



11 December 2014

(14-7210)

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Original: English

ARGENTINA – MEASURES AFFECTING THE IMPORTATION OF GOODS

COMMUNICATION FROM INDIA

The following communication, dated 9 December 2014, from the delegation of India to the Presiding Member of the Appellate Body Division in this dispute, is circulated at the request of this delegation.

Argentina, the United States and Japan ("the parties") in their communication dated 5 December 2014 have noted and regretted the lack of consultation with them by Members and the Appellate Body on the need to exceed the 90-day time limit set out in Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). The parties have also indicated that there was a "prior practice" of consultation of Members and the Appellate Body until 2011.

India is of the view that nothing in Article 17.5 of the DSU mandates prior consultation by the Appellate Body or agreement of parties before extending the time limit of 90 days set out therein. Therefore, it is not a legal requirement under Article 17.5 of the DSU. Existence of instances of past consultation do not transform those factual situations into legally binding requirements under the DSU.

The parties have referred, inter alia, to one instance wherein India was involved¹ in a Joint Communication with the United States to indicate that Members continue to demonstrate their willingness to co-operate with the Appellate Body in relation to any need for additional time. Parties to the dispute, in the circumstances of that case², agreed to make the Joint Communication. India would like to submit that this Joint Communication does not, however, indicate any legal requirement of prior consultation or agreement of disputing parties for the extension of the 90 day time limit nor the existence of a past practice.

¹ Joint Communication from the United States and India, US-Carbon Steel (India) (WT/DS436/9) (6 November 2014)

² In fact, in this particular case, the United States had requested one week additional time for the parties' appellee submissions. The Joint Communication states "*Due to the large number of claims at issue in the appeal, on 11 August 2014, the United States requested to extend by one week the parties' appellee submissions. In its request, the United States also acknowledged that it might be difficult for the Appellate Body to meet the 90-day time limit in Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU").*"