

mCOOL and the WTO dispute settlement process

October 28, 2009

The first step in any WTO (World Trade Organization) dispute process is to request and undertake formal consultations with the offending country. The Government of Canada (GoC) has undertaken two rounds of formal consultations with the United States (U.S.) on Mandatory Country-of-Origin Labelling (mCOOL). The first round was undertaken in December 2008 and produced an improvement in the final rule. Unfortunately, additional voluntary guidance from the U.S. Secretary of Agriculture, Tom Vilsack, sent everything back a step and prompted a second round of consultations - which concluded in July 2009. The second round of consultations produced no further improvement in the situation.

The next step is to request a dispute settlement panel be established. Such a request is made at a meeting of the WTO Dispute Settlement Body (DSB), which generally occurs once per month. The GoC requested a panel at the October 23 DSB meeting, but the U.S. exercised its right to block the first request. Canada is expected to make a second request at the next DSB meeting, scheduled for November 19. The second request cannot be blocked and the panel should be automatically established at the November 19 meeting.

Next, there is a period for other countries to express an interest to join the panel as third parties or observers, terms of reference are established and panelists are selected. Once these administrative requirements are fulfilled, Canada would have a number of weeks to present its first submission and the U.S. presents its defense and rebuttal a couple of weeks after that. If the mCOOL panel is established at the November 19 DSB meeting, it would likely be late February 2010 by the time we get to this point.

If the case is straightforward, we may have a first draft of a panel's report by early April, an interim report by late April and a final report by late May/early June. Of course, there is the opportunity for each stage of this process to take longer than anticipated. For example, there may be a delay in selecting panelists, the panel may wish to bring in technical experts or witnesses (economists perhaps) to comment on the testimony of either party, or there could be other stretching of the timelines by mutual consent.

Once the final report is made, the DSB has 60 days to adopt it - which could bring us to August 2010. Then there is the possibility for an appeal, which would take about three months to receive a decision and a further month for adoption by the DSB, taking us to December 2010.

At this point, assuming the ruling is in favour of Canada, the U.S. would have a month to inform the DSB of its intentions regarding compliance. They would likely begin to negotiate for a "reasonable period of time". If the U.S. does not indicate their intention to comply, Canada would have recourse to a retaliation process.

So if this process plays out on schedule, and Canada wins and the U.S. takes action to comply expeditiously, the best case scenario could result in compliance by the middle of 2011.

- 30 -

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