

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

Joint Request by Canada, Mexico and the United States  
for a Decision by the DSB

The following communication, dated 28 June 2012, from the delegations of Canada, Mexico and the United States to the Chairperson of the Dispute Settlement Body (DSB), is circulated at the request of those delegations.

On 5 January 2012, the Dispute Settlement Body (DSB) adopted decisions in the disputes *United States – Certain Country of Origin Labelling (COOL) Requirements* (DS384) and *United States – Certain Country of Origin Labelling (COOL) Requirements* (DS386) to extend the time period to adopt or appeal the reports of the panel to 23 March 2012.<sup>1</sup> The United States appealed the panel reports on 23 March. As a result, the 60-day time period for circulation of the Appellate Body report set out in Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) expired on 22 May 2012, and the 90-day time limit set out in Article 17.5 expired on 21 June 2012.

By a communication dated 21 May 2012, the Appellate Body stated that it would not be able to issue its reports within 60 days of the initiation of the appeals. The communication also indicated that the Appellate Body expected that it would not be able to circulate its reports within the 90-day time limit set out in Article 17.5. The communication states that the Appellate Body instead expects to circulate its reports by Friday, 29 June 2012.<sup>2</sup>

For the reasons set out below, Canada, Mexico, and the United States (the "parties to the disputes") request that the DSB adopt the draft decision attached to this letter. Through this decision, the DSB would deem the reports, issued no later than Friday, 29 June, to be Appellate Body reports pursuant to Article 17.5 of the DSU.

The parties to the disputes recall that the language in Article 17.5 sets a 90-day time limit ("In no case shall the proceedings exceed 90 days.")<sup>3</sup> However, as in several recent appeals, the Appellate Body has indicated that for these appeals it would be necessary to go beyond that 90-day period in order to complete its work. In the circumstances of these appeals, the parties to the disputes would agree and consider that it would be desirable for the DSB to confirm its agreement that the reports in

<sup>1</sup> WT/DSB/M/310 (14 March 2012).

<sup>2</sup> WT/DS384/14 (23 May 2012); WT/DS386/13 (23 May 2012).

<sup>3</sup> DSU Article 17.5 ("When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.")

these appeals, issued by Friday, 29 June, would be deemed to be Appellate Body reports pursuant to Article 17.5 of the DSU.

The parties consider that consideration by the DSB of the draft decision and adoption of that decision would serve several useful purposes.

First, through circulation of the draft decision and consideration at a DSB meeting, the issue is given full transparency. Members of the DSB can give due consideration to the reasons cited by the Appellate Body in its communication for circulation outside the 90-day time limit as well as the reasons cited by the parties to the disputes for putting forward the draft decision. Through circulation of the draft decision, the parties to the disputes are informing other Members of their agreement to the circulation of the appellate reports outside the 90-day time limit. The parties consider that it would be desirable that the Appellate Body consult with the parties and have their agreement, and this draft decision informs other Members of the parties' agreement. Through the process of consideration of the draft decision, Members will therefore be fully apprised of the circumstances under which the reports may come before the DSB for adoption.

Second, the parties consider it desirable that the DSB provide greater certainty on the adoption procedure that will apply to the reports. The reports will be put before the DSB for adoption by all Members. Any Member may observe that the 90-day deadline in Article 17.5 of the DSU has not been met. The parties to the disputes consider that in these circumstances it would be appropriate also for the DSB to agree to deem the reports to be Appellate Body reports pursuant to Article 17.5 of the DSU. Without prejudice to any Member's systemic views on the proper adoption procedure, the draft decision, if adopted by the DSB, would increase certainty with respect to the adoption process.

Finally, the parties note that the language of the draft decision has been drawn from the letters filed by a number of Members in numerous past appeals, through which the parties to those disputes have expressed their willingness to deem the reports in those appeals to be Appellate Body reports pursuant to Article 17.5 of the DSU.<sup>4</sup>

For the foregoing reasons, the parties to the dispute consider that the draft DSB decision, if adopted, would provide greater transparency to Members of the DSB of the circumstances under which the reports in the above-mentioned appeals may come before the DSB for adoption, enhance administration by the DSB of DSU procedures in relation to these appeals, and provide greater certainty for Members of the DSB with respect to the adoption process for these appellate reports circulated beyond the 90-day time limit in Article 17.5 of the DSU.

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<sup>4</sup> See, e.g., Joint Communication from the United States and Mexico, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (WT/DS381/13) (19 April 2012); Joint Communication from the United States and China, *China – Measures Related to the Exportation of Various Raw Materials* (WT/DS394/14) (13 January 2012); Communication from the United States and China, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (WT/DS379/7) (8 February 2011); *United States – Continued Suspension of Obligations in the EC – Hormones Dispute (AB)* (WT/DS320/AB/R) & *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute (AB)* (WT/DS321/AB/R), para. 29 (adopted 14 November 2008) (letters by the European Communities, the United States, and Canada); *United States – Subsidies on Upland Cotton: Recourse to Article 21.5 of the DSU by Brazil (AB)* (WT/DS267/AB/RW), para. 14 (adopted 20 June 2008) (letters by Brazil and the United States); *European Communities – Export Subsidies on Sugar (AB)* (WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R), para. 7 (adopted 19 May 2005) (letters by the European Communities, Australia, Brazil, and Thailand); *United States – Subsidies on Upland Cotton (AB)* (WT/DS267/AB/R), para. 8 (adopted 21 March 2005) (letters by Brazil and the United States).

The parties to these disputes look forward to the support of Members for the draft decision and would be pleased to discuss the draft decision with any interested Members.

We respectfully request that you circulate this request and the annexed draft decision to Members of the DSB.

(signed)  
Robert McDougall  
Counsellor  
Permanent Mission of Canada  
to the WTO

(signed)  
Hugo Romero  
Counsellor  
Permanent Mission of Mexico  
to the WTO

(signed)  
Juan A. Millán  
Senior Legal Advisor  
Permanent Mission of the  
United States to the WTO

Draft Decision of the DSB:

The DSB agrees that it deems a report in the appeal in *United States – Certain Country of Origin Labelling (COOL) Requirements* (DS384), circulated by the Appellate Body no later than 29 June 2012, to be an Appellate Body report circulated pursuant to Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*. The DSB further agrees that it deems a report in the appeal in *United States – Certain Country of Origin Labelling (COOL) Requirements* (DS386), circulated by the Appellate Body no later than 29 June 2012, to be an Appellate Body report circulated pursuant to Article 17.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

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