WORLD TRADE ORGANIZATION

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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY CANADA AND MEXICO

NOTIFICATION OF AN APPEAL BY THE UNITED STATES UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following notification, dated 28 November 2014, from the Delegation of the United States, is being circulated to Members.

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1. Further to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and pursuant to Rule 20 of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Reports of the Panels in *United States – Certain Country of Origin Labelling (COOL) Requirements: Recourse to Article 21.5 of the DSU by Canada / Recourse to Article 21.5 of the DSU by Mexico* (WT/DS384/RW and WT/DS386/RW) ("Panel Reports") and certain legal interpretations developed by the Panels.

2. The United States seeks review by the Appellate Body of the Panels' findings and conclusion that amended U.S. COOL measure is inconsistent with Article 2.1 of the *Agreement on Technical Barriers to Trade* (the "TBT Agreement") because the amended COOL measure accords less favorable treatment to complainants' livestock exports.[1] This conclusion is in error and is based on erroneous findings on issues of law and legal interpretations, including:

(a) the Panels' finding that the detrimental impact does not stem exclusively from legitimate regulatory distinctions because the amended COOL measure entails an increased recordkeeping burden and increased segregation.[2]

(b) the Panels' finding that the detrimental impact does not stem exclusively from legitimate regulatory distinctions because the current labels provided by the amended COOL measure have a potential for label inaccuracy.[3]

(c) the Panels' finding that the detrimental impact does not stem exclusively from legitimate regulatory distinctions because the amended COOL measure continues to exempt a large proportion of muscle cuts.[4]

3. In the event that Canada or Mexico appeals the ultimate findings of either Panel that the amended U.S. COOL measure is not inconsistent with Article 2.2 of the TBT Agreement[5], the United States seeks conditional review of the Panels' legal interpretation of the phrase "the risks

[1] *See, e.g.*, Panel Reports, paras. 7.284-7.285, 8.3(b) (DS384), 8.3(b) (DS386).
[2] *See, e.g.*, Panel Reports, paras. 7.134, 7.149-7.150, 7.220-7.221, 7.271-7.272, 7.282.
[3] *See, e.g.*, Panel Reports, paras. 7.243-7.244, 7.252-7.254, 7.269-7.270, 7.282.
[4] *See, e.g.*, Panel Reports, paras. 7.216-7.219, 7.201-7.203, 7.272-7.277, 7.282.
[5] *See, e.g.*, Panel Reports, paras. 8.3(c) (DS384), 8.3(c) (DS386).

non-fulfilment would create."[6] This analysis is based on erroneous findings on issues of law and legal interpretations, including: the Panels' interpretation of what effect a finding with regard to "the risks non-fulfilment would create" can have as to whether any particular alternative measure makes a contribution to the objective equivalent to the contribution made by the challenged measure.[7]

4. The United States seeks review by the Appellate Body of the Panels' findings and conclusion that the amended U.S. COOL measure is inconsistent with Article III:4 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994").[8] This conclusion is in error and is based on erroneous findings on issues of law and legal interpretations, including that "the amended COOL measure accords less favourable treatment within the meaning of Article III:4 of the GATT 1994"[9] and that the amended COOL measure would not be examined under Article XX of the GATT 1994.[10]

5. The United States seeks review by the Appellate Body of the Panels' failure to address the aspect of the relationship between Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994 related to the availability of an exception under Article XX of the GATT 1994 and the Panels' failure to address the availability of Article XX as an exception for Article III:4 of the GATT 1994 with respect to the amended U.S. COOL measure.[11]

6. Finally, in the event that Canada or Mexico appeals the determination by either Panel not to make findings or legal conclusions in relation to the non-violation claim by that complainant under Article XXIII:1(b) of the GATT 1994, the United States seeks conditional review by the Appellate Body of the Panels' findings and conclusion that the non-violation claims under Article XXIII:1(b) of the GATT 1994 were within the Panels' terms of reference.[12] This conclusion is in error and is based on erroneous findings on issues of law and legal interpretations, including that "reviewing the 'consistency' of a measure taken to comply under Article 21.5 of the DSU extends to non-violation claims under Article XXIII:1(b) of the GATT 1994 and Article 26.1 of the DSU."

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[6] *See, e.g.*, Panel Reports, paras. 7.374-7.383.
[7] *See, e.g.*, Panel Reports, paras. 7.481-7.488, 7.501-7.502.
[8] *See, e.g.*, Panel Reports, paras. 7.625, 7.642, 7.643, 8.4 (DS384), 8.4 (DS386) .
[9] *See, e.g.*, Panel Reports, paras. 7.642-7.643.
[10] *See, e.g.*, Panel Reports, paras. 6.70, 6.75.
[11] *See, e.g.*, Panel Reports, paras. 6.70-6.75.
[12] *See, e.g.*, Panel Reports, paras. 7.647-7.663.