

UNITED STATES – CERTAIN COUNTRY OF ORIGIN
LABELLING REQUIREMENTS

(WT/DS386)



Second Written Submission of the United Mexican States

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CASES CITED IN THIS SUBMISSION

Short title	Full case title
<i>Brazil – Retreaded Tyres</i>	Appellate Body Report, <i>Brazil - Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/AB/R, adopted 17 December 2007
<i>Dominican Republic- Cigarettes</i>	Panel Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/R, adopted 19 May 2005, as modified by the Appellate Body Report, WT/DS302/AB/R
<i>EC – Sardines</i>	Panel Report, <i>European Communities- Trade Description of Sardines</i> , WT/DS231/R and Corr.1, adopted 23 October 2002, as modified by the Appellate Body Report, WT/DS231/AB/R.
<i>Korea – Various Measures on Beef</i>	Appellate Body Report, <i>Korea- Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001.
<i>United States - Gasoline</i>	Appellate Body Report, <i>United States - Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/AB/R, adopted 20 May 1.
<i>Unites States- Shrimp Products</i>	Panel Report, <i>United States - Import Prohibition of Certain Shrimp and Shrimp Products. Recourse to Article 21.5 by Malaysia</i> WT/DS58/RW, adopted 21 November 2001, as Upheld by the Appellate Body Report, WT/DS58/AB/RW.

I. INTRODUCTION

1. This dispute concerns a particularly egregious type of country of origin labeling measure as it applies to specific facts and circumstances. It does not concern country of origin labeling in general nor does it concern all aspects and applications of the challenged COOL measure.
2. The United States has highlighted the fact that countries around the world have recognized that consumers desire to know the origin of the products they buy at the retail level and that at least 40 WTO Members have enacted country of origin labeling requirements in recent years. Mexico does not dispute the widespread nature of country of origin labeling. However, Mexico's case is not a broad challenge to country of origin labeling; rather, Mexico's case highlights that country of origin labeling measures, like other measures, are subject, in a strict manner, to the cumulative application of the disciplines in the WTO Agreements and are permissible only when they are in compliance with those disciplines.
3. In its first written submission, Mexico established a *prima facie* case with respect to each of the elements of its claims in respect of the COOL measure and the United States has failed to rebut that case. Instead, the United States has attempted to mischaracterize its COOL measure as a reflection of a genuine intent to provide consumer information and prevent consumer confusion. As Mexico has demonstrated, the COOL measure, as it applies to the specific facts and circumstances in respect of muscle cuts of beef, does not provide accurate information and creates confusion among final consumers at the retail level. Therefore, even if the stated objective of the United States is accepted, the COOL measure does not fulfil that objective.
4. The design, structure and application of the COOL measure, in respect of muscle cuts of beef and ground beef, unjustifiably discriminates against and restrict imports of Mexican cattle into the United States. Prior to the COOL measure, Mexican cattle were processed throughout the United States at various packing plants without the need for segregation by origin. The COOL measure changed this. Mexican cattle are now segregated from U.S. cattle and processed at a limited number of packing plants, during a limited number of days and subject to additional conditions such as advance notification. Not only has this reduced the packing plants and processing opportunities available to Mexican cattle, it has reduced the feedlots and backgrounders that are willing to take Mexican cattle. This adverse change in the conditions of competition is a direct result of the COOL measure. It is clear from the case presented by Mexico that the purpose and effect of COOL measure is to protect the U.S. cattle industry against competition with Mexican like products – live cattle. The resulting upsetting of the competitive opportunities against imports of Mexican live cattle is contrary to GATT Article III:4 and Article 2.1 of the TBT Agreement.
5. During the first substantive meeting with the Panel and in the questions from the Panel there was considerable focus on the elements of Mexico's and Canada's claim under Article 2.2 of the TBT Agreement, in particular factual matters related to the objectives of the COOL measure and the legitimacy of those objectives. In addition to Mexico's claim under Article 2.2, which is an integral part of its case, Mexico has presented discrimination claims under Article III:4 of the GATT 1994 and Article 2.1 of the TBT Agreement which are equally important. The WTO-inconsistency of the COOL measure is clearly evident in the *de facto* discrimination that it creates.

6. Mexico recognizes that all forms of regulation including country of origin labeling impose a cost on the affected products. However, in this dispute, the cost is imposed either in whole or disproportionately on imported Mexican cattle. In the case of Mexican cattle, this is reflected, *inter alia*, in reduced backgrounding, feeding and processing opportunities which, among other things, are reflected in a price discount applied to Mexican cattle.

7. Mexico also recognizes that the North American market for cattle is affected by many factors outside of the COOL measure and that those factors affect both the price of cattle and the volume of trade flows within North America. However, independent of those factors, the COOL measure is upsetting the balance of competitive opportunities against Mexican cattle in favour of like U.S. cattle as described in paragraph 4, above. Mexican cattle have been denied competitive opportunities that existed prior to the COOL measure and, irrespective of North American market conditions, would be better off if those competitive opportunities were restored through the elimination of the COOL measure.

8. Given the nature of the measure at issue and the fact that this is the first time that such a measure has been subject to dispute settlement under the DSU, it is important to the effective resolution of this dispute that the Panel rule on all of the claims raised by Mexico. These are: Articles III:4, X:3 and XXIII:1(b) of the GATT 1994 and Articles 2.1, 2.2, 2.4 and 12 of the TBT Agreement. In Mexico's view, the exercise of judicial economy with respect to one or more of Mexico's claims should be avoided.

9. In ruling on the issues in this dispute, it is also particularly important that the Panel take into account the implications for developing country Members. Developing country Members are at the highest risk of being adversely affected by non-tariff measures such as the mandatory labeling measure at issue in this dispute. It is therefore essential that the facts involving the application of such measures be carefully scrutinized and the requirements of the WTO Agreements be strictly applied.

10. On the basis of the argument and evidence presented by Mexico, it requests that the Panel find that the COOL measure is inconsistent with Articles III:4, X:3 and XXIII:1(b) of the GATT 1994 and Articles 2.1, 2.2, 2.4 and 12 of the TBT Agreement and make such recommendations that are necessary for the United States to bring itself into conformity with these provisions.

II. THE MEASURE AT ISSUE

A. The COOL Measure Is Distinguishable From Other Country Of Origin Labeling Measures

11. Mexico recognizes that country of origin labeling is widely used by WTO Members. However, most of those measures differ from the COOL measure in their design and structure and are applied in different circumstances.

12. The most common form of country of origin labeling measures relate to imported products that are to be consumed in the importing WTO Member in the form in which they are imported. This type of labeling measure is often mandatory and is applied at the border.

13. The COOL measure is clearly distinguishable from this principal type of measure. The COOL measure is an internal measure that does not apply to products in the form in which they are imported into the territory of a WTO Member, and is not applied at the border. Rather, it

applies to processed products (e.g., beef) that are manufactured and sold within the United States from domestic and/or imported inputs (e.g., cattle).

14. In its responses to Questions 12, 32 and 57 of the Panel, the United States seems to suggest that the “born/raised/slaughtered” standard is being applied at the border to imported beef products that are to be consumed in the United States in the form in which they are imported. It is not. The COOL regulations make clear that the origin of such imported products is the origin determined under the customs rules.¹ Thus, there is a difference between the rules applied to beef that is imported into the United States and beef that is manufactured in the United States. The former confers origin based on the place of processing and is unrelated to imports of cattle while the latter applies the born/raised/slaughtered standard and directly affects imported cattle as described in Mexico’s arguments and evidence.

15. Another form of country of origin labeling measures relates to products manufactured within the territory of a WTO Member from domestic and/or imported inputs. This type of measure can be mandatory or voluntary, it can employ different types of rules and conditions for application and it can employ different forms of compliance mechanisms (e.g., certification and audit, trace back).

16. The COOL measure falls within this second form of country of origin labeling measures. However, it occupies a very specific sub-category of such measures. The features that distinguish the COOL measure are: (i) it is mandatory; (ii) it applies very strict rules and conditions for application, related to place of birth, developing and processing of the input used to produce the final food product (e.g., born, raised and slaughtered); (iii) it employs a certification and audit compliance mechanism; and (iv) it implicitly discriminates in the treatment between domestic and imported cattle.²

17. As is discussed below, these distinguishing factors significantly narrow the scope of this dispute which, in turn, will narrow the potential future application of the Panel’s findings to most other country of origin labeling measures.

18. Therefore, Mexico’s claims do not concern country of origin labeling in general. Mexico’s claims do not even concern all of the country of origin labeling provisions created in the Farm Bill 2002 and Farm Bill 2008 and currently implemented by the AMS Final Rule.

¹ 7 CFR § 6.300(f): “(f) *Labeling Imported Covered Commodities*. Imported covered commodities ... shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale.” See also USDA, “Country of Origin Labeling (COOL) Frequently Asked Questions” (Jan. 12, 2009), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074846> (Exhibit CDA-07. As explained previously, the U.S. customs rules apply the NAFTA Marking Rules to beef products imported from Mexico and Canada, and the substantial transformation test to beef products from other countries. Under both sets of origin rules, the country of origin for marking purposes is the country in which the cattle was slaughtered. The countries of birth and raising are not relevant under these rules.

² With respect to point (iv), the COOL measure implicitly discriminates in treatment between domestic and imported cattle. Possibly, this could be cured by requiring both domestic and imported cattle to be individually marked throughout the entire production process (trace back) or by permitting the comingling of cattle prior to slaughter.

Mexico's claims concern the country of origin labeling provisions applicable to muscle cuts of beef and ground beef.

B. COOL is a Single Measure

19. The United States argues that the statute, regulations and Vilsack letter are not a single "COOL measure" and that each document cited by Canada and Mexico should be assessed on its own merits in respect of each of the claims.³

20. As explained in Mexico's response to the questions from the Panel, the COOL measure, like most measures created by WTO Members, is made up of various instruments. It comprises the statutory provisions, the regulations, and the administrative guidance including the Vilsack letter. Each instrument is dependent upon others, starting with the 2002 Farm Bill's amendments of the Agricultural Marketing Act of 1946. It is the collection of the instruments as a whole that creates the measure that is being challenged by Mexico.⁴

21. In such circumstances, it is not possible to treat each instrument in isolation. Therefore, Mexico requests that the Panel rule on these instruments as a whole. It is in this context that Mexico refers to the instruments as the "COOL measure".

C. The Components of the Single Measure

22. Although the COOL measure is a single measure, it is important to stress that each of the instruments that make up the measure is relevant to Mexico's claims. Each instrument relates to the country of origin labeling rules for meat, which are the rules at issue in this dispute.

1. The Statute

23. The Statute comprises the Agricultural Marketing Act of 1946, as amended by the Farm Bill 2002 and Farm Bill 2008.

24. The United States suggested that Mexico and Canada "do not address how the statute, apart from the 2009 Final Rule, is inconsistent with US obligations..." This argument is without merit. It is in the Statute where the country of origin labeling requirements were created, and specifically, where the rules for labeling muscle cuts of meat and ground products were created. These statutory provisions established the general framework for the U.S. country of origin labeling requirements, without including some specific rules related to its implementation and application. These specific rules were further developed through Interim Final Rules and Final Rules from USDA, including some other administrative guidance documents and the Vilsack letter.

25. Contrary to what the United States suggested in paragraphs 126 to 129 of its First Written Submission, Mexico has correctly addressed how each component of the COOL measure is inconsistent with WTO obligations. It is clear that the COOL measure is based on the Statute's

³ U.S. First Written Submission, paragraphs 126-130.

