WORLD TRADE ORGANIZATION

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Page: 1/3

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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY CANADA

Request for the Establishment of a Panel

The following communication, dated 19 August 2013, from the delegation of Canada to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

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On 23 July 2012, the Dispute Settlement Body ("DSB") adopted the Appellate Body Report and the Report of the Panel, as modified by the Appellate Body Report, in *United States – Certain Country of Origin Labelling (COOL) Requirements* (WT/DS384) (*US – COOL (Canada)*)[1]. Both the Panel and the Appellate Body found that the COOL measure of the United States[2] violated Article 2.1 of the *Agreement on Technical Barriers to Trade* ("TBT Agreement") because it accorded imported livestock treatment less favourable than that accorded to like domestic livestock. The DSB recommended that the United States bring its COOL measure into conformity with its obligations under the TBT Agreement and the *General Agreement on Tariffs and Trade 1994* ("GATT 1994").

At the DSB meeting of 31 August 2012 the United States indicated its intention to comply with the recommendations and rulings of the DSB[3]. This statement confirmed the contents of a letter from the United States to the same effect, dated 21 August 2012[4].

An arbitration conducted under Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") determined that the reasonable period of time for the United States to implement the DSB's recommendations and rulings was ten months from 23 July 2012, the date of the DSB's adoption of the Panel and Appellate Body Reports[5]. Therefore, the United States was under an obligation to bring itself into compliance with the recommendations and rulings of the DSB by 23 May 2013.

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[1] Dispute Settlement Body, Minutes of Meeting of 23 July 2012, WT/DSB/M/320 (of 28 September 2012). See Appellate Body Report, *US – COOL (Canada)*, WT/DS384/AB/R, 29 June 2012; Panel Report, *US – COOL (Canada)*, WT/DS384/R, 18 November 2011.

[2] The "COOL measure" on which the Panel and the Appellate Body made findings comprised: (1) the COOL statute (i.e. the *Agricultural Marketing Act of 1946*, as amended by the "2002 Farm Bill" and the "2008 Farm Bill" (60 Stat. 1087, United States Code, Title 7, Section 1621 *et seq.*, as amended)) (see Appellate Body Report, *US – COOL (Canada)*, at para. 1(a) and footnotes 4 and 5 thereto; Panel Report, *US – COOL (Canada)*, at paras. 7.77-7.82); and (2) the COOL regulations (i.e. 2009 Final Rule (AMS) – 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), 74 Fed. Reg. 2658-2707, 15 January 2009)) (see Appellate Body Report, *US – COOL (Canada)*, at para. 1(b) and footnote 6 thereto; Panel Report, *US – COOL (Canada)*, at para. 7.85). The Panel, in para. 7.61 of its Report, "consider[ed] it appropriate to examine the relevant elements of both the COOL statute and the 2009 Final Rule (AMS) pertaining to the COOL requirements for meat products 'as an integral part' of one single COOL measure."

[3] Dispute Settlement Body, Minutes of Meeting of 31 August 2012, WT/DSB/M/321 (of 7 November 2012).

[4] The letter was circulated as document WT/DS384/19.

[5] WT/DS384/24, of 4 December 2012.

On 23 May 2013, the Agricultural Marketing Service of the US Department of Agriculture introduced amendments (through the issuance of a Final Rule) to the COOL regulations of the United States, with legal effect as of the same date ("2013 Final Rule")[6]. These amendments brought about significant changes to the COOL measure in respect of the labelling of muscle cuts of meat, in that these amendments (1) abolished the possibility of commingling, during a production day, muscle cuts derived from livestock born and/or raised in different countries, and of marketing these muscle cuts under a common label; and (2) require references on the label of muscle cut covered commodities to the country where the animal concerned was born, to the country or countries in which the animal was raised, and to the country in which the animal was slaughtered.

The "amended COOL measure" consists of:

1) the COOL Statute – 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) (2002 Farm Bill) and the *Food, Conservation, and Energy Act of 2008* (Section 11002 of Public Law 110-246) (2008 Farm Bill);

2) the 2009 Final Rule (AMS) – 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), 74 Fed. Reg. 2658-2707, 15 January 2009;

3) the 2013 Final Rule – Mandatory Country of Origin Labelling 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), 78 Fed. Reg. 31367-31385, 24 May 2013; and,

4) any modifications or amendments to instruments listed in (1) through (3) above, including any further implementing guidance, directives, policy announcements or any other document issued in relation to those instruments.

The expanded labelling requirements of the amended COOL measure will result in increased segregation and cost for firms using animals born or raised outside of the United States, or the meat produced from them. Therefore, the amended COOL measure will have an effect that is diametrically opposed to what is necessary to bring the United States into compliance: instead of removing the discrimination against Canadian livestock, the amended COOL measure will increase the discrimination that was previously found by the Panel and the Appellate Body[7].

The amended COOL measure has failed to bring the United States into compliance with its obligations under the WTO Agreement. In particular, Canada considers that the amended COOL measure is inconsistent with the following provisions:

1) Article 2.1 of the TBT Agreement because it continues to accord cattle and hogs imported from Canada treatment less favourable than that accorded to like US cattle and hogs;

2) Article III:4 of the GATT 1994 because it modifies the conditions of competition in the US market to the detriment of cattle and hogs imported from Canada as compared to like US cattle and hogs; and

[6] Amendments to 7 CFR Parts 60 and 65 (Mandatory Country of Origin Labelling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts), issued on 23 May 2013 and published in 78 Fed. Reg. 31367-31385, 24 May 2013.

[7] In response to an invitation for written comments on the proposed amendments to the COOL regulations (released as a "Proposed Rule" on 8 March 2013 and published in 78 Fed. Reg. 15645-15653, 12 March 2013), the Government of Canada, in a written communication, dated 10 April 2013, expressed its view that the (then proposed) amendments would not bring the United States into compliance with its WTO obligations.

3) Article 2.2 of the TBT Agreement because it creates an unnecessary obstacle to international trade, as it is more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.

In addition, the amended COOL measure nullifies or impairs benefits Canada was entitled to expect in respect of exports of its cattle and hogs under Article XXIII:1(b) of the GATT 1994.

On 10 June 2013, Canada and the United States reached an understanding in this dispute on "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" ("Sequencing Agreement"). According to paragraph 2 of the Sequencing Agreement, Canada is not required to hold consultations with the United States before requesting the establishment of an Article 21.5 panel. The Sequencing Agreement was previously notified to the DSB[8].

Considering that there is disagreement between Canada and the United States as to the existence or consistency with the covered agreements of a measure taken to comply with the recommendations and rulings of the DSB, Canada requests that a panel be established under Articles 6 and 21.5 of the DSU, Article 14 of the TBT Agreement, and Article XXIII of the GATT 1994, with standard terms of reference as set out in Article 7.1 of the DSU. In accordance with Article 21.5 of the DSU, the DSB should refer this matter to the original Panel, if possible.

Canada asks that this request be placed on the agenda of the next meeting of the DSB, scheduled to be held on 30 August 2013.

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[8] WT/DS384/25, of 13 June 2013.