

ANNEX E

WORKING PROCEDURES FOR THE PANEL

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**UNITED STATES – CERTAIN COUNTRY OF ORIGIN
LABELLING (COOL) REQUIREMENTS
(DS384 and DS386)**

WORKING PROCEDURES FOR THE PANEL
AS REVISED ON 21 SEPTEMBER 2010

1. The Panel will provide the parties to the dispute (hereinafter "parties") and third parties to the dispute (hereinafter "third parties") with a timetable for panel proceedings and shall follow the relevant provisions of the Dispute Settlement Understanding (DSU). In addition, the following working procedures shall apply.
2. The Panel shall conduct its internal deliberations in closed session. The parties, and the third parties, shall be present at the meetings only when invited by the Panel to appear before it. The Panel may open its meetings with the parties to the public, subject to appropriate procedures to be adopted by the Panel after consulting the parties.
3. The deliberations of the Panel and the documents submitted to it shall be kept confidential. Nothing in the DSU or in these working procedures shall preclude a party or third party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the Panel which the submitting Member has designated as confidential. Where a party submits a confidential version of its written submissions to the Panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
4. Before the first substantive meeting of the Panel with the parties and third parties, the parties shall transmit to the Panel written submissions in which they present the facts of the case and their arguments. The third parties may also transmit to the Panel written submissions in accordance with the timetable established by the Panel.
5. At its first substantive meeting with the parties, the Panel shall ask Canada and Mexico then the United States to present their cases. All third parties may be present during the entirety of the first substantive meeting with the parties.
6. All third parties shall be invited to present their views during a session of the first substantive meeting of the Panel set aside for that purpose. All third parties may be present during the entirety of this session with third parties. During this meeting, third parties may ask questions to the parties or to the other third parties. The parties and the other third parties, however, have no obligation to respond to these questions.
7. Formal rebuttals shall be made at the second substantive meeting of the Panel. At this meeting, the United States shall have the right to take the floor first to be followed by Canada and Mexico. The parties shall submit, prior to that meeting, written rebuttals to the Panel in accordance with the timetable. All third parties may be present during the entirety of the second substantive meeting with the parties.
8. The Panel may at any time put questions to the parties and third parties and ask them for explanations either during the course of a meeting with the parties and third parties or in writing. Written replies to questions shall be submitted in accordance with the timetable.

9. All third parties shall be invited to present a brief statement during a session of the second substantive meeting of the Panel set aside for that purpose. All third parties may be present during the entirety of this session with third parties. During this meeting, third parties may ask questions to the parties or to the other third parties. The parties and third parties, however, have no obligation to respond to these questions.

10. The parties and third parties shall make available to the Panel a written version of their oral statements by 5:30 pm (Geneva time) on the first working day after the meeting. Each party shall make available a copy of the written version to the other parties, and each third party shall make available a copy of the written version to the parties and the other third parties, at the same time it makes available the written version to the Panel. The parties and third parties are encouraged to provide a provisional written version of their oral statements at the time the oral statement is presented.

11. The presentations, rebuttals and statements referred to in paragraphs 5, 6, 7, 8 and 9 shall be made in the presence of the parties. Moreover, each party's written submissions, written answers to questions and comments thereon, comments on the descriptive part of the report, and written request for review of precise aspects of the interim report and comments on another party's request shall be made available to the other parties. Each party's written submissions and written answers to questions after the first substantive meeting with the Panel shall also be made available to all third parties.

12. Any request for a preliminary ruling (including rulings on jurisdictional issues) shall be submitted at the earliest possible moment, and in any event no later than in a party's first written submission. If a party requests such a preliminary ruling, the other parties shall submit their respective response to such request within a time limit specified by the Panel. Exceptions to this procedure will be granted upon a showing of good cause.

13. The parties shall submit all factual evidence to the Panel no later than during the first substantive meeting, except with respect to factual evidence necessary for purposes of rebuttals, answers to questions or comments on answers provided by each other. Exceptions to this procedure will be granted upon a showing of good cause. In such cases, the other parties shall be accorded a period of time for comment, as appropriate.

