

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

Joint Communication from Canada and the United States

The following communication, dated 28 June 2012, from the delegation of Canada and the delegation of the United States to the Presiding Member of the Appellate Body Division in this dispute, is circulated at the request of those delegations.

Canada and the United States ("the parties to the dispute") are in receipt of the communication dated 21 May 2012, from the Appellate Body to the Chair of the Dispute Settlement Body.¹ In that communication, the Appellate Body states that it would not be able to issue its report in the above-referenced appeal within 60 days. The communication also indicates that the Appellate Body expects that it will not be able to circulate its report within the 90-day time limit set out in Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and sets out certain reasons why this is the case. The communication states that the Appellate Body instead expects to circulate its report by Friday, 29 June.

The parties note that the Division hearing this appeal did not consult with them on its need to exceed the 90-day time limit. We consider that, consistent with the practice of Members and the Appellate Body until 2011, the Appellate Body should consult with the parties and obtain their agreement to receive reports that are to be circulated after the deadline provided for in the DSU.²

¹ WT/DS384/14 (23 May 2012); WT/DS386/13 (23 May 2012).

² See, e.g., *United States – Continued Suspension of Obligations in the EC – Hormones Dispute (AB)* (WT/DS320/AB/R) and *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute (AB)* (WT/DS321/AB/R), para. 29 (adopted 14 November 2008) ("*After consultation with the Appellate Body Secretariat, Canada, the European Communities, and the United States each agreed that it would not be possible for the Appellate Body to circulate its Reports in these appeals within the 90-day time-limit referred to in Article 17.5 of the DSU. Canada, the European Communities, and the United States agreed that additional time was needed ...* ") (italics added; footnote omitted); *United States – Subsidies on Upland Cotton: Recourse to Article 21.5 of the DSU by Brazil (AB)* (WT/DS267/AB/RW), para. 14 (adopted 20 June 2008) ("*After consultation with the Appellate Body Secretariat, Brazil and the United States agreed, in a joint letter dated 19 March 2008, that it would not be possible for the Appellate Body to circulate its Report in this appeal within the 90-day time-limit referred to in Article 17.5 of the DSU.*") (italics added); *European Communities – Export Subsidies on Sugar (AB)* (WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R), para. 7 (adopted 19 May 2005) ("*After consultation with the Appellate Body Secretariat, the European Communities and Australia, Brazil, and Thailand agreed, in letters filed on 19 January 2005, that it would not be possible for the Appellate Body to circulate its Report in this appeal within the 90-day time limit referred to in Article 17.5 of the DSU.*") (italics added); *United States – Subsidies on Upland Cotton (AB)* (WT/DS267/AB/R), para. 8 (adopted 21 March 2005) ("*After consultation with the Appellate Body Secretariat, Brazil and the United States noted, in letters filed on 10 December 2004, that it would not be possible for the Appellate Body to circulate its Report in this*

We particularly regret the lack of consultation with the Division hearing this appeal given that the parties would have been willing to positively consider a communication from the Division of its need for additional time.³ While we note our understanding that further delays will not be required in upcoming disputes given the anticipated workload of the Appellate Body in the immediate future, should delays in the circulation of reports beyond the 90-day deadline be again considered necessary, we would expect a return to the Appellate Body's pre-2011 practice.

Without prejudice to our positions on how the concerns set out above should be addressed by Members, the Appellate Body and the DSB, in the interests of restoring predictability for the disputing parties and in the current circumstances Canada and the United States hereby confirm that they will each consider an Appellate Body Report circulated in this proceeding no later than 29 June 2012, to be an Appellate Body Report circulated pursuant to Article 17.5 of the DSU.

appeal within the 90-day time limit referred to in Article 17.5 of the DSU. *Brazil and the United States agreed that additional time was needed ...*") (italics added).

³ In this regard, we note that Members continue to demonstrate their willingness to cooperate with the Appellate Body in relation to any need for additional time. *See, e.g.,* Joint Communication from the United States and Mexico, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (WT/DS381/13) (19 April 2012); Joint Communication from the United States and China, *China – Measures Related to the Exportation of Various Raw Materials* (WT/DS394/14) (13 January 2012); Communication from the United States and China, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (WT/DS379/7) (8 February 2011).