⁴ Mexico's Responses to the Questions from the Panel from the First Substantive Meeting, 4 October 2010 (hereinafter "Mexico's Responses to Panel Questions"), paragraphs 1-7.

requirements. For example, the 2002 and 2008 Farm Bill (7 U.S.C. § 1638(a)) established the following:

“(a) *IN GENERAL.*—

“(1) *REQUIREMENT.*—*Except as provided in subsection (b), a retailer of a covered commodity shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country of origin of the covered commodity.*

“(2) *UNITED STATES COUNTRY OF ORIGIN.*—*A retailer of a covered commodity may designate the covered commodity as having a United States country of origin only if the covered commodity—*

“(A) in the case of beef, is exclusively from an animal that is exclusively born, raised, and slaughtered in the United States (including from an animal exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States);

...” (Emphasis added)

26. The standard for label A was originally established in the 2002 Farm Bill, which provides that a retailer may designate as “United States origin” a covered commodity only if “in the case of beef is exclusively from an animal that is exclusively born, raised and slaughter in the United States”. The subsequent components of the COOL measure contribute to the implementation of the label A standard, as well as other categories of labels.

27. Although the Statute provides for the creation of implementing regulations, it is in the Statute where the origin labeling requirements and the rules for muscle cuts of meat and ground meat were created, including the A, B, C and D categories of labeling.

28. It should be noted that the Statute also expressly prohibits the use of a mandatory identification system to verify the country of origin of the covered commodities, reflecting the political opposition to trace back in the U.S. cattle industry.⁵

29. In sum, the origin of the COOL measure is found in the Statute. Without the Statute, there would be no regulations, no Vilsack letter and no administrative guidance.

2. The Regulations

30. The regulations comprise the AMS Interim Final Rule, the FSIS Interim Final Rule, the AMS Final Rule and the FSIS Final Rule.

31. Although both the AMS Interim Final Rule and FSIS Interim Final Rule have been superseded, they were part of the COOL measure during the period at issue in this dispute and they constitute evidence of the operation of the COOL measure.

⁵ Farm Bill 2002 (Exhibit MEX-2), codified at 7 U.S.C. § 1638a(f)(1):

“(1) *MANDATORY IDENTIFICATION.*—The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity.”

32. The AMS Interim Final Rule was the first implementing regulation for the country of origin labeling requirements prescribed by the Statute, and although the FSIS Interim Final Rule did not create specific rules for country of origin labeling, it prescribed that the FSIS regulations would be amended so as to require that a country of origin statement comply with the AMS Interim Final Rule.⁶

33. The AMS Final Rule is the current regulation implementing the statutory COOL provisions.

34. In sum, the regulations implemented the statutory COOL provisions. Without the statutory provisions the regulations would not have been issued, but without the regulations, the statutory provisions could not be implemented and put into force.

3. The Vilsack Letter And The Administrative Guidance

35. As previously explained,⁷ the Vilsack letter is part of the COOL measure and is subject to the TBT Agreement and GATT Article III. It confirmed USDA's strict interpretation of the country of origin labeling provisions contained in the Statute and the Regulations, and discouraged the industry from using mixed origin labels.

36. The United States argues that the Vilsack letter is not a "requirement" under Article III:4 of the GATT 1994 and that it is not a "technical regulation" within the meaning of the TBT Agreement.⁸ In Mexico's view, even if viewed in isolation, the Vilsack letter is a "requirement" and a "technical regulation".⁹ However, in the case that it is not a "requirement" or "technical regulation" when viewed in isolation, it is clearly part of the COOL measure as a whole, which is unquestionably a "requirement" and "technical regulation".

37. At the very least, the Vilsack letter confirms the strict interpretation of the COOL measure that has been applied by the USDA — i.e., that it is not possible for the U.S. industry to use multiple country of origin labels in order to avoid the segregation and other costs associated with using the A label.

38. In this light, it is important for the Panel to understand that the Vilsack letter is simply one instrument that makes up the COOL measure and, even if it did not exist, the WTO-inconsistencies claimed by Mexico would still exist. This is because those inconsistencies are created by the wording of the statute and regulations as interpreted and applied by the administering U.S. authorities.

⁶ Mexico's First Written Submission, paragraphs 42-43.

⁷ Mexico's First Written Submission, paragraph 9. See also Mexico's Responses to the Panel's Questions, paragraph 1-6 and 22-23.

⁸ U.S. First Written Submission, paragraphs 132-136.

⁹ Mexico's First Written Submission, paragraphs 251-259. In its First Written Submission, Mexico sets out the reasons why the Vilsack letter is "mandatory" within the meaning of the definition of "technical regulation". The letter is also a "requirement" within the meaning of Article III:4 as outlined in paragraph 219 of Canada's First Written Submission.

39. Accordingly, whether or not the Vilsack letter is found to be a “requirement” or “technical regulation” or neither when it is viewed in isolation does not affect the legal and factual basis for Mexico’s claims.

40. The Vilsack letter is also evidence of the pressure that the USDA was putting on the industry to comply with COOL as the USDA wished, i.e., in a strict manner that avoided the use of the commingling rules.

41. Indeed, while giving a presentation one month after the letter was issued, Secretary Vilsack was reported to have commented as follows:

COOL is an important aspect of a US food safety program, Agriculture Secretary Vilsack suggested. He told the audience that the American public rightfully insists on the safety of food consumed in the United States. Knowing with confidence the origin of those foods goes a long way to ensure that safety, he added. “Americans think the closer to home, the safer it is.”¹⁰

This characterization of the COOL measure as a food safety measure contradicts the objective of the measure as characterized by the United States and further confirms the arbitrariness of the measure.

42. In addition to the Vilsack letter, the guidance received by the industry from the USDA further confirms the strict interpretation of the rules adopted by the U.S. authorities.

**D. The COOL Provisions for Meat Products: Labeling Categories
Based on the Origin of the Cattle**

43. The COOL measure has created a new system for labeling muscle cuts of meat and ground meat, through labeling categories based on the place where the animal from which the meat is derived was born and raised, and not on the place where the meat was produced from that animal. In this way, it ignores the substantial transformation processes that occur in the United States.

44. The COOL measure creates a labeling system with four labeling categories for muscle cuts of meat and one labeling category for ground beef. These categories do not apply to any other edible parts of the same animal, such as liver, head or tongue. They do not apply to butcher shops and specialty meat stores, or to food service establishments. For the purposes of having a better understanding on this labeling system, the following chart contains a general description of each category of labels under the COOL measure:

¹⁰ Exhibit MEX-85.

Labeling system under COOL Measure

Category “A”	“Product of the United States” can only be used when the animal from which the muscle cut of meat produced in the United States, was exclusively born, raised and slaughtered in the United States.
Category “B”	“Product of the United States and Mexico” can be used when the animal from which the muscle cut of meat was produced was born in Mexico and raised and slaughtered in the United States.
Category “C”	“Product of Canada, United States” can be used when the animal was imported into the United States for immediate slaughter. It can also be used if someone with a product entitled to a label “B”, for whatever reason decides to label its product with label “C”.
Category “D”	“Product of Mexico” can be used when the meat, and not the animal, was imported into the United States. For label “D” it does not matter where the animal was born or raised, provided that the last place of processing is shown on the label.
Category “E”	All origins must be listed of the cattle whose meat has been in inventory for the prior 60 days.

45. In relation with Category “B”, it does not make sense that the meat derived from a Mexican animal will never be able to obtain a “Product of the United States” labeling when it: (i) was born in Mexico and has the same genetic features of the cattle born in the United States, (ii) was sent to the United States at a very early period in its life to be fed in the same grasslands on which cattle born in the United States are fed, (iii) was sent thereafter to a feedlot to be fed with the same grains with which cattle born in the United States are fed, (iv) obtained more than 70% of its weight in the United States, and (v) was slaughtered and processed into meat in the same facilities as the cattle born in the United States, and further (vi) its meat was classified with the same quality grading as meat derived from an animal born in the United States

46. Furthermore, with respect to label “B”, the end consumer who buys a package with several cuts might think that part of the cuts come from Mexico and part of the cuts come from the United States. This creates confusion between what is truly a “Product of Mexico” and what is considered by the COOL measure as a “Product of the United States and Mexico”.

47. Importantly, as explained in Mexico’s answer to Question 11 of the Panel, the “B” label can be used in several other instances, so the end consumer, assuming *arguendo* that he/she knows what label B means, might never be able to know whether a product labeled as “Product of the United States and Mexico” derived from a cattle born in Mexico and transported at a very early stage, and raised, slaughtered and processed into meat in the United States. Those instances are as follows:

- Meat entitled to label B can be labelled as B or C, if the processor chooses to do so.
- When category A and B animals are commingled in a single production day, the meat may be labelled as B or C.
- When category A and C animals are commingled in a single production day, the meat may be labelled as B or C.
- When category B and C animals are commingled in a single production day, the meat may be labelled as B or C.
- When category A, B and C animals are commingled in a single production day, the meat may be labelled as B or C.

48. This is the system for labeling muscle cuts of meat and ground meat created by the United States supposedly with the objective of “consumer information” and “reducing consumer confusion”. Clearly it does not fulfil this objective.

E. The Supposed Efforts to Balance Competing Interests

1. The Reduction of the Costs of Compliance

49. Throughout its submission, the United States argues that the COOL measure was designed in such way so as to strike a balance between the objective of providing information to consumers and reducing restrictions on trade resulting from these provisions. The United States further argues that it tried to achieve the stated objective of “consumer information” without unduly burdening retailers or domestic or foreign producers.¹¹

50. Although it is true that the United States attempted to reduce the burdens on U.S. domestic retailers and producers, it is not true that it tried to reduce the burden for foreign producers or industry participants using foreign cattle.

51. The first way in which the United States tried to reduce compliance for its own market participants was through an express prohibition of the creation of any mandatory identification system to verify the country of origin of the covered commodities, and from requiring additional records other than those maintained in the course of the normal business. This prohibition does not reduce the impact of the COOL measure for Mexican cow calf producers; rather, it was designed to protect U.S. cow calf producers.

52. The COOL measure also excludes retailers such as butcher shops and specialty meat shops from its application. This minimizes the impact of the measure on U.S. domestic interests but keeps untouched the protectionist objective and effect of the measure because the principal distribution channels remain covered.

¹¹ See U.S. Answers to the Panel’s First Set of Questions, paragraph 43,

53. These exclusions also contradict the stated objective of the measure — providing consumer information and avoiding consumer confusion — because they create a substantial gap in its coverage. These exemptions do not reduce the impact on Mexican cow-calf operators.

54. Finally, the U.S. “compromise” excludes so many products from the scope of the COOL measure (including parts of the same animal), that it has created a complex matrix of rules which would confound the most diligent consumer. This further clarifies that protectionism – not consumer information – was the true objective of the law.

2. The “Flexibilities” Regarding Commingling

55. The United States argues that the flexibilities in the labeling rules minimize the impact on foreign cattle. This is simply incorrect.

56. There is no flexibility regarding label “A” beef which cannot be used for beef produced from Mexican cattle notwithstanding that such cattle have the same genetic features as U.S. cattle, were raised in the United States (during which 70 percent of their weight was added), and were processed in the United States into beef.

57. To the extent there is any practical flexibility to commingle U.S. and Mexican cattle and use label B, the USDA’s strict interpretation of the provisions has effectively discouraged this commingling.

58. Finally, the flexibility to choose between label “B” or “C” does not facilitate the use of foreign cattle, including Mexican cattle.

59. These flexibilities serve mainly to protect label “A”, but do not provide any meaningful benefits to foreign cattle, and, if anything, undermine the stated objectives of providing accurate information to consumers or alleviating consumer confusion when they purchase muscle cuts of beef in a grocery store.

