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Page: 1/2

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

RECOURSE BY CANADA TO ARTICLE 22.2 OF THE DSU

The following communication, dated 4 June 2015, from the delegation of Canada to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

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Canada submits this request, pursuant to Article 22.2 of the Dispute Settlement Understanding ("DSU"), for authorization from the DSB to suspend the application of certain tariff concessions and related obligations to the United States under the GATT 1994 in the amount of CDN $ 3.068 billion, in connection with the continued non-compliance of the United States with its WTO obligations in the *US – COOL* dispute.

Background

On 19 November 2009, the DSB established a single panel at the request of Canada and Mexico to examine certain mandatory country of origin labelling requirements of the original COOL measure[1]. The resulting Panel Report, of 18 November 2011, found that the original COOL measure violated Articles 2.1 and 2.2 of the Agreement on Technical Barriers to Trade ("TBT"). It also found that the Vilsack letter (since repealed) violated Article X:3(a) of the General Agreement on Tariffs and Trade ("GATT") 1994. That Panel Report was appealed and the resulting Appellate Body Report was circulated on 29 June 2012. The Appellate Body upheld the Panel's finding that the original COOL measure violated Article 2.1 of the TBT Agreement and reversed the Panel's finding that the original COOL measure also violated Article 2.2 of the TBT Agreement. The DSB adopted the Appellate Body Report and the Panel Report, as amended by the Appellate Body Report, on 23 July 2012.

The reasonable period of time ("RPT") for the United States to comply with the rulings and recommendations of the Appellate Body was determined by arbitration under Article 21.3(c) of the DSU. The RPT expired on 23 May 2013. It was on 23 May 2013 that the United States adopted its regulatory amendments to the original COOL measure. Because Canada and the United States disagreed as to whether the United States had achieved compliance with its WTO obligations by adopting these amendments to the original COOL measure, Canada initiated compliance proceedings regarding the amended COOL measure[2] under DSU Article 21.5. The Compliance Panel requested by Canada was established on 25 September 2013. The resulting Compliance Panel Report was circulated on 20 October 2014. The Compliance Panel found that the amended COOL measure violates Article 2.1 of the TBT Agreement and in fact *increases* the detrimental impact on imported livestock over and above that caused by the original COOL measure. The Compliance Panel also found that the amended COOL measure violates Article III:4 of the GATT 1994. It did not find a violation of Article 2.2 of the TBT Agreement. On appeal, the

[1] The "original COOL measure" encompassed the Agricultural Marketing Act of 1946, as amended by the 2002 Farm Bill and the 2008 Farm Bill (referred to as the "COOL statute") and the 2009 Final Rule (AMS). The Panel Report dealt with the Vilsack letter separately. See paragraphs 1, 2, 5 and 6 of the Appellate Body Report in the original COOL proceedings (WT/DS384/AB/R).

[2] The "amended COOL measure" encompasses the "original COOL measure" and the 2013 Final Rule. See paragraphs 7.7 – 7.9 of the Compliance Panel Report (WT/DS384/RW); see also the Appellate Body Report in the compliance proceedings (WT/DS384/AB/RW), at paragraph 1.7.

Appellate Body confirmed the Compliance Panel's findings of violations by the United States of TBT Article 2.1 and GATT Article III:4. The Appellate Body Report was circulated on 18 May 2015. On 29 May 2015, the DSB adopted the Appellate Body Report and the Compliance Panel Report, as modified by the Appellate Body Report.

Before the compliance proceedings commenced, Canada and the United States jointly informed the DSB of their *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding* ("Agreed Procedures")[3]. In this document, Canada and the United States provided, *inter alia*, that if following proceedings under DSU Article 21.5, the DSB ruled that the amended COOL measure was inconsistent with a covered agreement, Canada could resort to DSU Article 22.2 and request authorization from the DSB to suspend the application of concessions or other obligations under the covered agreements.[4] In addition, the United States affirmed that in such a situation, it would not assert that Canada was precluded from obtaining the DSB's authorization to suspend concessions or other obligations on the ground that the request was made outside of the 30-day period specified in DSU Article 22.6.[5]

Canada's request for authorization to suspend concessions

In its recommendations and rulings of 29 May 2015, the DSB determined that the amended COOL measure is in violation of TBT Article 2.1 and GATT Article III:4. Therefore, pursuant to Article 22.2 of the DSU, and in accordance with Article 22.3(a) of the DSU and paragraph 6 of the Agreed Procedures, Canada requests from the DSB, at its meeting on 17 June 2015, authorization to suspend the application of certain tariff concessions and related obligations to the United States under the GATT 1994.

Canada has applied the principles and procedures of Article 22.3(a) of the DSU and seeks to suspend concessions and obligations in the goods sector under the GATT 1994. The requested annual value of the suspension of the concessions and related obligations of CDN $ 3.068 billion is, pursuant to DSU Article 22.4, equivalent to the annual level of nullification or impairment of benefits to Canada caused by the amended COOL measure. Canada will provide to the DSB a list of goods and the level of the tariffs to be applied to those goods in due course.

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[3] By communication dated 10 June 2013. See WT/DS384/25
[4] Agreed Procedures, paragraph 6.
[5] Ibid.