14. To facilitate the maintenance of the record of the dispute, and for ease of reference to exhibits submitted by the parties, the parties are requested to number their exhibits sequentially throughout the stages of the dispute. For example, exhibits submitted by Canada could be numbered CAN-1, CAN-2, etc, exhibits submitted by Mexico could be numbered MEX-1, MEX-2, etc. and exhibits submitted by the United States could be numbered US-1, US-2, etc. If, for example, the last exhibit in connection with the first submission was numbered CAN-5, the first exhibit of its next submission thus would be numbered CAN-6. The parties and third parties may submit exhibits as electronic files saved on CD-ROMs. However, 2 paper copies of the exhibits contained on a CD-ROM shall be provided to the Panel. Moreover, where a party requests a paper copy of an exhibit submitted as an electronic file, the party or third party having submitted the exhibit shall provide, within three business days, one paper copy to the other parties to the dispute and, where an electronic exhibit was served on the third parties, on the third parties.

15. The parties and third parties shall submit executive summaries of their written submissions (excluding any separate requests for a preliminary ruling and responses thereto) and oral statements within twenty days of the original submission or statement concerned. Each executive summary of the written submissions to be provided by each party shall not exceed 10 pages in length and each executive summary of the oral statements shall not exceed 5 pages in length. The summary to be

provided by each third party shall not exceed 5 pages. The Panel may revise these page limits upon request of a party. Paragraph 21 shall apply to the service of executive summaries.

16. The executive summaries shall not in any way serve as a substitute for the submissions of the parties and third parties in the Panel's examination of the case. The Panel intends to use them solely for the purpose of preparing the descriptive part of its report, subject to any modifications deemed appropriate by the Panel. The replies of the parties and third parties to questions and the parties' comments on each other's replies to questions will not be attached to the Panel report as annexes. They will be reflected in the findings section of the Panel report where relevant.

17. The parties and third parties to these proceedings have the right to determine the composition of their own delegations. The parties and third parties shall have responsibility for all members of their delegations and shall ensure that all members of their delegations act in accordance with the rules of the DSU and the Working Procedures of this Panel. The parties and the third parties shall provide a list of the participants of their delegation before each meeting with the Panel to the Secretary of the Panel, Mrs. Tessa Bridgman (e-mail: tessa.bridgman@wto.org).

18. To allow the Panel to prepare its report in an efficient manner, any party wishing to request a separate panel report pursuant to Article 9.2 of the DSU shall make such a request no later than at the second substantive meeting of the Panel.

19. Following issuance of the interim report, the parties shall have two weeks to submit written requests to review precise aspects of the interim report and to request a further meeting with the Panel. The right to request such a meeting must be exercised no later than at the time the written request for review is submitted. Following receipt of any written requests for review, in cases where no further meeting with the Panel is requested, the parties shall have the opportunity within one week to submit written comments on the other parties' written request(s) for review. Such comments shall be strictly limited to responding to the other parties' written request(s) for review. The parties are also reminded that the interim report shall be kept strictly confidential and shall not be disclosed. The Panel reserves the right to earmark its communications to enable the identification of possible breaches of confidentiality, especially the Panel's interim report and its final report before the latter's circulation to all Members.

20. The Panel will do its utmost to provide the parties with electronic versions of the descriptive part of its report, its interim report and its final report. Paper copies will be provided to the parties in any event. In case of inconsistency between the electronic and paper copy version of these documents, the hard copy version shall prevail.

21. The following procedures regarding service of documents apply:

- (a) Each party and third party shall serve any document submitted to the Panel directly on the other parties. Each party shall, in addition, serve its written submissions and written answers to the Panel's questions after the first substantive meeting on all third parties. Each third party shall serve any document submitted to the Panel on the parties and all other third parties. Each party and third party shall confirm, in writing, that copies have been served as required at the time it provides each document to the Panel.
- (b) Each party and third party should provide the Panel and the other parties with their submissions, written answers to questions and comments invited by the Panel by 7:00 p.m. (Geneva time) of the date referred to in the timetable, unless a different time is set by the Panel. Each party shall, in addition, provide all third parties with its

written answers to the Panel's questions after the first substantive meeting by 7:00 p.m. (Geneva time) of the date indicated by the Panel.

