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UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING REQUIREMENTS

Request for the Establishment of a Panel by Mexico

The following communication, dated 9 October 2009, from the delegation of Mexico to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 17 December 2008 and 7 May 2009 Mexico requested consultations with the United States pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 14 of the *Agreement on Technical Barriers to Trade* (TBT Agreement), Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement), and Article 7 of the *Agreement on Rules of Origin*, concerning the mandatory country of origin labelling (COOL) provisions adopted by the United States.

Mexico held consultations with the United States on 27 February 2009 and on 5 June 2009. Unfortunately, the consultations failed to resolve the dispute.

Accordingly, Mexico respectfully requests the establishment of a panel pursuant to Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994, Article 14 of the TBT Agreement, Article 11 of the SPS Agreement, and Article 8 of the *Agreement on Rules of Origin*.

A. MEASURES AT ISSUE

The measures relating to the COOL provisions adopted by the United States include:

(i) The *Agricultural Marketing Act of 1946* (7 U.S.C. 1621 et seq.), as amended by the *Farm, Security and Rural Investment Act of 2002* (Section 10816 of Public Law 107-171) and the *Food, Conservation and Energy Act of 2008* (Section 11002 of Public Law 110-246).

(ii) *Interim Final Rule – Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* (published in 73 Federal Register 45106, 1 August 2008).

(iii) *Final Rule – Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts (*7 CFR Parts 60 and 65)[1].

(iv) *Interim Final Rule – Mandatory Country of Origin Labeling of Muscle Cuts of Beef (including Veal), Lamb, Chicken, Goat and Pork, Ground Beef Ground Lamb, Ground Chicken, Ground Goat, and Ground Pork* (9 CFR Parts 317 and 381, published in 73 Federal Register 50710, 28 August 2008).

(v) Letter from Thomas Vilsack, Secretary of Agriculture (United States Department of Agriculture, USDA), to Industry Representatives (20 February 2009), cited in USDA News Release No. 0045.09, "*Vilsack Announces Implementation of Country of Origin Labeling Law*" (20 February 2009).

(vi) Any modification or amendment to measures (i) through (v) above, including any further implementing guidance, directives of policy announcements or any other document issued in relation to those measures.

Cuts of beef and ground beef are among the commodities subject to the COOL measures. Mexico exports live cattle to the United States, where it is subsequently fed and processed into cuts of beef and ground beef.

Various aspects of the COOL measures, including the labelling requirements, the rules of origin, the record-keeping requirements and the mechanisms for implementing the measures have in several ways adversely affected trade in Mexican cattle and cattle products, for example by (i) discriminating against Mexican cattle and cattle products; (ii) increasing costs for exporters, importers and processors; (iii) reducing prices of Mexican cattle; and (iv) generally speaking restricting trade.

B. LEGAL BASIS

Mexico holds that the aforementioned measures are inconsistent with the following obligations of the United States, as explained below:

(i) Mexico considers the US COOL measures to be inconsistent with the obligations of the United States under Article III of the GATT 1994. In particular, the COOL measures are inconsistent with Article III.4 of the GATT 1994 to the extent that they accord Mexican products treatment less favourable than that accorded to products of US origin.

(ii) The COOL measures are established and applied in a manner that is not "uniform, impartial and reasonable" and are therefore inconsistent with the obligations of the United States under Article X.3(a) of the GATT 1994.

(iii) The COOL measures are inconsistent with the obligations of the United States under Articles 2 and 12 of the TBT Agreement, for the following reasons:

(a) Mexican products are accorded treatment less favourable than that accorded to like products of U.S. origin, contrary to Article 2.1 of the TBT Agreement;

[1] Originally published in 74 Federal Register 2658 (15 January 2009).

(b) The measures have the effect of creating unnecessary obstacles to international trade and are more trade-restrictive than necessary to fulfil a legitimate objective, contrary to Article 2.2 of the TBT Agreement;

(c) The measures are not based on an existing international standard, contrary to Article 2.4 of the TBT Agreement;

(d) Contrary to Article 12.1 and 12.3 of the TBT Agreement, the United States, in the preparation and application of the COOL measures, (i) did not take into account the special development, financial and trade needs of Mexico, as a developing country; and (ii) created an unnecessary obstacle to exports from Mexico as a developing country.

(iv) Should the United States assert that the COOL measures are sanitary or phytosanitary measures, then it is Mexico's view that the COOL measures are inconsistent with Articles 2, 5 and 7 of the SPS Agreement.

(v) The COOL measures are inconsistent with the obligations of the United States under Article 2 of the *Agreement on Rules of Origin*, for the following reasons:

(a) The rules of origin of the COOL measures are used as instruments to pursue trade objectives, contrary to Article 2(b) of the *Agreement on Rules of Origin*;

(b) The rules of origin of the COOL measures themselves create restrictive, distorting, or disruptive effects on international trade, contrary to Article 2(c) of the *Agreement on Rules of Origin*;

(c) The rules of origin of the COOL measures are more stringent than the rules of origin applied to determine whether or not a good is domestic, contrary to Article 2(d) of the *Agreement on Rules of Origin*; and

(d) The rules of origin of the COOL measures are not administered in a consistent, uniform, impartial and reasonable manner, contrary to Article 2(e) of the *Agreement on Rules of Origin*.

(vi) In the event that certain aspects of the COOL measures should fall within the scope of Article XI of the GATT 1994, they are inconsistent with the obligations of the United States under this Article, for the following reasons:

(a) The United States did not reduce to a minimum the difficulties and inconveniences which the measures cause to the commerce and industry of Mexico, as an exporting country, in violation of Article IX.2 of the GATT 1994;

(b) The COOL measures were not adopted in such a way as to permit compliance without seriously damaging Mexican products, materially reducing their value, or unreasonably increasing their cost, in violation of Article IX.4 of the GATT 1994.

Mexico holds that the above violations cannot be justified under any of the covered Agreements.

The COOL measures also appear to nullify or impair, within the meaning of Article XXIII.1(b) of the GATT 1994, one or more benefits accruing to Mexico, either directly or indirectly, under the Marrakesh Agreement Establishing the World Trade Organization, or to impede the attainment of one of its objectives.

For the aforementioned reasons, Mexico respectfully requests the establishment of a panel with standard terms of reference as set out in Article 7 of the DSU.

Mexico also requests that this matter be included in the agenda for the next regular meeting of the Dispute Settlement Body on 23 October 2009.