F. The Objectives Of The COOL Measure

60. The objectives of the COOL measure have been discussed in detail in the submissions and oral statements of the parties and third parties. As elaborated upon in the legal argument section of this submission, while most directly relevant to Mexico’s claims under Article 2.2 of the TBT Agreement, the objectives of the measure are also relevant to Mexico’s other claims.

1. Determining the Objectives

61. Mexico presented detailed argument and evidence in its First Written Submission that the true purpose of the COOL measure, by virtue of its design, structure and application, is to protect domestic producers in the United States by altering the operation of the U.S. beef industry in favour of the U.S. feeder cattle.¹² Its protectionist purpose and objective is reflected in, *inter alia*, its scope being limited to certain commodities, the targeting of the principal downstream products (i.e., muscle cuts of beef) and distribution network (i.e., large diversified retailers), the

¹² Mexico’s First Written Submission, paragraphs 168-191, 279-283 and 296-302.

exclusion of small retailers and the U.S. processed food industry, and the departure from the established comprehensive system that was in place for regulating consumer information.¹³ The United States has not rebutted this evidence.

62. As discussed in Mexico's responses to the questions from the Panel, it is part of the Panel's function to objectively assess the facts in this dispute to determine the objectives of the measure.¹⁴ Moreover, in determining the objectives of the COOL measure it is necessary for the Panel to examine the measure at a high degree of detail.¹⁵

63. This is an important step in the assessment of the measure particularly for a developing country Member such as Mexico which, like other developing country Members, is increasingly facing sophisticated non-tariff barriers implemented by developed country Members. If the objectives of a measure were self-defining and beyond meaningful scrutiny by a Panel, it would be difficult if not impossible for developing country Members such as Mexico to challenge such measures.

64. The following submissions supplement those presented in Mexico's first written submission regarding the protectionist intent, objective and effect of the COOL measure.

2. Protectionist Intent and Effect

65. The objective of the COOL measure as well as its legitimacy must be assessed in the light of the intent behind the measure. It is Mexico's view that the evidence demonstrates that the intent of the COOL measure is overwhelmingly protectionist.¹⁶

66. The protectionist intent of the COOL measure is reflected in the circumstances in which the measure was introduced, its design and structure and in secondary corroborating evidence in the form of statements of U.S. legislators and officials and of members of the U.S. cattle industry.

a. Circumstances in Which the Measure was Introduced

67. The circumstances in which the COOL measure was introduced provide important context for the measure. It is clear from the evidence that consumers supported the idea of country of origin labeling for fruits, vegetables and meat in general, although that idea was firstly introduced and supported not by consumers, but by producers¹⁷.

68. To the extent some U.S. consumers stated they wanted information on the country in which the cattle used to produce beef products were born and raised, the proportion of those consumers to the entire population of U.S. beef consumers was very small. Moreover, this small subset of consumers was not willing to pay higher prices for any country of origin information,

¹³ *Ibid.*

¹⁴ Mexico's Responses to the Panel Questions from the First Substantive Meeting, paragraphs 146-149.

¹⁵ *Ibid.*

¹⁶ See Mexico's First Written Submission, paragraphs 169-170.

¹⁷ *Ibid.* Paragraphs 177-191.

as the United States has recognized¹⁸. This is compelling evidence that U.S. legislators and regulators had other interests in mind when creating the COOL measure. Why in the light of such tepid demand for this information did the United States implement such a broad ranging, onerous and expensive measure?

69. The United States acknowledges that the measure was not created for sanitary or other human or animal health-related reasons. Accordingly, the COOL measure is not the type of measure that governments sometimes have to implement even where there is little consumer demand or even if there is consumer opposition. In Mexico's view, the answer is that the interests of the U.S. cattle producers were the motivating factor in the design of the special COOL provisions for beef. In other words, the motivation was protectionism.

b. Design and Structure of the Measure

70. According to the United States, the COOL measure was created solely for consumer information purposes to remove consumer "confusion" about the origin of beef sold in the U.S. market. However, this assertion is not correct. As explained in paragraphs 168 to 191 of its First Written Submission, it is Mexico's view that the design and structure of the COOL measure denotes its protectionist intent.

71. By virtue of the design and structure of the COOL measure, the only label that provides relatively precise information (although not necessarily correct as it excludes beef that meets the customs law rule of origin) is the A label. In this light, the intent of the United States in implementing the COOL measure was to draw a distinction between beef under label A and all other beef. In other words, it was to draw a distinction between beef produced exclusively from U.S. cattle and beef produced from imported cattle or commingled imported and domestic cattle. This type of distinction is exactly the type of discriminatory distinction that the WTO Agreements prohibit.

72. Likely the most telling evidence of the protectionist intent of the COOL measure is the fact that the design and structure of the COOL measure favours the use of the label A (discussed above) and that U.S. authorities are interpreting and applying the measure strictly so that U.S. beef producers maximize the use of the label A and production of A label beef and minimize the use of the multiple country of origin label and therefore the production of beef from imported cattle.

73. The exclusions incorporated in the design and structure of the COOL measure also indicate the protectionist intent of the measure. As discussed in Mexico's First Written Submission, all the efforts to reduce burdens and costs of compliance were designed to help the cow-calf operators, processors and suppliers in the United States, not to reduce the cost of compliance of foreign producers.¹⁹

¹⁸ See U.S. Answers to Panel's First Set of Questions, paragraph 69.

¹⁹ *Ibid.* Paragraph 37. In Question 20, the panel asked the United States why food service establishment were exempt from the COOL measure. The United States responded that its intent was to reduce burdens on small business establishments. In fact, the exemption applies to McDonalds and other large chain restaurants. Interestingly, a large U.S. fast food chain named Wendy's (a competitor of McDonalds) advertises on its own

74. The protectionist intent of the measure is also illustrated by comparing the COOL measure to treatment of origin by the U.S. customs authorities. The United States uses the substantial transformation test to determine the origin of all goods for marking/labeling purposes under its customs law, except in the case of imports from Mexico and Canada that are governed by the NAFTA. The NAFTA contains a distinct set of “tariff shift” rules of origin that are for use exclusively in determining whether Mexico or Canada should be indicated as the country of origin on product labels. Because the NAFTA marking rules were designed to reach the same results as the more general substantial transformation test but provide more specificity, the U.S. customs authorities have proposed to adopt them as the rules of origin for country of origin marking purposes for imports from all countries.²⁰

75. The COOL measure, as it applies to meat products produced in the United States from Mexican cattle, requires a different and more burdensome origin labeling system mechanism that is based on the fact that the cattle were born in Mexico prior to being raised, slaughtered and processed in the United States. Thus, the COOL measure applies a different rule of origin to domestically-produced U.S. beef than to imported beef, with the purpose and effect of imposing burdens on the use of foreign cattle as an input. In Mexico’s view, the COOL measure as reflected in the requirements for labels A, B and C is not a “rule of origin,” but rather a way to single out domestically produced goods on the basis of criteria that are not normally considered relevant to determining the origin of a finished good.

76. Finally, the compliance mechanism implemented in the COOL measure — i.e., certification and audit — is designed so that the lowest cost alternative for compliance is to exclude all non-U.S. animals from the processing stream or, alternatively, segregate those animals in the processing stream. In their paper entitled *Impact of Mandatory Country of Origin Labeling on U.S. Pork Exports*, Dermot J. Hayes and Steve R. Meyer discuss two alternative compliance mechanisms that could be employed by the COOL measure: (i) certification and audit; and (ii) trace back.²¹

77. The authors describe the first option — certification and audit — as requiring that certificates of origin be backed up by some proof that the meat came only from animals born, raised and slaughtered in the United States.²² In their view, the easiest way of complying with this option would be to exclude all non-U.S. animals.²³ Another compliance option would be strict segregation of foreign-produced animals.²⁴ The authors observe that either option would

initiative that it uses “North American beef.” Exhibit MEX-86. “North America” includes the United States, Mexico and Canada.

²⁰ U.S. Customs and Border Protection, Notice of Proposed Rulemaking, Uniform Rules of Origin for Imported Merchandise, 73 Fed. Reg. 43385, 43386 (July 25, 2008). Exhibit MEX-87.

²¹ Dermot J. Hayes and Steve R. Meyer, *Impact of Mandatory Country of Origin Labeling on U.S. Pork Exports*, p. 7, Exhibit MEX-88.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

cause the foreign animals to be heavily discounted due to increased costs and would impose enormous economic strain on foreign producers.²⁵ This is the option that the United States chose to implement the COOL measure and the effect of the measure is exactly as predicted by the authors. The costs are being disproportionately born by Mexican animals compared to like U.S. animals.

78. The authors describe the second option —trace back — as requiring that a retailer be able to trace a piece of meat back to the original animal.²⁶ The authors recognize that this option is used in the EU and suggest that it is technically and economically feasible in the United States.²⁷ A trace back system would impose the same requirements on both domestic and imported animals and therefore would not give rise to the discriminatory lowest cost compliance solution referred to in the first option (i.e., there would be no incentive to exclude non-U.S. animals).²⁸ In Mexico's view, if there were trace back to the originating farm, there would likely be no incentive to exclude imported Mexican cattle or shift the cost of compliance solely to Mexican animals. This is because all farmers would be treated the same and it would be immaterial where they were located. Because U.S. beef processors would still have to trace U.S. cattle to individual farms, there would be no cost saving associated with excluding Mexican cattle. Thus, the economic incentive to discriminate against Mexican cattle would likely be eliminated.²⁹

c. Corroborating Statements of Legislators, Regulators and Industry

79. The U.S. has failed to rebut the point made by Canada and Mexico in relation with the legislative history of the COOL measure. In this regard, the U.S. asserts that "...selection of comments cited by Canada and Mexico do not provide meaningful insight into the objective of the statute".³⁰ This assertion is simply incorrect. On the contrary, the legislative history of the COOL measure during the discussion of the 2002 Farm Bill clearly reflects the protectionist intent of the COOL measure. The legislative history cited by Mexico provides meaningful insight into the real objective of the statute: protectionism in favor of U.S. producers of live cattle.

80. The protectionist intent of the COOL measure is reflected in statements of U.S. legislators and regulators.³¹ In addition to what Mexico has already described in its First Written Submission, following is a sample of comments made during the discussion of the 2002 Farm Bill which illustrate the real objective of the COOL measure:

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.* See discussion at pp. 9-10.

²⁹ Mexico observes that whether or not discrimination still existed under this second option would depend on the specific facts and circumstances relating to the design and implementation of the compliance mechanism.

³⁰ See U.S. Answer to Panel's First Set of Questions, paragraph 2.

³¹ See Mexico's First Written Submission, paragraphs 177-191.

