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January 7, 2009

H.E. Mr. Peter Allgeier  
Ambassador  
Permanent Mission of the United States  
to the WTO  
11, route de Pregny  
1292 Genève

Dear Mr. Ambassador,

Thank you for your letter, dated January 7, 2009, which states as follows:

"I refer to Canada's request of December 1, 2008 for consultations with the United States of America ("United States") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994*, Article 14 of the *Agreement on Technical Barriers to Trade*, Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, and Article 7 of the *Agreement on Rules of Origin*, which was circulated in document WT/DS384/1.

Pursuant to this request, the United States and Canada held constructive consultations in Washington, D.C. on December 16, 2008. During these consultations, Canada described its concerns about certain mandatory country of origin labeling provisions of the United States under the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008*, and as implemented by the U.S. Department of Agriculture Interim Final Rule on *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* ("Interim Final Rule"), published on August 1, 2008 (73 Fed. Reg. 45106).

The United States has informed Canada that it intends to issue a Final Rule on *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* ("Final Rule") in the near future. Such a Final Rule will replace the Interim Final Rule, implementing the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*. Through the letter of December 1, 2008 from Canada's Minister of International Trade to the United States Trade Representative and

Canada

the attachment to that letter, Canada informed the United States of its request to have the following elements<sup>1</sup> included in the Final Rule:

- (a) maintaining the flexibility to use a Category B<sup>2</sup> label on covered commodities derived from Category A<sup>3</sup> animals when Category A animals and Category B animals are commingled during a single production day;
- (b) expanding the flexibility to use a Category C<sup>4</sup> label on covered commodities derived from Category B animals, without any requirement that there must be commingling between B and C animals; and
- (c) establishing the flexibility to use a Category B label on covered commodities derived from Category C animals when Category B animals and Category C animals are commingled during a single production day.

A copy of the attachment to the letter from Canada's Minister of International Trade to the United States Trade Representative is attached hereto.

The United States has carefully considered Canada's concerns and its request regarding the inclusion of the three elements in the Final Rule described above.

The United States requests Canada to confirm that if the three elements described above are included in the Final Rule, Canada will not request the establishment of a panel for a period of at least eight months from the date of publication of the Final Rule in the U.S. Federal Register in its dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, or initiate or pursue any other WTO dispute settlement proceedings regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule, during the eight month period from the date of publication of the Final Rule, provided that the Final Rule continues to contain the three elements described above during that period.<sup>5</sup>

The United States proposes that at the end of the eight month period from the date of publication of the Final Rule described above, the United States and Canada will consult

<sup>1</sup> These elements are explained more fully in the attachment to the December 1, 2008 letter from Canada's Minister of International Trade to the United States Trade Representative.

<sup>2</sup> Category B refers to § 282(2)(B) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

<sup>3</sup> Category A refers to § 282(2)(A) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

<sup>4</sup> Category C refers to § 282(2)(C) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

<sup>5</sup> This is without prejudice to the proceedings in WT/DS357, *United States – Subsidies and Other Domestic Support For Corn and Other Agricultural Products*.

regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

The United States proposes that in these consultations, which could include a continuation of the consultations held on December 16, 2008, the United States and Canada would explore the possibility of a mutually agreed solution regarding: 1) dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, and 2) the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

The proposals of the United States described in this letter are without prejudice to the rights and obligations of the United States and Canada under the *Marrakesh Agreement Establishing the World Trade Organization*.”

I am pleased to confirm that if the three elements described in your letter are included in the Final Rule, Canada will not request the establishment of a panel for a period of at least eight months from the date of publication of the Final Rule in the U.S. Federal Register in its dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, or initiate or pursue any other WTO dispute settlement proceedings regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule, during the eight month period from the date of publication of the Final Rule, provided that the Final Rule continues to contain the three elements described in your letter during that period.”

I am also pleased to confirm Canada’s acceptance of your proposal that at the end of the eight month period from the date of publication of the Final Rule described in your letter, the United States and Canada will consult regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule. In these consultations, which could include a continuation of the consultations held on December 16, 2008, Canada and the United States would explore the possibility of a mutually agreed solution regarding: 1) dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, and 2) the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

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\* This is without prejudice to the proceedings in WT/DS357, *United States – Subsidies and Other Domestic Support For Corn and Other Agricultural Products*.

Canada's acceptance of your proposals is without prejudice to the rights and obligations of Canada and the United States under the *Marrakesh Agreement Establishing the World Trade Organization*.

Yours sincerely,



**John Gero**  
**Ambassador**  
**Permanent Representative to the WTO**