WORLD TRADE ORGANIZATION

WT/DS386/24

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

UNDERSTANDING BETWEEN THE UNITED STATES AND MEXICO REGARDING PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU

The following communication, dated 10 June 2013, from the delegation of the United States and the delegation of Mexico to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

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Mexico and the United States would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" between Mexico and the United States with respect to the above captioned dispute.

We respectfully request that you circulate the attached agreement to Members of the Dispute Settlement Body.

(Signed)
Clete Willems
Legal Advisor
Permanent Mission
of the United States

(Signed)
Hugo Romero
Counsellor
Permanent Mission
of Mexico

Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding

United States – Certain Country of Origin Labelling (COOL) Requirements (WT/DS386)

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *United States – Certain Country of Origin Labelling (COOL) Requirements* (WT/DS386) on 23 July 2012.

Pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), the arbitrator fixed the reasonable period of time ("RPT") for the United States to implement the recommendations and rulings of the DSB at 10 months from 23 July 2012 (WT/DS386/23). The RPT expired on 23 May 2013. On that date, the US Department of Agriculture adopted a final rule modifying the U.S. COOL regulations. 78 Fed. Reg. 31,367 (24 May 2013).

Mexico and the United States (the "Parties") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes and are without prejudice to either Party's views on the correct interpretation of the DSU:

1. If Mexico considers that the United States has adopted a measure to comply with the recommendations and rulings of the DSB in DS386 that is inconsistent with the covered agreements or there is disagreement between the Parties as to the existence of a measure taken to comply, Mexico may request the establishment of a panel pursuant to DSU Article 21.5 at any time.

2. Mexico is not required to hold consultations with the United States prior to requesting the establishment of an Article 21.5 panel.

3. The Parties shall cooperate to enable the DSU Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to DSU Article 12.12.

4. Either Party may request the DSB to adopt the report of the DSU Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to Members unless either Party appeals the report to the Appellate Body.

5. In the event of an appeal of the DSU Article 21.5 panel report, the Parties shall cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date of notification of the appeal to the DSB. Further, either Party may request the DSB to adopt the reports of the Appellate Body and of the DSU Article 21.5 panel (as modified or upheld by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to Members.

6. In the event that the DSB, following a proceeding under DSU Article 21.5, rules that a measure taken to comply does not exist or is inconsistent with a covered agreement, Mexico may request authorization to suspend the application of concessions or other obligations under the covered agreements to the United States pursuant to DSU Article 22. The United States shall not assert that Mexico is precluded from obtaining such DSB authorization on the ground that the request was made outside the 30-day time-period specified in DSU Article 22.6. This is without prejudice to the right of the United States to refer the matter to arbitration in accordance with DSU Article 22.6.

7. If Mexico requests authorization to suspend the application of concessions or other obligations under the covered agreements to the United States pursuant to DSU Article 22, the United States may object under DSU Article 22.6 to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in DSU Article 22.3 have not been followed, thereby referring the matter to arbitration pursuant to DSU Article 22.6.

8. The Parties will cooperate to enable the arbitrator under DSU Article 22.6 to circulate its decision within 60 days of the referral to arbitration.

9. If any of the original panelists is not available for either the DSU Article 21.5 panel or the Article 22.6 arbitration (or both), the Parties will promptly consult on a replacement, and either Party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, the Parties will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.

10. The Parties will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the Parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

11. These agreed procedures in no way prejudice other rights of either Party to take any action or procedural step to protect its rights and interests, including recourse to the DSU.

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