Mr. Lucas of Oklahoma (Congressional Record – House May 2, 2002): *Producers pushed Congress to include a country-of-origin labeling and their work paid off. When given this option, I believe consumers will pick American produce over our foreign competitors. I strongly support this farm bill. I urge my colleagues to vote for final passage and show their support for America's farmers.*³²

Mr Kolbe: (Congressional Record – House May 2, 2002): *We should not be undermining our negotiating efforts at the WTO, and this conference report will unfortunately do just that. Further, I am extremely disappointed that this final agreement requires mandatory country of origin labeling for meat, fruits, vegetables, fish, and peanuts. In order to meet the threshold of being labeled a "USA product," it must be born, raised and processed in the United States. This is ridiculous. I grew up on a ranch in southern Arizona, and my family bought calves in Mexico to be raised and sold on our ranch. So I guess if I bought a small calf in Mexico and raised him for 5 years on my ranch in the United States, he would still never be a "U.S. calf." Even immigrants coming to the United States are allowed to obtain U.S. citizenship after 5 years, but no such luck for a calf. He would be treated like a future U.S. President under the Constitution. If you're not born here, you can't become President. And if a calf is born in Mexico—even if his mother is a "U.S. cow" that went through a cut border fence to have her calf in Mexico and returned a few days later—this calf will never be able to be labeled as a "USA product." Is this what our national policy should be? I find this outrageous and am surprised that something like this is on the road to becoming law. It was my hope that we would be able to fashion a new farm policy that helps the farmers, increases conservation efforts, reduces the price of food for the American people, and fulfills our obligations to our trading partners around the world. Unfortunately, the conference report before us today does not accomplish these goals.*³³

Mr. Tim Johnson: (Congressional Record – Senate May 8, 2002): *First, the farm bill contains language from S. 280, the Consumer Right-to- Know Act, legislation I sponsored to require country-of-origin labeling for beef, lamb, pork, fruits, vegetables, fish, and peanuts. Despite strong opposition from the Bush administration, the meatpackers, and other special interests, we prevailed in this effort that I have worked on since I was in the House of Representatives. In fact, my first meat labeling bill was introduced in 1992, 10 years ago. Western South Dakota cow-calf ranchers will be proud to know that the standard for "U.S. beef" under my provision will require it to come from cattle born, raised, and slaughtered in the United States, despite a last-minute campaign by opponents to allow foreign cattle to qualify as U.S. beef. Although the labeling program must first undergo a 2-year voluntary implementation period, consumers will eventually be able to select meat and other food products by their country-of-origin at grocery stores. While the House-passed farm bill merely covered fruits and vegetables, the Senate-passed bill included an amendment I worked on with Senator WELLSTONE to cover meat and other products. The conference committee nearly prevented the labeling of meat because it was not in the House farm bill, but, I am pleased that we overcame their opposition. I want to express my heartfelt gratitude to all*

³² Exhibit MEX-89.

³³ Exhibit MEX-90.

of the South Dakota farm organizations for supporting this legislation. Furthermore, I wish to commend the national farm and consumer groups that helped lead the way on this effort, including, the National Farmers Union, the American Farm Bureau, R-CALF USA, the Consumer Federation of America, the National Consumers League, and a host of others too numerous to mention. In fact, over 200 organizations in the U.S. have written me in support of this provision. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the National Farmers Union regarding the passage of country-of-origin labeling in the farm bill. There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FARMERS UNION, Washington, DC, May 2, 2002. Hon. TIM JOHNSON, U.S. Senate, Washington, DC. DEAR SENATOR JOHNSON: On behalf of the 300,000 family farm and ranch members of the National Farmers Union (NFU), I write to commend you for your leadership and your tireless efforts to enact policies that benefit our nation's independent producers. NFU enthusiastically congratulates you on your success in the inclusion of mandatory country of origin labeling for fresh produce and meat products in the conference-agreed farm bill. Unequivocally, this is a hard-won and a hard earned victory for our producers, growers and consumers. We greatly appreciate your steadfast determination in the face of sizable opposition to carry through in conference the provisions of your original bill that require products receiving a U.S. label must be "born, raised, and slaughtered" in the U.S. (...) NFU, again, congratulates your success for country of origin labeling. We look forward to working with you in enacting the packer ban provision as well as other legislation that increases competition and transparency in agricultural markets. You are champion to family farm and ranchers across the country....³⁴

Mr. INOUE: (Congressional Record – Senate May 8, 2002): Mr. President, title X of the farm bill contains provisions that would provide country of origin labeling for certain covered products. This program will specifically inform consumers right at their local markets whether they are eating U.S. products, or products produced under the laws of another nation. In a time of uncertainty about our economic, environmental, and personal security, we want to provide this level of assurance to our citizens and to our producers. U.S. origin labeling is important because it will allow consumers to vote with their wallets to support U.S. farmers, ranchers, and fishermen. This is important in the case of wild-caught fish, particularly in Hawaii, where we have traditionally relied on our vast ocean "backyard" for sustenance, chasing highly migratory species like tuna and swordfish as well as closer to shore species. I ask the distinguished Senator from Iowa, one of the managers of the bill, if this is not the purpose of the country of origin provision?

Mr. HARKIN. Indeed, the distinguished Senator from Hawaii is correct about the intent of the provision.³⁵

Mr Wyden: (Congressional Record – Senate May 8, 2002): Country of Origin Labeling for fresh meats, fruits, vegetables and fish will help Oregon's producers.³⁶

³⁴ Exhibit MEX-91.

³⁵ Exhibit MEX-92.

81. Moreover, the protectionist intent of the COOL measure is reflected in public statements of the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF), the main proponents and supporters of the COOL measure. R-Calf members are primarily beef cattle producers in the mountain states of Idaho, Montana and the Dakotas. For example, the following is an excerpt of the statement of Mr. Dennis McDonald from R-CALF in the a Hearing in 2001 before the Senate:

STATEMENT OF DENNIS McDONALD, RANCHERS–CATTLEMEN ACTION LEGAL FUND, UNITED STOCKGROWERS OF AMERICA, BILLINGS, MONTANA

Country of origin labeling, we would hope would be addressed in the Farm bill. R–CALF strongly supports Senator Tim Johnson’s proposal, the Consumer’s Right to Know. A strict labeling law will allow producers to differentiate our product from all of the other beef products that are imported from around the world. For beef to carry the USA label, it should be processed from a calf born, raised, fed to finished weight, and processed in this country. Any deviation from that definition should be labeled as such.

(...)

Senator THOMAS. What would you say, you guys in the beef, what would be your first two priorities in this bill for the beef industry? Both of you—either one of you.

*Mr. MCDONALD. I would say country of origin labeling and restriction of the USDA grade stamp. That is a cornerstone of our ability to be able to compete in this global market. We need to distinguish and identify our beef.*³⁷

³⁶ Exhibit MEX-93.

³⁷ Exhibit MEX-94. (Emphasis added.) In 2001, R-CALF sent a letter from 27 Cattle Associations to members of the U.S. Congress demanding the adoption of country of origin label system that currently is the COOL measure. In its letter R-CALF expressed the following:

The U.S. cattle industry invested considerable time, effort, and money to improve, promote, and advertise its finished product – U.S. beef. The U.S. cattle industry now needs the ability to identify its beef from among the growing volume of beef supplied by its foreign competitors. The ability to differentiate domestic beef from foreign beef is necessary to ensure that U.S. cattle producers have a competitive, open market that allows consumer demand signals to reach domestic cattle producers.

....Several importing and processing industry groups are aggressively working to weaken the Senate Farm Bill’s mandatory country-of-origin labeling language. They want to eliminate the exclusively born, raised, and slaughtered definition of origin. They also want to exempt ground beef from among the meat covered by the legislation. We strongly oppose any such changes as they would severely impair the competitiveness of U.S. cattle producers.

Letter from R-CALF USA and 27 Cattle Associations to members of the US Congress, 2 December 2001, available at http://www.r-calfusa.com/COOL/country_of_origin_labeling.htm. Exhibit MEX-95.

82. Additionally, the National Farmers Union, in a Hearing before the Senate in 2007, expressed the following:

STATEMENT OF TOM BUIS, PRESIDENT, NATIONAL FARMERS UNION

Mr. HAYES. Okay. All right. Mr. Buis, as I understand the National Farmers Union position, you support mandatory country of origin labeling and oppose mandatory Animal ID unless the government pays the entire cost. Can you reconcile how imposing the cost of mandatory COOL on livestock is acceptable to your members, but imposing the cost of mandatory Animal ID is not?

Mr. BUIS. Well, we support mandatory country of origin labeling and we feel that the shift in consumer preference, which if you even used USDA's more exaggerated cost, which we they had to revise when they first came out with the rule, it was around \$4 billion, to implement COOL. If you had a one percent shift, and their OMB analysis said this, one percent shift in consumer preference towards US products, it would more than offset that \$4 billion, so I think the market could absorb it. As far as mandatory animal ID, this was suggested and encouraged by the Secretary of Homeland Security, worried about terrorists distorting our food production or risking our food production, and if you are going to impose that cost on the two percent of society that produces the food to benefit the other 98 percent, I think it is a government cost. I do not think.³⁸

83. Country of origin labeling was always seen by R-CALF, other producer groups and their supporters as a means to protect the U.S. cattle industry from foreign competition.

d. Protectionist Effect

84. The protectionist intent of the COOL measure, as evidenced in the foregoing factors, is reflected in the adverse effects of the COOL measure.

85. These adverse effects are set out in Mexico's first written submission and in the supplementary evidence filed with this submission.

86. If the effects of the COOL measure were simply a reflection of consumer choice, there would be very little adverse effect in the market because such a small proportion of consumers care about the country of origin of the beef they are purchasing. Instead, the actual adverse effects of the COOL measure on Mexican cattle are market-wide. This manifestly reflects protectionism and not consumer choice.

3. The Consumer Information Objective: Two Principal Objectives

87. Assuming *arguendo* that the Panel accepts that the COOL measure is not merely protectionist, it is Mexico's view that the COOL measure, at a very general level, is intended to

³⁸ Exhibit MEX-96.

provide information to consumers on the origin of inputs used to produce muscle cuts of meat and ground meat.

88. Specifically, the COOL measure could be viewed as a mandatory country of origin labeling measure that, at a very general level, is intended to provide information to consumers on where the cattle that were processed into beef in the United States were born, raised and slaughtered. However, it is not sufficient for the Panel to define the objectives of the COOL measure at this general level. It must go further to determine the true objectives of the measure.

89. Although the A, B, and C labels purport to provide various combinations of origin information, the two underlying and primary objectives of the COOL measure are: (i) to provide information on label A, namely beef produced from cattle that are born, raised and slaughtered in the United States; and (ii) to ensure that most of the beef sold at retail in U.S. stores is label A beef. This second objective goes beyond simply informing consumers of the origin of the inputs used to produce the beef they purchase and promotes the production of beef from cattle born, raised and slaughtered in the United States.

90. These two objectives are confirmed by the design and structure of the measure and by other secondary information.

91. The first objective — i.e., to provide information on the label A— is apparent when the design, structure and circumstances of application of the COOL measure are analyzed against the stated objective of the measure. The United States asserts that the objective of the COOL measure is to prevent consumer confusion. However, it is not clear that the average consumer is aware of what the B and C labels actually mean. Moreover, the multiple origin labels can be a combination of cattle from many sources including the United States. As is made clear in the example provided in the oral statement of the EU in the first substantive meeting with the Panel, even accepting the underlying origin rule applied by the United States, it is impossible for U.S. consumers to accurately determine the origin of beef identified with the label “B”.³⁹ The only label giving accurate information is label “A” (i.e. meat derived from animals exclusively born, raised and slaughtered in the United States, and not commingled).

92. With respect to the second objective, the starting point is the text of the Agricultural Marketing Act as amended by the 2002 Farm Bill and the 2008 Farm Bill and further implemented in the Final Rule. The Statute requires that to use label A (i.e., “product of the United States”), the beef must be produced from cattle that are exclusively born, raised and slaughtered in the United States.⁴⁰ Deceptively, the Statute uses the permissive word “may” when setting out the labeling requirements, however, there is actually no practical discretion granted because the muscle cuts of beef must be labeled and therefore one of the permissible labeling options must be applied. This permissive word “may” was also used in the Final Rule.⁴¹

³⁹ Oral Statement of the EU at the First Substantive Meeting of the Panel, paragraphs 31-38. As explained at paragraph 55 of the US First Written Submission, the following various combinations could use the following labels: A & B = B or C; A & C = B or C; B & C = B or C; A & B & C = B or C.

