

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

Request for the Establishment of a Panel by Canada

The following communication, dated 7 October 2009, from the delegation of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 1 December 2008, the Government of Canada ("Canada") requested consultations with the Government of the United States ("United States") concerning its measure requiring country of origin labelling ("COOL measure") in respect of certain products, 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*.

On 16 December 2008, consultations were held in Washington, DC with a view to reaching a satisfactory resolution of the matter. On 11 May 2009, Canada requested supplemental consultations with the United States. These supplemental consultations were held in Washington, DC on 5 June 2009. Unfortunately, the consultations failed to settle the dispute.

Canada, therefore, requests the DSB to establish a panel to examine this matter with standard terms of reference, as set out in Article 7.1 of the DSU and 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*.

The COOL measure covered in this request consists of the following provisions:

- (i) the Agricultural Marketing Act of 1946, as amended by the Farm, Security and Rural Investment Act of 2002 and the Food, Conservation, and Energy Act of 2008;
- (ii) the Interim Final Rule on Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts, and published on 1 August 2008 as 7 CFR Part 65 and on 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, published on 28 August 2008 as 9 CFR Parts 317 and 381;

- (iii) the Final Rule on Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts, published on 15 January 2009 as 7 CFR Part 65;
- (iv) the letter to "Industry Representative" from the United States Secretary of Agriculture, Thomas J. Vilsack, of 20 February 2009; and
- (v) any modifications, administrative guidance, directives or policy announcements issued in relation to items (i) through (iv) above.

The COOL measure is inconsistent with the obligations of the United States under the *TBT Agreement*. In particular, Canada considers that the measure is inconsistent with the following provisions:

- (1) Article 2.1 because the measure as applied results in less favourable treatment accorded to beef and pork produced from livestock from Canada than for beef and pork produced from livestock born, raised and slaughtered in the United States. The measure also results in less favourable treatment for Canadian livestock as compared with US livestock.
- (2) Article 2.2 because the measure creates an unnecessary obstacle to international trade, lacks a legitimate objective and is more trade-restrictive than necessary to fulfil a legitimate objective if any such objective were to exist.
- (3) Article 2.4 because the measure is not based on the *Codex General Standard for the Labelling of Prepackaged Foods*, which is the relevant international standard.

Should the United States assert that the COOL measure is an SPS measure, then it is Canada's view that the COOL measure is inconsistent with Articles 2, 5 and 7 of the *SPS Agreement*.

Canada also considers that the COOL measure is inconsistent with the following provisions of the *GATT 1994*:

- (1) Article III:4 because the measure as applied results in less favourable treatment accorded to beef and pork produced from livestock from Canada than for beef and pork produced from livestock born, raised and slaughtered in the United States. The measure also results in less favourable treatment for Canadian livestock as compared with US livestock.
- (2) Article IX:2 because the measure does not reduce to a minimum difficulties and inconveniences which the measure causes.
- (3) Article IX:4 because the measure materially reduces the value of imported livestock from Canada.
- (4) Article X:3(a) because the laws, regulations, decisions and rulings that make up the measure are not administered in a uniform, impartial and reasonable manner.

Canada also considers that the COOL measure is a rule of origin and therefore inconsistent with Article 2 of the *Agreement on Rules of Origin*. In particular, the COOL measure is inconsistent with:

- (1) Article 2(b) because the measure is used to pursue trade objectives directly or indirectly.
- (2) Article 2(c) because the measure creates restrictive, distorting or disruptive effects on international trade by imposing unduly strict requirements related to processing as a prerequisite for the determination of country of origin.
- (3) Article 2(e) because the measure is not administered in a consistent, uniform, impartial and reasonable manner.
- (4) Article 2(j) because administrative action taken under the measure in relation to the determination of origin is not reviewable promptly by judicial, arbitral or administrative tribunal or procedures.

The violations stated above nullify or impair the benefits accruing to Canada under those Agreements. Moreover, the COOL measure also nullifies or impairs the benefits accruing to Canada in the sense of Article XXIII:1(b) of the *GATT 1994*.

Canada asks that this request be placed on the agenda of the next meeting of the DSB, scheduled to be held on 23 October 2009.

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