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

Request for Consultations by Canada

Addendum

The following communication, dated 7 May 2009, from the delegation of Canada to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On 1 December 2008, Canada requested consultations regarding Certain Country of Origin Labelling (COOL) Requirements ("COOL measure") of the United States (issued as WT/DS384/1, dated 4 December 2008). These consultations were held on 16 December 2008.

Since these consultations were held, the United States replaced the Interim Final Rule (citation below) with the Final Rule (citation below) and the US Secretary of Agriculture issued a public letter, dated 20 February 2009, regarding the implementation of the Final Rule.

To take these developments into account, my authorities have instructed me to clarify the scope of the COOL measure and to request supplemental 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* with regard to the US COOL measure.

The COOL measure includes:

- (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, 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* published on 1 August 2008 as 7 CFR Part 65 and on *Mandatory Country of Origin Labeling of Muscle Cuts of Beef (including Veal)*,

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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 ("Interim Final Rule");

- (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* ("Final Rule") published on 15 January 2009 as 74 Fed. Reg. 2658, Parts 60 and 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 appears to be inconsistent with the United States' obligations under the WTO Agreement, including:

- (i) Articles III:4, IX:2, IX:4, and X:3 of GATT 1994;
- (ii) Articles 2 of the TBT Agreement, or, in the alternative, Articles 2, 5 and 7 of the SPS Agreement; and
- (iii) Article 2 of the Agreement on Rules of Origin.

These violations appear to nullify or impair the benefits accruing to Canada under those Agreements. Moreover, this measure appears to nullify or impair the benefits accruing to Canada in the sense of Article XXIII:1(b) of GATT 1994.

Canada reserves the right to raise additional claims and legal matters during the course of consultations.

Canada looks forward to receiving the reply of the United States to the present request and welcomes any suggestions that the United States may wish to make concerning the date on which these consultations could take place, and the location of the consultations.
