(nu")-2.16797(s)-0.839844(")-2.16797(ons)-0.839844-2.16797(n) 62. Based on t(e a%o.e o%se&.at"on' "t "s #!ea&!y not fo& t(e T&"%una! to su%st"tute "ts o3n ."e3s and to e!a%o&ate on t(e assessment of t(ose #&"te&"a %y t(e @ A ' as !ong as t(e assessment "tse!f 3 as not %ased on o% ."ous!y 3&ong fa#ts t(at #ou!d %e o%Ce#t".e!y .e&"f"ed' su#( as t(e m"s:uotat"on of &e!e.ant t"me e&"ods &797((e) 3.84766(ta) eff 3&00ff a0P.@PP to (#ot) t&e&T&797((e) 3.84766() - 330(T) 0.839&437.5467t66(.a) t

# Conclusion

- 64. /n ."e3 of t(e folego"ng' t(e T $\ell$ "%una! D5C/D508
  - T(e a !"#at"on "s d"sm"ssed "n "ts ent"&ety.

+Signed-

Judge T(omas )a;e&

# Dated t("s $16^{t}$ day of Aa&#( 2014

5nteled "n t(e 7eg"stel on t("s  $16^{t}$  day of Aal#( 2014

+Signed-

7 enK A. Va&gas A.' 7 eg"st&a&' Gene.a