

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

Notification of an Other Appeal by Canada  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 28 March 2012, from the Delegation of Canada, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Rule 23 of the *Working Procedures for Appellate Review*, Canada hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel in *United States – Certain Country of Origin Labelling (COOL) Requirements* (WT/DS384/R) (Panel Report) and certain legal interpretations developed by the Panel.

1. Canada seeks review by the Appellate Body of the Panel's legal conclusions that:
  - (a) Article 2.2 of the Agreement on Technical Barriers to Trade requires identifying a potential objective of a challenged measure rather than the actual objective of that measure; and
  - (b) the objective of the COOL measure<sup>1</sup> is legitimate within the meaning of Article 2.2 of the Agreement on Technical Barriers to Trade.
2. Canada also appeals the Panel's failure, in contravention of Article 11 of the DSU, to make an objective assessment of the facts demonstrating that the objective of the COOL measure is protectionism. In the alternative, if the objective of the COOL measure is not protectionism, the Panel erred by failing to define the objective at a sufficiently detailed level.
3. If the Appellate Body does not uphold the Panel's finding that the COOL measure fails to fulfil a legitimate objective, then Canada seeks a finding by the Appellate Body that there are less trade-restrictive alternative measures that fulfil that objective, and that therefore the COOL measure violates Article 2.2 of the Agreement on Technical Barriers to Trade.

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<sup>1</sup>The COOL measure includes the COOL Statute and the Final Rule, as set out in the Panel Report, paras. 7.21, 7.34, and 7.63.

4. Canada further seeks review by the Appellate Body of the Panel's exercise in judicial economy on Canada's GATT Article III:4 claim regarding the COOL measure and the Vilsack letter<sup>2</sup>.

5. Finally, Canada seeks conditional review by the Appellate Body of the Panel's failure to find that the COOL measure and the Vilsack letter constitute an instance of non-violation nullification or impairment under GATT Article XXIII:1(b). That request for review is conditional on the Appellate Body not finding a violation of either Article 2.1 of the TBT Agreement or Article III:4 of the GATT.

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<sup>2</sup>Defined in the Table of Abbreviations of the Panel as "Letter to 'Industry Representative' from the United States Secretary of Agriculture, Thomas J. Vilsack, of 20 February 2009".