⁴⁰ 7 U.S.C. § 1638(a)(2)(A)(i).

⁴¹ Sec. 65.300 Country of origin notification.

93. Moreover, in the Final Rule there is no practical flexibility in labeling when label A beef is produced. Label A beef can only be labeled with an alternative multiple country of origin label (e.g., label B or a derivative of label C) if it is commingled with label B or label C beef “during a production day”.⁴² This substantially reduces the usefulness of the multiple country of origin label as a means to reduce the adverse impact of the COOL measure.⁴³ It is notable that the “production day” requirement is applicable only to the commingling of label A beef with other beef. A similar rule does not apply to imported cattle (e.g., there is no such requirement for

In providing notice of the country of origin as required by the Act, the following requirements shall be followed by retailers:

(d) Labeling Covered Commodities of United States Origin. A covered commodity **may bear a declaration** that identifies the United States as the sole country of origin at retail only if it meets the definition of United States country of origin as defined in Sec. 65.260.

(e) Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin that include the United States.

(1) For muscle cut covered commodities derived from animals that were born in Country X or (as applicable) Country Y, raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter as defined in Sec. 65.180, the origin **may be designated** as Product of the United States, Country X, and (as applicable) Country Y.

(2) For muscle cut covered commodities derived from animals born, raised, and slaughtered in the U.S. that are commingled during a production day with muscle cut covered commodities described in Sec. 65.300(e)(1), the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y.

(3) If an animal was imported into the United States for immediate slaughter as defined in Sec. 65.180, the origin of the resulting meat products derived from that animal shall be designated as Product of Country X and the United States.

(4) For muscle cut covered commodities derived from animals that are born in Country X or Country Y, raised and slaughtered in the United States, that are commingled during a production day with muscle cut covered commodities that are derived from animals that are imported into the United States for immediate slaughter as defined in Sec. 65.180, the origin **may be designated** as Product of the United States, Country X, and (as applicable) Country Y. In each case of paragraphs (e)(1), (e)(2), and (e)(4) of this section, the countries may be listed in any order. In addition, the origin declaration may include more specific information related to production steps provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements. (Emphasis added.)

⁴² Section 65.300 (e)(2) and (4).

⁴³ The USDA *Frequently Asked Questions*, 12 January 2009, Exhibit CDA-07 confirm this:

Q. Can a packer or intermediary supplier that processes whole muscle meat products derived from both mixed origin animals (e.g., Product of U.S., Canada and Mexico) and U.S. origin animals commingle and label these products with a mixed origin label?

A. If meat covered commodities derived from U.S. and mixed origin animals are commingled during a production day, the resulting product may carry the mixed origin claim (e.g., “Product of U.S., Canada, and Mexico”). Thus, it is not permissible to label meat derived from livestock of U.S. origin with a mixed origin label if solely U.S. origin meat was produced during the production day.

multiple counties of origin using label B) and there is no similar rule for ground beef (for which a 60-day window is allowed for commingling)⁴⁴

94. Finally, the Final Rule does not allow the use of “or” or “and/or” when connecting a string of two or more countries of origin on a declaration of origin, further restricting flexibility.⁴⁵

95. Viewed cumulatively, these aspects of the text of the Final Rule promote the use of the label A and beef production meeting that label and make it harder to use alternative labels.

96. To the extent that the Final Rule provides any flexibility for U.S. producers to commingle production and use the B and/or C labels, USDA has interpreted the Statute and applied the Final Rule strictly to discourage U.S. producers from commingling imported and domestic cattle and beef and therefore label most of their beef production as label A. This strict interpretation and application of the Final Rule is confirmed by the Vilsack letter.

97. The foregoing objectives are further supported in the statements of U.S. officials referred to in Mexico’s response to the questions of the Panel and in its First Written Submission.⁴⁶

98. As discussed below in the legal arguments section of this submission, when assessing the WTO-consistency of the COOL measure it is important for the Panel to keep in mind these two principal objectives.

4. Shaping consumer expectations

99. As Mexico has explained, the strict standard for the use of the label “A” (i.e. born, raised and slaughtered in the United States) was developed with the intent of ensuring that the beef sold at retail in U.S. stores is label A beef, thereby affecting both the consumers of the cattle (i.e. backgrounders, feedlot operators and processors) and the end consumers of beef.

100. As explained in paragraphs 292 to 295 of Mexico’s First Written Submission, regarding the creation of consumer expectations, the Panel in *EC – Sardines* stated:

[T]he danger is that Members, by shaping consumer expectations through regulatory intervention in the market, would be able to justify thereafter the legitimacy of that very

⁴⁴ The requirements for label B set out in Section 65.300(e)(1) do not specify a same production day requirement. The requirements for ground beef in Section 65.300(h) provide for a 60 day rule.

⁴⁵ The USDA *Frequently Asked Questions*, 12 January 2009, Exhibit CDA-07 state, *inter alia*:

Q. Is it permissible to use “or” or “and/or” when connecting a string of two or more countries of origin on a declaration of origin?

A. To provide consistency in the labels and to avoid consumer confusion, the terms “or” and “and/or” in the country of origin designation declaration shall not be used (e.g., retailers should not label their products Product of the U.S., Canada, or Mexico or Product of the U.S., Canada, and/or Mexico).

⁴⁶ See Mexico’s First Written Submission, paragraphs 177-191. See also Mexico’s Responses to the Panel Questions from the First Substantive Meeting, paragraph 16-17.

same regulatory intervention on the basis of governmentally created consumer expectations.⁴⁷

101. In this dispute, through the COOL measure, it is clear that the United States is trying to shape consumer expectations and perceptions through regulatory intervention, and to justify the legitimacy of this intervention on the basis of a governmentally created consumer perception and expectation.

III. FACTUAL INFORMATION

A. The COOL Measure Continues to Upset the Balance of Competitive Opportunities to the Detriment of Mexican Cattle

102. The COOL measure continues to upset the balance of competitive opportunities to the detriment of Mexican cattle compared to like US cattle. In Mexico's first written submission it summarized these as follows: (i) the reduction in the number of plants that slaughter and process fed cattle that were born in Mexico and raised in the United States; (ii) the reduction of the number of days per week that such cattle are slaughtered or processed; (iii) the reduction in the number of backgrounders and feedlots taking Mexican cattle; and (iv) the imposition of additional requirements in the form of advance notice prior to accepting Mexican cattle for slaughter and processing.⁴⁸

103. These factors that evidence the upsetting of the balance of competitive opportunities continue.⁴⁹ Over the summer, this continued to be reflected in a price discount being applied to Mexican cattle. For example, Mexico is submitting evidence of transactions in July and August in which different processors applied downward adjustments of \$40 per head and \$25 per head to Mexican cattle.⁵⁰

B. The Other Factors Identified by the US do not Explain the Loss of Competitive Opportunities

104. The United States argues that only by ignoring basic market factors completely unrelated to the measures at issue – such as the global economic recession that severely affected trade flows, high feed costs, animal disease issues, declining inventories, and a restructuring of the North American hog industry – can Canada and Mexico attempt to imply some commercial impact on their livestock attributable to the measures at issue.⁵¹

105. Mexico acknowledges that the North American market for cattle is affected by many factors outside of the COOL measure and that those factors affect both the price of cattle and the

⁴⁷ Panel Report, *European Communities – Sardines*, WT/DS231/R and Corr.1, adopted 23 October 2002, as modified by the Appellate Body Report, WT/DS231/AB/R, ¶ 7.127.

⁴⁸ Mexico's First Written Submission, paragraph 221-223.

⁴⁹ See Affidavit BCI Exhibit MEX-97.

⁵⁰ *Ibid.*

⁵¹ U.S. First Written Submission, paragraph 6.

volume of trade flows within North America. In particular, prices for Mexican cattle vary depending on supply and demand in the United States. Especially in times of greater demand when prices are rising, the overall differential between prices for Mexican and U.S. cattle may be less. Nonetheless, the available recent documentation shows that the U.S. processors are still imposing COOL-based downward adjustments to the prices they pay for Mexican born cattle, and the Mexican industry will continue to have to bear the burden of that differential during times of both rising and declining prices.⁵²

106. However, independent of those factors, the COOL measure is upsetting the balance of competitive opportunities against Mexican cattle in favour of like US cattle as described in paragraph 4, above. Mexican cattle have been denied competitive opportunities that existed prior to the COOL measure and, irrespective of North American market conditions, would be better off if those competitive opportunities were restored through the elimination of the COOL measure.

IV. LEGAL ARGUMENT

A. Generally

107. Mexico has presented a *prima facie* case with respect to all of the elements of its claims. In this section, Mexico responds to arguments raised by the United States and third party Members with respect to those claims. As discussed, none of these arguments rebut the case that Mexico has presented.

B. Mexico's *De Facto* Discrimination Claims under Article III:2 of the GATT 1994 and Article 2.1 of the TBT Agreement

108. Mexico has raised *de facto* discrimination claims under both the GATT 1994 and the TBT Agreement. Numerous issues have been raised regarding these claims. These issues are addressed in logical order.

1. The Burden of Proof in a *De Facto* Claim

109. In response to Question 3 of the Panel to the Third Parties, the EU argues that “making an ‘in fact’ case is a much more difficult task, not to be lightly assumed, and that there is a high threshold and a need for particular rigour”.⁵³ It goes on to argue that the “complainants must demonstrate how the directly evidenced facts, working together, permit the inference of other facts, of which there is no direct evidence, leading to the conclusion that they have demonstrated the existence and precise content of a measure inconsistent with Article III:4 of the GATT 1994”.⁵⁴

110. Contrary to what the EU suggests, it is Mexico's view that there is no basis for increasing the evidentiary threshold for *de facto* discrimination claims. *De facto* discrimination claims

⁵² See Affidavit BCI Exhibit MEX-97.

⁵³ See, Replies to the First Questions by the European Union, paragraph 32.

⁵⁴ *Ibid.*

under Article III:4 of the GATT 1994 go back to the GATT 1947 and nowhere has such a high evidentiary threshold been applied to such claims.

111. The normal burden of proof applies—i.e., Mexico must establish a *prima facie* case with respect to each element of its *de facto* discrimination claims under Article III:4 of the GATT 1994 and Article 2.1 of the TBT Agreement. Mexico has met this burden.

2. The Timeframe for Examining *De Facto* Discrimination Claims

112. The EU also argues that “the immediate regulatory shock” of a regulation does not, in itself, necessarily demonstrate less favourable treatment. It elaborates as follows:

[T]he European Union observes that it may be quite possible or even likely that any new regulation may involve a regulatory shock for all firms and products. If one sets out to observe whether there is an adverse effect on imports, that generally being approached as relative concept, one may compare the situation before and after the new measure. However, a great deal may depend on how long after one makes the comparison. If one looks immediately after the new measure, it may not be surprising if one finds an adverse effect. But if one looks a reasonable period later, one may find that the regulatory shock has worked itself out of the market, and that there is equal opportunity for the different goods concerned notwithstanding the regulatory measure.

What is a reasonable time may depend on the facts of the case. Some regulatory changes, by definition, might take many years to work their way through the system, if the underlying assets necessary to operate in the relevant industry have an extended useful economic life and it is not efficient or viable to accelerate replacement. Of course, if the change in regulation can never be overcome by the importers (and a commonly used example is cattle must have spent at least six months of each year above 1500 metres – a rule that Switzerland might comply with but not the Netherlands, for example) then that might be relevant to the application of Article III:4 of the GATT 1994.⁵⁵

113. There is no legal basis for this argument. Whether or not a challenged measure *de facto* discriminates in a manner that violates a provision of a WTO Agreement must be assessed by a Panel on the basis of the facts existing at the time of the establishment of the Panel. The EU is arguing that WTO Members must wait an unspecified time before challenging a measure that *de facto* discriminates in order to accommodate the possibility that the facts may change in such a way as to eliminate the discrimination.

