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

RECOURSE BY MEXICO TO ARTICLE 22.2 OF THE DSU

The following communication, dated 17 June 2015, from the delegation of Mexico to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

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Mexico requests that a special meeting of the Dispute Settlement Body (DSB) be held on 29 June 2015 to consider the following agenda item:

> *United States – Certain Country of Origin Labelling (COOL) Requirements (DS386)*
> *– Recourse to Article 22.2 of the DSU by Mexico*

Background of this request

On 23 July 2012, the DSB adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. In these reports, it was found that the COOL measure of the United States was inconsistent with the obligations of Article 2.1 of the Agreement *on Technical Barriers to Trade* (TBT Agreement).[1] The DSB recommended that the United States bring the COOL measure into conformity with its obligations under the TBT Agreement.

The United States informed the DSB that it intended to implement the DSB recommendations and rulings for which it required a reasonable period of time (RPT). Mexico requested that the RPT be determined through binding arbitration under Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). On 4 December 2012 the Arbitrator issued an award determining that the RPT for the United States to implement the recommendations and rulings of the DSB would expire on 23 May 2013.[2]

On 23 May 2013, the United States Department of Agriculture adopted an amended COOL measure. In Mexico's view, the amended COOL measure did not bring the United States into compliance with the recommendations and rulings of the DSB.

By communication dated 13 June 2013, Mexico and the United States jointly informed the DSB of "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding", under which the parties agreed that Mexico retained the right to challenge the amended COOL measure under Article 21.5 of the DSU at any time.[3] The Parties also agreed that if following proceedings

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[1] The COOL measure comprises:
a. the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), as amended by the Farm Security and Rural Investment Act of 2002 and the Food, Conservation, and Energy Act of 2008;
b. 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 (7 CFR Parts 60 and 65), 74 Fed. Reg. 2658-2707;
c. 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 (7 CFR Parts 60 and 65), 78 Fed. Reg. 31367-31385.
Panel Report, para. 2.1.

[2] WT/DS386/23, para. 123.

[3] WT/DS386/24.

under Article 2.15, the DSB ruled that the amended COOL measure was inconsistent with a covered agreement, Mexico could resort to Article 22.2 of the DSU and request the DSB's authorization to suspend the application of concessions or other obligations under the covered agreements. The United States affirmed that in such a situation, it would not assert that Mexico was precluded from obtaining the DSB's authorization on the grounds that the request was made after the 30-day time-period specified in Article 22.6 of the DSU.[4]

Mexico requested the establishment of a compliance panel, which was established on 25 September 2013. The compliance panel found that the amended COOL measure is inconsistent with Article 2.1 of the TBT Agreement and Article III:4 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994).[5] The Appellate Body report circulated to WTO Members on 18 May 2015 upheld the Panel's conclusions on Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994.[6] On 29 May 2015, the DSB adopted the Article 21.5 Appellate Body report and the compliance panel report, as amended by the Appellate Body Report.

Mexico's request under Article 22.2 of the DSU

Because the United States' COOL measure is not in compliance with the recommendations and rulings of the DSB and is inconsistent with the covered Agreements, and in light of paragraph 6 of the understanding reached between the Parties on Agreed Procedures under Article 21 and 22 of the DSU, Mexico is entitled to redress under Article 22.2 of the DSU.

In accordance with Article 22.2, Mexico requests authorization from the DSB to suspend the application to the United States of tariff concessions and other related obligations in the goods sector under GATT 1994 in an amount of USD $713 million annually. Mexico has applied the principles and procedures of Article 22.3(a) of the DSU in considering what concessions and obligations to suspend. As required by Article 22.4 of the DSU, the level of suspension of concessions proposed by Mexico is equivalent on an annual basis to the nullification or impairment of benefits accruing to Mexico, resulting from the United States' failure to bring its COOL measure in compliance by 23 May 2013 or otherwise comply with the recommendations and rulings of the DSB in *United States – Certain Country of Origin Labelling (COOL) Requirements*.

Mexico will implement the suspension of tariff concessions and other related obligations by imposing additional tariffs on a list of US products to be established by Mexico in due course.

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[4] Id., para 6.
[5] WT/DS386/RW.
[6] WT/DS386/AB/RW.