



20 September 2018

(18-5837)

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**AUSTRALIA – CERTAIN MEASURES CONCERNING TRADEMARKS,  
GEOGRAPHICAL INDICATIONS AND OTHER PLAIN PACKAGING REQUIREMENTS  
APPLICABLE TO TOBACCO PRODUCTS AND PACKAGING**

**COMMUNICATION FROM THE APPELLATE BODY**

The following communication, dated 17 September 2018, from the Chair of the Appellate Body to the Chair of the Dispute Settlement Body, is being circulated to Members.

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I am writing pursuant to Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which states 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 further states 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. In no case shall the proceedings exceed 90 days."

On 19 July 2018, Honduras filed a Notice of Appeal with respect to the Panel Report in *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* (WT/DS435/R). On 23 August 2018, the Dominican Republic filed a Notice of Appeal with respect to the Panel Report in *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* (WT/DS441/R). On 5 September 2018, the Appellate Body decided to consolidate the appeals of the Panel Reports in *Australia – Tobacco Plain Packaging*, complaints by Honduras (DS435) and the Dominican Republic (DS441), as contemplated in the Procedural Ruling dated 23 July 2018.

The 60-day period expires on 17 September 2018 in *Australia – Tobacco Plain Packaging*, complaints by Honduras (DS435) and on 22 October 2018 in *Australia – Tobacco Plain Packaging*, complaints by the Dominican Republic (DS441).

The Appellate Body is not able to circulate its reports by the end of the 60-day periods, or within the 90-day timeframe provided for in the last sentence of Article 17.5 of the DSU, due to the exceptional size and complexity of these consolidated proceedings. In this respect, we refer to the considerable volume of the Panel record and the size of the Panel Report, the number of issues appealed, and the many complex aspects of these appellate proceedings. We further note that in view of the backlog of appeals pending with the Appellate Body at present, and the overlap in the composition of all divisions resulting in part from the reduced number of Appellate Body Members, Division Members can currently spend only very little time preparing for these appeals. It will not be possible for the Division to focus on the consideration of these appeals for some time, that is, schedule internal meetings, fully staff them, and schedule the hearing.

As soon as we know more precisely when the division can schedule the hearing in these appeals, we will communicate appropriately with the participants and DSB Members.

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