



9 December 2014

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ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS

JOINT COMMUNICATION FROM ARGENTINA, JAPAN AND THE UNITED STATES

The following communication, dated 5 December 2014, from the delegations of Argentina, Japan and the United States to the Presiding Member of the Appellate Body Division in these disputes, is circulated at the request of those delegations.

Argentina, the United States, and Japan ("the parties") are in receipt of a 20 November 2014 communication from the Appellate Body to the Chair of the Dispute Settlement Body ("DSB"). In that communication, the Appellate Body states that it will not be able to issue its reports in the above-referenced appeals within 60 days. The communication also indicates that the Appellate Body expects that it will not be able to circulate its reports 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 reports by Thursday, 15 January 2015.

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 regret this lack of consultation given the prior practice of Members and the Appellate Body until 2011, in which the Appellate Body consulted with the parties and obtained their agreement before circulating reports after the deadline provided for in the DSU.¹

If the parties had been consulted, we would have been willing to positively consider a communication from the Division of its need for additional time. 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.²

¹ See, e.g., Appellate Body Reports, *US – Continued Suspension & Canada – Continued Suspension*, para. 29 ("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); Appellate Body Report, *US – Upland Cotton: Recourse to Article 21.5 of the DSU by Brazil*, para. 14 ("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); Appellate Body Reports, *EC – Export Subsidies on Sugar (Australia) & EC – Export Subsidies on Sugar (Brazil) & EC – Export Subsidies on Sugar (Thailand)*, para. 7 ("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); Appellate Body Report, *US – Upland Cotton*, para. 8 ("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 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).

² See, e.g., Joint Communication from the United States and India, *US – Carbon Steel (India)* (WT/DS436/9) (6 November 2014); Joint Communication from Canada and the United States, *US – COOL* (WT/DS384/17 and Corr. 1) (3 July 2012); Joint Communication from Mexico and the United States, *US – COOL* (WT/DS386/16 and Corr. 1) (3 July 2012); Joint Communication from the United States and Mexico, *US – Tuna II (Mexico)* (WT/DS381/13) (19 April 2012); Joint Communication from the United States and China,

The parties hereby confirm that they will consider Appellate Body reports circulated no later than 15 January 2015 to be Appellate Body reports circulated pursuant to Article 17.5 of the DSU.

(Signed)
Enrique Ferrer Vieyra
Minister
Permanent Mission
of Argentina

(Signed)
Hiroshi Ogihara
First Secretary
Permanent Mission
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(Signed)
Clete Willems
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