114. If accepted, the EU argument will fundamentally undermine this important discipline which prevents Members from doing indirectly what they cannot do directly.

115. In addition to having no basis in law, this argument has no basis in fact in the circumstances in this dispute. Mexico’s *de facto* discrimination claims are grounded in the fact that the economically rational way for US processors to comply with the COOL measure is to either stop processing Mexican cattle or to segregate the processing of those cattle in a way that

⁵⁵ *Ibid.*, at paragraph 29 -30.

restricts the access Mexican cattle have to the backgrounding, feeding and processing streams. This fact will not change over time. The EU might be confusing facts related to trade effects with facts related to the upsetting of the balance of competitive opportunities between Mexican and like US cattle. While the facts related to trade effects may change over time, the facts related to competitive opportunities will not change as long as the COOL measure remains in place.⁵⁶

3. Like Products

116. The United States does not take issue with the fact that Mexican and U.S. cattle are like. Rather it argues that the COOL measure applies to beef and not cattle, therefore, in the view of the US the like product analysis should focus on beef.

117. Mexico disagrees. The COOL measure explicitly applies to *both* beef and cattle. This is evident from the text of the Statute and the Final Rule which links the relevant label for beef to the country in which the cattle were born, raised and slaughtered. Moreover, Mexico's challenge of the COOL measure relates to its effect on imported inputs (i.e., Mexican cattle). The relevant like product is therefore domestic inputs (i.e., U.S. cattle).

118. Mexican and U.S. cattle are clearly like.⁵⁷

119. In regards to Mexico's *de facto* discrimination claim under Article 2.1 of the TBT Agreement, the United States makes an additional argument:

Article 2.1 states, in relevant part, that "Members shall require that *in respect of* technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin" Applying the customary rules of interpretation, the ordinary meaning of the term "respect" is "be directed to; refer to; relate to; deal with; be concerned with." Canada and Mexico have done nothing to demonstrate that the COOL Statute, the 2009 Final Rule, or the FSIS Rule treat cattle or hogs (as opposed to beef) and pork) less favorably, and thus they have done nothing to demonstrate that, "in respect of" those measures, there is any less favorable treatment for livestock.⁵⁸

120. The United States argument regarding the term "in respect of" is misplaced. That term simply clarifies that the non-discrimination obligation in Article 2.1 applies only to technical regulations. It does not prevent Mexico from challenging the *de facto* discrimination created between like imported and domestic inputs.

⁵⁶ In this regard, the key facts are: (i) reduction in processing plants accepting Mexican cattle; (ii) reduction in days of the week Mexican cattle are processed; (iii) reduction in backgrounders and feedlots that will accept Mexican cattle; and (iv) additional requirements imposed on Mexican cattle in the form of advanced notification requirements for processing.

⁵⁷ Mexico's First Written Submission, paragraph 199-205

⁵⁸ U.S. First Written Submission, paragraph 197.

4. Private Actions and Market Forces

121. The United States argues that any action by private actors not compelled by the measure at issue does not result in a violation of the non-discrimination provisions.⁵⁹ It further argues that to the extent that market participants are segregating their processing lines or demanding less foreign livestock, this results from the independent decisions of these private actors and is not attributable to the United States.⁶⁰

122. In the context of Article III:4 of the GATT 1994, the Appellate Body stated in *Korea – Beef* that “[w]hat is addressed by Article III:4 is merely the governmental intervention that affects the conditions under which like goods, domestic and imported, compete in the market within a Member’s territory”.⁶¹ Furthermore, it stated that:

We are aware that the dramatic reduction in number of retail outlets for imported beef followed from the decisions of individual retailers who could choose freely to sell the domestic product or the imported product. **The legal necessity of making a choice was, however, imposed by the measure itself.** The restricted nature of that choice should be noted. The choice given to the meat retailers was *not* an option between remaining with the pre-existing unified distribution set-up or going to a dual retail system. The choice was limited to selling domestic beef only or imported beef only. Thus, **the reduction of access to normal retail channels is, in legal contemplation, the effect of that measure. In these circumstances, the intervention of some element of private choice does not relieve Korea of responsibility under the GATT 1994 for the resulting establishment of competitive conditions less favourable for the imported product than for the domestic product.** (Emphasis added).

123. The same situation arises in this dispute. It is the COOL measure that is imposing the legal necessity of making the choice of either not accepting Mexican cattle or restricting their access. The reduced access Mexican cattle have to the US market is a direct consequence of the COOL measure. To the extent some element of private choice is involved, it does not relieve the United States of responsibility for the resulting establishment of competitive conditions less favourable for imported Mexican cattle than like US cattle.

124. Although this reasoning is presented in the context of Article III:4, it applies equally to Mexico’s claims under Article 2.1 of the TBT Agreement.

5. Costs Inherent to Regulating

125. The United States argues that to the extent that the COOL measure imposes costs, they are merely costs inherent to regulating.⁶² It argues that to the extent that Canada and Mexico’s

⁵⁹ U.S. First Written Submission, paragraph 147

⁶⁰ U.S. First Written Submission, paragraph 150

⁶¹ Appellate Body Report, *Korea – Various Measures of Beef*, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, paragraph 149.

⁶² U.S. First Written Submission, paragraphs 190-195; US Oral Statement, paragraph 30.

argument amounts to an objection to the fact that the 2009 Final Rule carries with it compliance costs, and that these compliance costs are not shared equally among all market participants, that fact alone cannot support the conclusion that the measures “modif[y] the conditions of competition.”⁶³

126. It argues that the national treatment provisions do not require Members to ensure that every technical regulation they adopt affects every market participant and every product in the exact same way. In its view, compliance costs may and often do vary among market participants based on their pre-existing makeup (i.e., size, business structure, etc.) and market participants may respond to new costs in different ways, including by changing their sourcing patterns. It argues that measure that on its face treats domestic and foreign products identically and does not require market participants to respond to new requirements in a way that disadvantages foreign products does not provide less favorable treatment, even if some market participants may choose to respond in a manner that disproportionately affects imported products.

127. Finally, the United States argues that were the national treatment provisions to be interpreted to require technical regulations to affect all market participants and products identically, this would significantly impair the ability of a Member to maintain a technical regulation.

128. While the United States’ observations about the distribution of costs of regulation among market participants may be correct in certain circumstances, they are inapplicable to the facts of this dispute. This dispute is not about the distribution of costs among individual market participants. In the case of Mexico’s trade, it is about the discriminatory and trade restrictive effects of the COOL measure on imported cattle. In this sense, it is about the disproportionate or possibly even complete allocation of costs to one market participant (in the case of Mexico’s claims, the Mexican cattle producers and other participants carrying Mexican cattle) over others based solely on the origin of the cattle they provide. As a consequence of the COOL measure, the processing plants, feedlots and backgrounders accepting Mexican cattle have been reduced and additional requirements in the form of advanced notice for processing have been imposed on Mexican cattle. Similar costs have not been imposed on like US cattle.

129. While regulations can distribute costs throughout the market in a variable manner, they cannot discriminate on the basis of origin as does the COOL measure.

6. Less Favourable Treatment

130. The United States raises several arguments regarding Mexico’s claims of less favourable treatment. These arguments are without merit.

a. Mexico is not Arguing that Market Participants are being “Forced” to Discontinue the purchase of Mexican Cattle

131. The US argues that Canada and Mexico’s arguments regarding less favourable treatment are flawed because “they presuppose that market participants will all choose to comply, and in

⁶³ U.S. First Written Submission, paragraph 150.

fact, are *forced* to comply with the regulations by discontinuing the purchase of Canadian and Mexican livestock”.⁶⁴

132. This characterization of Mexico’s arguments is incorrect. Similar to the situation in *Korea – Beef*, Mexico is arguing that the COOL measure is imposing the necessity of making a choice and in the light of the normal economic conditions in the market that choice is to either stop carrying Mexican cattle or to segregate Mexican cattle in a way that restricts trade in those cattle. By law, relevant US market participants must comply with the COOL measure. The design and structure of the measure is such that when complying with the measure the market participants will discontinue or restrict the purchase of Mexican cattle as described above.

b. Differential Effect on Different Market Participants

133. The EU argues that the effects arising from different volumes of trade do not, in themselves, necessarily demonstrate less favourable treatment. It elaborates as follows:

[A]n additional cost imposed on firms involved in differing volumes of trade (such as, for example, importers on the one hand and domestic producers on the other hand) can increase the relative unit cost of the importers. However, this may be true of all regulatory measures. Furthermore, it may not necessarily be a change in the conditions of competition in the long term, if the importers subsequently increase volume.⁶⁵

134. The EU also makes the following statement regarding the AB Report in *Dominican Republic - Cigarettes*:

Appellate Body Report, Dominican Republic – Import and Sale of Cigarettes, para. 96: (“Nor do we accept Honduras’ argument that the bond requirement accords “less favourable treatment” to imported cigarettes because, as the sales of domestic cigarettes are greater than those of imported cigarettes on the Dominican Republic market, the per-unit cost of the bond requirement for imported cigarettes is higher than for domestic products. The Appellate Body indicated in *Korea – Various Measures on Beef* that imported products are treated less favourably than like products if a measure modifies the conditions of competition in the relevant market to the detriment of imported products. However, the existence of a detrimental effect on a given imported product resulting from a measure does not necessarily imply that this measure accords less favourable treatment to imports if the detrimental effect is explained by factors or circumstances unrelated to the foreign origin of the product, such as the market share of the importer in this case. In this specific case, the mere demonstration that the per-unit cost of the bond requirement for imported cigarettes was higher than for some domestic cigarettes during a particular period is not, in our view, sufficient to establish “less favourable treatment” under Article III:4 of the GATT 1994. Indeed, the difference between the per-unit costs of the bond requirement alleged by Honduras is explained by the fact that the importer of Honduran cigarettes has a smaller market share than two domestic producers (the per-unit cost of the bond requirement being the result of dividing the cost of the bond by the number of cigarettes sold on the Dominican Republic market). In this case, the difference between

⁶⁴ U.S. Oral Statement, paragraph 13.

⁶⁵ See Replies to the First Questions by the European Union, paragraph 31.

the per-unit costs of the bond requirement alleged by Honduras does not depend on the foreign origin of the imported cigarettes. Therefore, in our view, the Panel was correct in dismissing the argument that the bond requirement accords less favourable treatment to imported cigarettes because the per-unit cost of the bond was higher for the importer of Honduran cigarettes than for two domestic producers.") (footnotes omitted). See: US First Written Submission, paras 146 and 173.⁶⁶

135. The EU misconstrues Mexico's arguments and misinterprets the findings of the Appellate Body as they apply to the facts of this dispute. Mexico is not arguing that the COOL measure is imposing the same total cost on imported and like domestic cattle but a higher per unit cost on imported cattle. Rather, the COOL measure is structured so that the most commercially rational means of compliance is to stop carrying Mexican cattle or to segregate Mexican cattle in a way that restricts trade in those cattle. Mexico's *de facto* discrimination claims have nothing to do with per unit costs.

c. Sufficient Remaining US Capacity to Process all Mexico's Cattle Exports

136. The United States argues that the remaining slaughterhouses have more than enough capacity to process all of the cattle Mexico exports.⁶⁷ Whether or not the remaining US slaughterhouses have enough capacity to process all of the Mexican cattle exports is immaterial. What matters is that access to the US market for Mexican cattle is being limited to certain slaughterhouses on certain days and under certain circumstances. This reduces the competitive opportunities for the sale of Mexican cattle compared to like US cattle.

d. Segregation

137. The United States argues that the provisions of the COOL measure do not require segregation and that the flexibility provided by the measures reduces the likelihood that livestock will need to be segregated to comply with them in the first place.⁶⁸

138. The United States misplaced the point made by Mexico. As discussed above, Mexico is arguing that the COOL measure is structured so that the most commercially rational means of compliance is to stop carrying Mexican cattle or to segregate Mexican cattle in a way that restricts trade in those cattle. As also discussed above, the flexibility provided by the measures does *not* reduce the likelihood that livestock will need to be segregated. Given the restrictive conditions applicable to the application of the multiple origin label to label A beef (i.e., commingling on the same production day), the use of the multiple label is severely restricted and is therefore of little practical use to avoid segregation.

