WORLD TRADE ORGANIZATION

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

Notification of an Appeal by the United States
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the *Working Procedures for Appellate Review*

The following notification, dated 23 March 2012, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Reports of the Panel in *United States – Certain Country of Origin Labelling (COOL) Requirements* (WT/DS384/R and WT/DS386/R) ("Panel Reports") and certain legal interpretations developed by the Panel.

1. The United States seeks review by the Appellate Body of the Panel's findings and conclusion that U.S. country of origin labeling requirements[1] are inconsistent with Article 2.1 of the *Agreement on Technical Barriers to Trade* (the "TBT Agreement").[2] This conclusion is in error and is based on erroneous findings on issues of law and legal interpretations including:

(a) the Panel's finding that the U.S. COOL requirements treat imported livestock differently than domestic livestock.[3]

(b) the Panel's finding that the U.S. COOL requirements accord less favorable treatment to imported livestock than that accorded to domestic livestock by modifying the conditions of competition to the detriment of imported products.[4]

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[1]The U.S. COOL requirements consist of the relevant sections of the Agricultural Marketing Act of 1946 (7 U.S.C. __ 1638-1638c) ("the COOL statute") and regulations promulgated by the United States Department of Agriculture's Agricultural Marketing Service on January 15, 2009, entitled "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, which are codified at 7 C.F.R. Parts 60 and 65 ("2009 Final Rule"). *See* Panel Reports, para. 7.61.

[2]*See, e.g.*, Panel Reports, paras.7.420, 7.548, 8.3(b).

[3]*See, e.g.*, Panel Reports, paras.7.295-7.296.

[4]*See, e.g.*, Panel Reports, paras. 7.420, 7.548

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2. The United States also requests the Appellate Body to find that the Panel acted inconsistently with Article 11 of the DSU by failing to make an objective assessment of the facts related to these issues, specifically that segregation of livestock is "necessitated" by the COOL requirements, that commingling is not occurring on a widespread basis, and that the COOL requirements resulted in a "price differential" between domestic and imported livestock,[5] and by using these faulty factual findings to support its conclusions with regard to different treatment and less favorable treatment.

3. The United States also seeks review of the Panel's findings and conclusion that the COOL requirements are inconsistent with Article 2.2 of the TBT Agreement.[6] This conclusion is in error and is based on erroneous findings on issues of law and legal interpretations including:

(a) with regard to section VII.D.3(b) of the Panel Reports, the Panel's finding that the COOL measure is "trade restrictive" for purposes of Article 2.2.[7]

(b) with regard to section VII.D.3(c) of the Panel Reports, the Panel's failure to consider all relevant information regarding the U.S. chosen level of fulfillment of the legitimate objective.[8]

(c) with regard to sections VII.D.3(d)-(e) of the Panel Reports: (1) the Panel's legal framework for determining whether a measure is "more trade-restrictive than necessary to fulfil a legitimate objective";[9] (2) the Panel's finding that the COOL requirements do not fulfill the legitimate objective at the level the United States considers appropriate;[10] and (3) the Panel's failure to require the complaining parties to meet their burden to prove that the measure is "more trade-restrictive than necessary" based on the availability of a significantly less trade-restrictive alternative measure that also fulfills the objective at the level the United States considers appropriate.[11]

4. The United States also requests the Appellate Body to find that the Panel acted inconsistently with Article 11 of the DSU by failing to make an objective assessment of the facts related to these issues, specifically the Panel's findings regarding the level at which the United States considers it appropriate to fulfill its objective.[12]

The United States is providing a copy of this letter directly to Canada, Mexico and to the third parties.

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[5] *See, e.g.*, Panel Reports, paras. 7.316, 7.327, 7.336, 7.352-353, 7.356, 7.364, 7.366-368, 7.379. 7.487, and 7.542.

[6] *See, e.g.*, Panel Reports, para. 8.3(c).

[7] *See, e.g.*, Panel Reports, paras. 7.565-7.575.

[8] *See, e.g.*, Panel Reports, paras. 7.590-7.620.

[9] *See* Panel Reports, paras. 7.652, 7.666-7.670, 7.692-7.720.

[10] *See, e.g.*, Panel Reports, paras. 7.692-7.720.

[11] *See* Panel Reports, para. 7.719.

[12] *See, e.g.*, Panel Reports, paras. 7.619-7.620, 7.715.