



6 October 2017

(17-5368)

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Original: English

BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES

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 OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following communication, dated 3 October 2017, 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 of the *Working Procedures for Appellate Review*, Japan hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report in *Brazil – Certain Measures Concerning Taxation and Charges* (WT/DS497/R) and certain legal interpretations developed by the Panel in this dispute.

In particular, Japan seeks review by the Appellate Body of the Panel's findings that it did not need to review the WTO-consistency of the challenged INOVAR-AUTO and ICT programmes under an "in-house" scenario. The Panel's findings to this effect are in error and are based on an erroneous interpretation and application of Article 11 of the DSU, by erroneously exercising judicial economy not to extend findings to the so-called "in-house" scenario. Alternatively, the Panel failed to provide "coherent reasoning as required under Article 11 of the DSU. The paragraphs relating to these errors include paragraphs 6.11, 7.302, 7.308, 7.314 and 7.749 of the Panel Report.

Japan respectfully requests the Appellate Body to reverse and modify the related findings, conclusions and recommendations of the Panel. Moreover, to the extent that it reverses the Panel's findings in this respect, Japan also requests that the Appellate Body complete the legal analysis by extending the Panel's findings regarding the "outsourcing" scenario to the "in-house" scenario, and finding that the accreditation and production step requirements under the INOVAR-AUTO programme and ICT programmes "as a whole" – i.e., under both the "outsourcing" and "in-house" scenarios – are inconsistent with Article III:4 of the GATT 1994 and Article 3.1(b) of the SCM Agreement.

In the alternative, should the Appellate Body consider that the Panel did not exercise judicial economy, Japan respectfully requests the Appellate Body to review, pursuant to Article 17.6 of DSU, the legal interpretations developed by the Panel and modify, pursuant to Article 17.13 of the DSU, the findings contained in paragraphs 7.298-7.314 and 7.746-7.751 of the Report, to the extent that they may be understood as referring solely to the "outsourcing" scenario, and clarify that the Panel's findings of the WTO-inconsistency of the challenged INOVAR-AUTO programme and ICT programmes are indeed not limited to the "outsourcing" scenario, but that the Panel made a finding with respect to the accreditation requirement under INOVAR-AUTO programme as a whole, as well as the production-step requirements of the ICT programmes as a whole. To this end, Japan also requests that the Appellate Body complete the analysis, where appropriate.