139. Mexico has presented *prima facie* evidence that segregation was an understood consequence of the COOL measure and that it is in fact occurring.

e. Small Market Shares

⁶⁶ *Ibid.*, at footnote 30.

⁶⁷ U.S. Oral Statement, paragraph 25.

⁶⁸ U.S. First Written Submission, paragraphs 152-159.

140. The United States argues that Canada and Mexico both appear to acknowledge that any decision by U.S. packers to change their production practices results in large part from the complaining parties' relatively small market shares.⁶⁹

141. In assessing whether the COOL measure *de facto* discriminates against Mexican cattle, the Panel must assess the facts and circumstances related to the trade in Mexican cattle that would normally exist in the absence of the measure and then examine how the facts change when the measure is applied. Mexico's share of the US market may be one of the facts that is taken into account in this analysis, however, the fact Mexico has a small market share does not mean that any *de facto* discrimination against Mexican imports resulting from the COOL measure is to be ignored. To do so would fundamentally prejudice developing country Members who generally account for only a small portion of the trade with any given developing country Member.

f. Other Factors Affecting the Reduction in the Demand for Mexican Cattle

142. The United States argues that Canada and Mexico have failed to consider the numerous external factors that explain any reduction in the demand for and price of their livestock and that the detrimental effects that Canada and Mexico claim to have occurred in the market can be fully explained by factors not related to the COOL measures.⁷⁰

143. Once again, the United States misconstrues Mexico's arguments. Mexico acknowledges that there are many economic factors that could affect the demand for cattle in the North American market. However, the detrimental effects Mexico is challenging relate to the upsetting of the balance of competitive opportunities between Mexican cattle and like US cattle. These effects include the reduction in the number of slaughterhouses accepting Mexican cattle, the reduction in the number of days Mexican cattle are being accepted, the additional conditions (e.g., advanced notification) required for Mexican cattle, and the consequent reduction in the number of market participants carrying Mexican cattle or segregating Mexican cattle. None of these important facts can be attributed to the external factors highlighted by the United States. Those factors affect the North American market as a whole and do not discriminate against Mexican cattle. The factors at issue in this dispute are a direct consequence of the COOL measure and unlike the external factors highlighted by the United States, they do discriminate against Mexican cattle.

7. The COOL Measure is Inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TBT Agreement

144. As described above, in the context of Mexico's challenge, the fundamental thrust of the COOL measure is the protection of U.S. domestic cattle to the detriment of like Mexican cattle. In other words, pure protectionism. This is reflected in the upsetting of the balance of competitive opportunities to the disadvantage of Mexican cattle.

⁶⁹ U.S. First Written Submission, paragraph 174.

⁷⁰ U.S. First Written Submission, paragraphs 150, 168-178.

145. For the reasons set out in Mexico's first written submission as supplemented by the foregoing, the COOL measure is inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TBT Agreement.

C. TBT Agreement

1. The COOL Measure is a Technical Regulation

146. Mexico has demonstrated that the COOL Measure is a technical regulation.⁷¹ The only point upon which Mexico and the United States disagree is whether the Vilsack letter, viewed in isolation, constitutes a technical regulation.

147. As explained above when discussing the "Measure at Issue", in Mexico's view the Vilsack letter is a "requirement" and a "technical regulation". However, even if it is not a "requirement" or "technical regulation" when viewed in isolation, it clearly is when viewed as part of the COOL measure as a whole, which is unquestionably a "requirement" and "technical regulation".

2. The COOL Measure is Inconsistent with Article 2.2 of the TBT Agreement

148. The United States argues that the COOL measure fulfills the legitimate objective of providing consumers with additional information about the food that they buy at the retail level while also helping to prevent consumer confusion, and does so in a manner that is no more trade restrictive than necessary.⁷² It raises several arguments in response to Mexico's claim under Article 2.2, which are addressed below.

a. Preamble to the TBT Agreement

149. The United States argues that Article 2.2 provides deference to WTO Members in the pursuit of their policy objectives and must be read in conjunction with the sixth recital in the preamble of the TBT Agreement.⁷³ That recital reads as follows:

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it

⁷¹ Clearly compliance with the COOL measure is mandatory. In its response to the panel's question 27, the United States appeared to try to suggest that any fines for COOL violations would be minor. However, USDA has not issued guidelines on how it will apply the sanctions to violations, and there remains ambiguity as to how the fines would be imposed. What is clear, however, is that USDA retains the discretion to assess fines on a per item basis. Thus, for example, a grocery that prepares its own muscle cuts from carcasses would run the risk of being fined hundreds of thousands of dollars (or more) if an employee did not follow proper procedures – either in recordkeeping or labeling – for a single week. A processing plant (slaughterhouse) would run the risk of even higher fines if there were an error in procedures on a single day. It is rational for the U.S. industry participants to attempt to avoid any possibility of violations by limiting the use of Mexican and Canadian cattle.

⁷² U.S. First Written Submission, paragraphs 131 and 227.

⁷³ U.S. First Written Submission, paragraph 203.

considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement

150. On this basis the United States argues that each Member has the right to decide for itself which legitimate objectives to pursue and to take measures to meet those objectives “at the levels it considers appropriate”.⁷⁴

151. In making this argument, the United States ignores an important caveat in this recital—i.e., “subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade”. It is crucial to the effective operation of the TBT Agreement that this language in the preamble is given meaning. Otherwise, WTO Members could define the objectives of their technical regulations so narrowly and with such high levels of protection that no other alternative measure could fulfil those objectives. This would insulate such measures from challenge under Article 2.2 of the TBT Agreement and would be particularly prejudicial to the interests of developing country Members.

152. In Mexico’s view the COOL measure is “applied in a manner which [...] constitute[s] a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail” and it is a “disguised restriction on international trade”. Although there is no jurisprudence on the meaning of these terms in the context of Article 2.2 of the TBT Agreement, there is jurisprudence on the meaning of similar terms in the context of Article XX of the GATT 1994.

153. In that context, the Appellate Body has determined that analyzing whether discrimination is arbitrary or unjustifiable usually involves an analysis that relates primarily to the cause or the rationale of the discrimination.⁷⁵ It has further determined that the assessment of whether discrimination is arbitrary or unjustifiable should be made in the light of the objective of the measure.⁷⁶ As discussed above, in this instance the objective of the measure is protectionist and, in the light of the failure of the measure to fulfil its stated objective of consumer information and the reduction of consumer confusion, it is clearly arbitrary.⁷⁷

154. With respect to the meaning of “disguised restriction on international trade” in the context of Article XX, the Appellate Body has found that “disguised restriction, whatever else it covers, may properly be read as embracing restrictions amounting to arbitrary or unjustifiable discrimination in international trade taken under the guise of a measure formally within the terms

⁷⁴ *Ibid.*, paragraph 204.

⁷⁵ Appellate Body Report, *Brazil - Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007, paragraph 225.

⁷⁶ *Ibid.*, paragraph 227.

⁷⁷ The ordinary meaning of “arbitrary” is “capricious, unpredictable, inconsistent”. See Panel Report, *United States - Shrimp Products - Recourse to Article 21.5 by Malaysia*, WT/DS58/RW, adopted 21 November 2001, as upheld by the Appellate Body Report, WT/DS58/AB/RW, paragraph 5.124.

of an exception listed in Article XX”.⁷⁸ In this instance, the COOL measure is being taken under the guise of a “consumer information” measure that is clearly aimed not at consumers but at protecting US domestic industry. It is in this sense that it is a disguised restriction on international trade.

b. The Objectives of the COOL Measure

155. As discussed in Mexico’s response to Questions 52 and 54 of the Panel, the first factual element that must be determined by the Panel is the objective of the COOL measure and that objective must be determined on the basis of an objective assessment of the facts. Moreover, as part of its objective assessment of the facts, the Panel must determine all relevant details of the objectives of the technical regulation not just its stated objective.

156. The objectives of the COOL measure as reflected in the design and structure of the measure and corroborated by other evidence are described in detail above (see Section II.F, “The Objectives of the COOL Measure”).

157. As discussed in Mexico’s response to Question 54 of the Panel, it is essential to the proper interpretation and application of Article 2.2 that the Panel first objectively determine the objective of the COOL measure to this necessary level of specificity. To do otherwise would undermine the discipline in Article 2.2 and would be particularly prejudicial to the interests of developing country Members.

c. The Objectives Are Not Legitimate

158. Mexico presents detailed argument on why the objective of the COOL measure is not legitimate in its first written submission.⁷⁹ In addition to those arguments, it is clear from the above that the COOL measure is applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail and it is a disguised restriction on international trade. Its objectives are overwhelmingly protectionist.

159. Such objectives cannot be “legitimate” within the meaning of Article 2.2. They go against the fundamental object and purpose of the WTO Agreements.

160. In Mexico’s view, if there ever was a measure whose true objective was not legitimate, the COOL is such a measure. On the facts of this dispute, a finding that the objectives of the COOL measure are legitimate would render this element of Article 2.2 inutile.

161. Giving meaning to this element of Article 2.2 is particularly important for protecting the interests of developing country Members who are the most likely to suffer the adverse effects of such non-tariff measures.

⁷⁸ Appellate Body Report, *United States - Gasoline*, WT/DS2/AB/R, adopted 20 May 1, paragraph 66.

⁷⁹ Mexico’s First Written Submission, paragraphs 279-295.

d. If the Objectives are Found to be Legitimate, the COOL Measure Does Not Fulfil those Objectives

162. If the Panel finds that the objectives of the COOL measure are legitimate, it is Mexico's position that the COOL measure does not fulfil those objectives. Mexico presents detailed arguments on this point in its first written submission.⁸⁰

163. The stated objective of the COOL measure is to provide consumers with additional information about the food that they buy at the retail level while also helping to prevent consumer confusion.

164. It is clear, however, from an objective assessment of the facts, that the COOL measure does not fulfil these objectives. As explained above and in Mexico's first written submission, there are substantial gaps in the retail coverage of the measure and the information provided further confuses rather than clarifies the origin of the beef that is being purchased.

e. If the COOL Measure fulfils those Objectives, it is more Trade-Restrictive than Necessary Taking Account of the Risks Non-Fulfillment would Create

165. This final step in the application of the discipline in Article 2.2 illustrates the importance of the Panel carefully interpreting and applying the previous steps. If a WTO Member creates a technical regulation with a narrow objective and a high level of protection, it will be difficult to identify alternative measures that could fulfil those objectives. This is exactly what the United States is arguing in this dispute.