- (c) Each party and third party shall provide the Panel with 9 paper copies of all documents submitted to the Panel. Where a party or third party submits exhibits as electronic files pursuant to paragraph 14, it shall provide the Panel with four CD-ROMs containing such files and 2 paper copies of the files contained on the CD-ROMs. All these copies shall be filed with the Dispute Settlement Registrar, Mr. Ferdinand Ferranco (office 3178).
- (d) At the time it provides a hard copy of its submissions, each party and third party shall also provide the Panel with electronic copies of all its submissions on a CD-ROM or DVD or as an e-mail attachment in a format compatible with the Secretariat's text-editing software. E-mail attachments shall be sent to the Dispute Settlement Registry (DSRegistry@wto.org) with a copy to Ms. Aegyoun Jung (e-mail: aegyoun.jung@wto.org), Mr. János Volkai (janos.volkai@wto.org) and Mrs. Tessa Bridgman (e-mail: tessa.bridgman@wto.org). If a CD-ROM or DVD is provided, it should be delivered to Mr. Ferdinand Ferranco in four copies.

22. The Panel reserves the right to modify these procedures at any time following consultations with the parties.

**UNITED STATES - CERTAIN COUNTRY OF ORIGIN
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Procedures of the Panel Concerning Business Confidential Information¹

1. These procedures apply to any business confidential information (BCI) that a party wishes to submit to the Panel.
2. For the purposes of these procedures, BCI is defined as any information that has been designated as such by the Party submitting the information, that is not available in the public domain, and the release of which would seriously prejudice an essential interest of the person or entity that supplied the business information to the Party.
3. No person may have access to BCI except a member of the Secretariat or the Panel, a party's or third party's employee participating in the dispute, and a party's or third party's outside advisor for purposes of this dispute. However, an outside advisor is not permitted access to BCI if that advisor is an officer or employee of an enterprise engaged in the production, export, or import of cattle, swine, beef, or pork. When a party or third party provides BCI to an outside advisor who is an employee or officer of an industry association of such enterprises, that party or third party shall obtain written assurances from such advisor that he or she has read and understands these Working Procedures and will not disclose any BCI in contravention of the Working Procedures.
4. A party or third party obtaining access to BCI as a result of the BCI being submitted in this dispute shall treat it as confidential, i.e. shall not disclose that information other than to those persons authorized to receive it pursuant to these procedures. Each party and third party shall have responsibility in this regard for its employees as well as any outside advisors for the purposes of this dispute. BCI obtained under these procedures may be used only for the purpose of providing information and argumentation in this dispute.
5. A party or third party submitting or referring to BCI in a document shall mark the cover and each page of the document to indicate the presence of BCI in the document as follows: BCI shall be placed between double brackets (for example, [[xx,xxx.xx]]). The cover and the top of each page of the document shall contain the notice "Contains Business Confidential Information". Any BCI that is submitted in electronic form shall be clearly marked with the phrase "Contains BCI" on a label on the storage medium, and clearly marked with the phrase "Contains BCI" in the electronic file name.
6. In the case of an oral statement containing BCI to be delivered in the session not open to public observation as foreseen in paragraphs 2 and 3 of the "Procedures for open hearings, first and second substantive meetings of the Panel," the Panel should ensure that only persons authorized to have access to BCI pursuant to these procedures are permitted to hear the statement.
7. The parties, third parties, and the Panel shall store all documents containing BCI so as to prevent unauthorized access to such information.
8. The Panel shall not disclose BCI, in its report or in any other way, to persons not authorized under these procedures to have access to BCI. The Panel may, however, make statements of conclusion drawn from such information. Before the Panel makes its final report publicly available,

¹ These procedures are adopted according to, and are an integral part of, the Panel's Working Procedures of 18 June 2010.

the Panel shall give each party an opportunity to ensure that the report does not contain any information that it has designated as BCI.

9. Submissions containing BCI will be included in the record forwarded to the Appellate Body in the event of an appeal of the Panel's Report.

