



27 January 2015

(15-0575)

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UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

RECOURSE TO ARTICLE 21.5 OF THE DSU BY MEXICO

COMMUNICATION FROM THE APPELLATE BODY

The following notification, dated 26 January 2015, from the Chair of the Appellate Body addressed to the Chair of the Dispute Settlement Body, is circulated to Members in accordance with Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

I am writing to you pursuant to Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which stipulates that, as a general rule, the Appellate Body will circulate its report no later than 60 days after the appellant has formally notified the Dispute Settlement Body (DSB) of its decision to appeal. Article 17.5 states, furthermore, that, when the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

The United States notified the DSB on 28 November 2014 of its decision to appeal certain issues of law covered in the Panel Reports WT/DS384/RW and WT/DS386/RW and legal interpretations developed by the Panel in these disputes, with the result that the 60-day period expires on Tuesday, 27 January 2015. For the reasons expressed below, the Appellate Body will not be able to circulate its reports by this date, or within the 90-day timeframe provided for in the last sentence of Article 17.5 of the DSU.

On 28 November 2014, the Appellate Body also received a joint request by the participants requesting extensions of the time-periods for filing written submissions pursuant to Rule 16(2) of the Working Procedures for Appellate Review (Working Procedures). The participants submitted that, in the particular circumstances of this case, the time-periods set out in the Working Procedures would not afford the United States as appellant sufficient time to present its arguments. In their joint request, the participants also requested consequential extensions of the time-periods for filing other appellants' and appellees' submissions. In support of their request, the participants pointed to serious resource constraints due to concurrent work on other pending proceedings, as well as the constraints imposed by the contemporaneous holiday period, the multiple complex issues at stake in these disputes, and the present workload of the Appellate Body. After hearing the views of the third participants, the Appellate Body Division hearing this appeal issued a Procedural Ruling dated 2 December 2014 in which it extended, pursuant to Rule 16(2) of the Working Procedures, the time-periods foreseen in Rules 21(1), 22(1), and 23(3) and (4) for filing written submissions.

On 11 December 2014, the Appellate Body Division hearing this appeal received a letter from Australia requesting an extension of the deadline for the filing of the third participants' submissions. Australia noted that, in the particular circumstances of this case, the time-period of three days between the filing of the appellees' submissions and the filing of the third participants' submissions would run over a weekend, providing third participants with only one working day to incorporate reactions to the appellees' submissions into their third participants' submissions. Furthermore, Australia explained that these challenges would be exacerbated by the decreased staffing capacity during the peak summer holiday period in the Southern hemisphere. After

hearing the views of the participants and other third participants, the Appellate Body Division hearing this appeal issued, pursuant to Rule 16(2) of the Working Procedures, a Procedural Ruling dated 17 December 2014 in which it extended the time-periods for filing third participants' submissions.

Moreover, on the date this appeal was filed, appeals in three other disputes were ongoing, and appeals in two further disputes were subsequently filed during the course of the present proceedings, resulting in substantial workload for the Appellate Body. In addition, overlap in the composition of the Divisions hearing the different appeals during this time-period led to difficulties in scheduling meetings in these proceedings.

In sum, there are several factors rendering it impossible for the Appellate Body to circulate its reports within the 90-day timeframe provided for in Article 17.5 of the DSU. These include the current workload of the Appellate Body, the number and complexity of the issues raised in these appeal proceedings, and the demands that this places on the WTO Secretariat's translation services. These also include extensions of the deadlines for filing written submissions in this appeal granted at the request of the participants and third participants, the intervening year-end closure of the WTO Secretariat, as well as scheduling difficulties arising from overlap in the composition of the Divisions hearing appeals pending before the Appellate Body at the same time.

The circulation date of the Appellate Body reports in this appeal will be communicated to the participants and third participants shortly after the oral hearing, at which time the scheduling in other appeals concurrently pending before the Appellate Body will have been decided.
