**** As Delivered ****

United States – Certain Country of Origin Labelling (COOL) Requirements:

***Recourse to Article 21.5 of the DSU by Canada* (DS384)**

***Recourse to Article 21.5 of the DSU by Mexico* (DS386)**

Closing Oral Statement of the United States of America

February 19, 2014

*** *As Delivered* ***

1. Mr. Chairman and members of the Panels, the United States would like to thank the Panels for their work to date, and the work to come, in helping to resolve this dispute. We would also like to thank the interpreters for their assistance both yesterday and today. I would like to make a few brief remarks in closing.

2. First, as an initial matter, U.S. consumers are interested in origin information regarding where the animal is born, raised, and slaughtered. In response to the Panels' first question regarding this topic, a recent Consumer Federation of America study concluded that 87 percent of those surveyed viewed favorably requiring the package label to indicate the "country or countries in which animals were born, raised and processed." We submit the survey as Exhibit US-46. We also submit as Exhibit US-47 two examples out of the many comments received in support of the proposed amended COOL measure. Finally, we submit original Exhibit US-138, which is a final report of a poll on COOL from Consumer Reports National Research Center, as Exhibit US-48. All of this evidence, taken together, reflects strong support for providing consumers information on origin regarding where the animal was born, raised, and slaughtered.

3. Second, when the panelists first examined the original COOL measure, you were concerned with the accuracy and meaningfulness of the labels, particularly with regard to the B and C labels. The United States has responded by amending the COOL measure to provide meaningful and accurate information regarding where the animal was born, raised, and slaughtered. Again, we do not hear from Canada or Mexico that the labels applied to meat from livestock *actually* originating in their countries are inaccurate.

4. Third, and also with regard to complainants' TBT Article 2.1 claims, complainants emphasize the fact that the amended COOL measure includes three exemptions. But this appears

to be just an excuse to try to find fault with the amended COOL measure. For example, complainants do not actually want the amended COOL measure extended to require that more establishments to use the very label that they complain about.

5. And again, notwithstanding its position here, Canada does agree with the United States on this point. It is Mexico that is the outlier. Canada's current position before the Appellate Body in *EC – Seal Products* is that a panel commits reversible error that, when applying the even-handed analysis, it analyzes regulatory distinctions that do not cause the detrimental impact.[1] In fact, Canada goes so far as to quote paragraph 286 of *US – Tuna II (Mexico)* for the proposition that under this analysis, the Appellate Body has focused *only* on the "distinction that accounts for the detrimental impact on imported products as compared to domestic products."

6. And, of course, complainants do not argue that the fact that labeling is not required in all instances affects – in any way – their trade in livestock. This is just another way of saying that the scope of the amended COOL measure does not cause the detrimental impact. As such, we do not believe an analysis of these three exemptions assists the Panels in answering the *key* question before these Panels – whether the detrimental impact from the measure "reflects discrimination."

7. Fourth, we note the European Union's similar views with regard to the relationship of Article III:4 of the GATT 1994 and TBT Article 2.1. We also consider complainants' overly narrow interpretation of Article III:4 is "obviously wrong." By way of example, it is clear that complainants' view is incorrect when they assert that their interpretation maintains a "balance"

[1] Canada's Appellant Submission in *EC – Seal Products*, paras. 93-94 (Jan. 24, 2014) (quoting *US – Tuna II (Mexico) (AB)*, para. 286).

between TBT Article 2.1 on the one hand and GATT Articles III:4 and XX on the other. There is no such balance under complainants' interpretation. Measures that ensure consumer information on origin (and many other objectives that technical regulations pursue) are not covered by Article XX, and complainants are attempting to use an erroneous interpretation of Article III:4 to ease their burden of proving the amended COOL measure is discriminatory.

8. Fifth, with regard to the TBT Article 2.2 alternative measures, complainants seem to be arguing that: "If we can come up with a way to regulate that seems better to us, then that establishes a breach." Under their approach, any measure could be found to be in breach because there will always be different views as to how best to pursue a particular legitimate objective. But that is not the way the TBT Agreement is written. And the task assigned to the WTO dispute settlement system is not to determine the "best" way to regulate, but rather to determine whether the way a Member has chosen to regulate is more trade restrictive than necessary.

9. Finally, with regard to an exchange with the Chair yesterday, to be clear, the United States does not take position that *the obligations* contained in the WTO Agreement do not apply equally to the United States as a large country. Rather, the point is that to establish a *prima facie* case that a less trade restrictive alternative exists that is reasonably available and makes an equivalent contribution to a Member's objective, complainants must necessarily rely on the particular facts *of the United States*. Simply referring to the experience of other, very different countries does not satisfy complainants' burden of proof.

10. And this should not be of some great surprise to complainants. Recall that one of the key drivers of the original panel's finding of detrimental impact was that the majority of beef

produced in the United States is derived from animals born, raised, and slaughtered in the United States. If the United States were a minority producer, that finding might well have come out differently under the original panel's analysis.

11. The facts *in the United States* mattered for the original panel's Article 2.1 analysis. And they matter for these Panels' Article 2.2 analysis now. In particular, complainants do not establish that an alternative is reasonably available to the United States by arguing that such a measure is reasonably available for other, differently situated Members.

12. Thank you very much.