166. In Mexico's first written submission, it proposed two alternative measures: (i) voluntary country of origin labeling that uses the same strict transformation rule and other requirements currently utilized in the COOL measure; or (ii) mandatory country of origin labeling that uses the transformation rule applied by US Customs to imported products.⁸¹

167. The United States responds that voluntary labeling "would not meet the U.S. objective because origin information would not be consistently and accurately provided to U.S. consumers of meat, fruits, and vegetables, and other commodities at the retail level".⁸² It further responds that a labeling system based on substantial transformation "would not fulfill the U.S. objective because it would not provide consumers with any information about where the various processing steps took place during the production of beef, pork and other meat products".⁸³ As explained above, the COOL measure itself does not provide information "consistently and accurately" nor does it necessarily provide information "where the various processing steps took place".

168. Thus, the United States has not sufficiently explained how these two alternative measures do not fulfill the objectives of the COOL measure. Moreover, it fails to address an important

⁸⁰ Mexico's First Written Submission, paragraphs 296-302.

⁸¹ Mexico's First Written Submission, paragraphs 315-317

⁸² U.S. First Written Submission, paragraph 252.

⁸³ *Ibid.*, paragraph 256.

element of this final step in the application of Article 2.2, namely “taking into account the risks non-fulfilment would create”. Mexico addresses this element in its first written submission.⁸⁴ The value of the information provided by the COOL measure “to the consumer” is minimal and to the extent it has value to US consumers it is to a very limited sub-set of those consumers. In such circumstances, a voluntary measure or a measure that employs the substantial transformation test applied by US Customs is sufficient to meet the objectives of the COOL measure.

169. There is also a third alternative measure that, depending on how it is implemented, may be less trade restrictive in the sense that it may eliminate the discrimination currently facing Mexican cattle imports. That alternative is a country of origin labeling measure that employs the strict requirements of the COOL measure but that also employs a trace back compliance mechanism as discussed in paragraph 78 above.

D. The COOL Measure is Inconsistent with Article 2.4 of the TBT Agreement

170. With respect to Mexico’s claim under Articles 2.4 the TBT Agreement, the United States claims that the CODEX standard identified by Mexico is not a relevant international standard that would fulfill the U.S. objective of providing meaningful information to consumers regarding the origin of meat.⁸⁵ However, Mexico has met the burden of proving that is a relevant international standard and the US has not rebutted this burden of proof.

1. CODEX STAN 1-1985 Is A Relevant International Standard

171. In its First Written Submission, the United States suggested that Mexico had failed to establish that CODEX STAN 1-1985 was “adopted by a body whose membership is open to the relevant bodies of at least all Members and is based on consensus.”⁸⁶ The United States asserts that Mexico has not met its burden of proof in this regard “consistent with the Appellate Body’s reasoning in *EC – Sardines*.”⁸⁷

172. In fact, *EC – Sardines* involved another standard of the CODEX Alimentarius, which the Appellate Body affirmed was a relevant standard. In *EC – Sardines*, the EU had similarly argued that the complainant had the burden of proving that the standard at issue had been adopted by consensus. The Appellate Body expressly disagreed, stating:

Therefore, we uphold the Panel's conclusion ... that the definition of a "standard" in Annex 1.2 to the *TBT Agreement* does not require approval by consensus for standards adopted by a "recognized body" of the international standardization community.⁸⁸

Accordingly, the U.S. argument must be rejected.

⁸⁴ Mexico’s First Written Submission, paragraphs 311-318.

⁸⁵ U.S. First Written Submission, paragraph 131.

⁸⁶ U.S. First Written Submission, paragraph 261.

⁸⁷ *Ibid.*

⁸⁸ Appellate Body Report, *EC – Sardines*, paragraph 227.

173. The United States has already conceded that CODEX STAN 1-1985 is “relevant”, stating as follows:

The United States also does not dispute that at least some (though not all) of the products subject to the COOL requirements contained in the statute and 2009 Final Rule would constitute “prepackaged foods,” as those terms are defined in Article 2 of CODEX-STAN 1-1985, and that the CODEX standard concerns the provision of country of origin information.⁸⁹

174. The United States questions whether the CODEX standard is actually equivalent to the “substantial transformation” standard, noting that the word “processing” in CODEX STAN 1-1985 is undefined.⁹⁰ However, the complete relevant term in the CODEX standard is “When a food undergoes processing in a second country which changes its nature,” (Emphasis added.) The “change in nature” standard is closely similar, if not identical, to substantial transformation, which under U.S. law is a change that results in a different name, character or use.⁹¹

175. In any event, it cannot be seriously questioned that the conversion of a live animal into cuts of beef meets both standards, however they are interpreted. Perhaps only in transcendental Buddhism and among Vedic philosophers is the transition of life to death anything less than “substantial transformation”. The end of temporal existence is a fundamental change of condition in and of itself. In the case of beef products, the death of the animal is followed by dismemberment, and then slicing into cuts of meat. That is certainly “processing ... which changes [the] nature” of the cattle” within the meaning of CODEX STAN 1-1985.

2. The CODEX Standard Would Be Both Effective And Appropriate

176. The United States also argues that CODEX STAN 1-1985 would not be effective or appropriate because the substantial transformation test would provide misleading information in at some situations. The only example offered by the United States is a situation in which cattle would be in U.S. territory only one day prior to slaughter.⁹²

177. Mexico has previously explained, and the United States has not disputed, that Mexican cattle are brought to the United States at a young age, gain 70% of their weight in the United States, and are fed on the grasslands and in the same feedlots as U.S. born cattle. Accordingly, the U.S. example is wholly inapplicable to Mexico.

178. In any event, Mexico observes:

⁸⁹ U.S. First Written Submission, paragraph 262.

⁹⁰ U.S. First Written Submission, paragraph 263.

⁹¹ 19 CFR 134.35. Exhibit MEX-31.

⁹² U.S. First Written Submission, paragraphs 267-69.

- CODEX Stan-1985 was adopted twenty five years ago and reflects a multilateral consensus on how origin should be identified on prepackaged food products to as to avoid misleading consumers.
- As a factual matter the processing of live animals into cuts of beef is an extremely extensive form of processing, and relying on the substantial transformation/processing test cannot fairly be characterized as misleading.
- The United States, in effect, applied the CODEX standard to meat processed within its territory for many years, without considering it misleading.⁹³

179. Fundamentally, the United States seems to be arguing that CODEX STAN 1-1985 is ineffective and inappropriate because it is different than the COOL measure. That approach would turn the obligations of the TBT Agreement on their head and render Article 2.4 meaningless. CODEX STAN 1-1985 is an international standard that deals specifically with the purported objective of the COOL measure as claimed by the United States – to inform consumers of the origin of food products. The COOL measure is not based on CODEX STAN 1-1985, but rather conflicts with it.

E. The COOL Measure is Inconsistent with Articles 12.1 and 12.3 of the TBT Agreement

180. With respect to Mexico's claim under Article 12 of the TBT Agreement, the United States argues that developing country Members were given ample opportunity to participate in the development of the 2009 Final Rule, as well as the FSIS Rule.⁹⁴ The United States argues that it took into account the concerns of numerous interested parties, including those of the complaining parties in this dispute, while developing the 2002 COOL Statute, as amended, and the implementing regulations, and has made every effort to apply the measures in a manner that minimizes burdens, including on developing countries.⁹⁵

181. While it is true that the United States gave some opportunity to Mexico to comment on the development of the 2009 Final Rule (although with no positive results for Mexico), it is clearly not true that the United States gave Mexico the opportunity to participate in the development of the 2002 Farm Bill. This means that Mexico was able to provide comments to the United States only after the 2002 Farm Bill was approved and the rules were already created.⁹⁶

182. Therefore, the only opportunity that Mexico had to provide comments was when the COOL provisions were already established and only needed to be implemented. At that point,

⁹³ Mexico's First Written Submission, paragraph 101.

⁹⁴ U.S. First Written Submission, paragraph 131.

⁹⁵ U.S. First Written Submission, paragraph 131.

⁹⁶ See the following minutes from the Meetings of the WTO's Committee on Technical Barriers to Trade: G/TBT/M/27, paragraphs 19-20, G/TBT/M/29, paragraphs 23- 25, G/TBT/M/29, paragraph 34 , G/TBT/M/30, paragraphs 40-42. See also: G/TBT/M/35, G/TBT/M/42, G/TBT/M/43, G/TBT/M/46, G/TBT/M/47, G/TBT/M/49.

there was little flexibility in the measure, and thus, contrary to Article 12 of the TBT Agreement, the United States did not take into account the special development, financial and trade needs of Mexico as a developing country in the formulation of the 2002 Farm Bill, and thus, in the formulation of the country of origin provisions and the rules for labeling meat products.

183. Mexico has elaborated upon its claims under Article 12 in its response to Question 82 of the Panel. In that response, Mexico summarized the type of evidence that the US would have to present in order to show that it “took into account” Mexico’s special needs:

- Evidence that the United States has “looked at attentively”, “reflected on”, or “weighed the merits of” the special development, financial and trade needs of Mexico and not merely received evidence and taken notice of those needs. Evidence that, in undertaking these steps, the United States has made certain that the COOL measure does not create unnecessary obstacles to exports from Mexico.
- Public comments during the preparation process of the COOL Measure made Congress and the USDA cognizant of the possible negative effects on Mexican exports. Neither Congress nor the USDA responded to these comments. This failure to respond is demonstrative of a lack of compliance with Article 12.3.
- U.S. domestic law provides an example of the steps required to properly “take into account” special needs. The Regulatory Flexibility Act (RFA) requires U.S. agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize the impact, and make their analyses available for public comment. The purpose of the RFA is essentially the same as Article 12.3, i.e., to be sure that regulatory actions (RFA) or measures (Article 12.3) take into account the special needs of small businesses (RFA) or developing countries (Article 12.3).
- Mexico suggests that evidence that the “special needs” referred to in Article 12.3 have been taken into account would require a showing that consideration was given to the following: (1) how the measure may impact developing countries; (2) steps considered/taken to minimize the impact of the measure on developing countries; (3) a discussion of less onerous alternatives considered, and reasons for not adopting them. Mexico further suggests that the above must be in writing, to ensure transparency, and to ensure that a Member did “take into account” the special needs of developing countries when promulgating a TBT measure.

184. There is no evidence that the United States took any of these actions.

F. GATT Article X:3(a)

185. The administration of the COOL measure has been characterized by shifts in interpretation and guidance by USDA on its implementation of the statutory and regulatory provisions, as reflected in USDA’s guidelines, non-public pressure by the U.S. government of individual companies, and the Vilsack letter. The final interpretation by USDA was both partial (favoring U.S. producers of cow-calves) and unreasonable.

186. The nature of the inconsistent and unreasonable administration is described in an article in *Farm and Dairy* dated September 30, 2008, which stated:

The latest brouhaha stems from the USDA's interpretation of COOL.

The USDA's Agricultural Marketing Service issued guidance Sept. 11 that said meat products from livestock "born, raised and slaughtered in the United States" can be labeled as "mixed origin," or as products from the U.S., Canada and Mexico.

That led to the announcement by several large beef packers of their intent to label all beef products under the multiple products category, such as "Product of the United States, Canada and Mexico," ignoring the exclusively U.S. born, raised and processed category. And that, some say, was the whole point of country-of-origin labeling in the first place.

Packers and processors said they simply don't have the physical capacity to segregate those animals in the handling and processing steps.⁹⁷

187. This guidance by USDA is contained in Canada's Exhibit 29, which was a list of "frequently asked questions" published by USDA. The specific guidance at issue was as follows:

Q. Can a retailer, like a meat packer, declare the origin of meat products derived from livestock born, raised, and slaughtered in the United States (i.e., Product of USA) as a mixed origin label such as Product of the United States, Canada, and Mexico?

A. Yes. Retailers are permitted to market U.S. produced meat products under a mixed origin label declaration.⁹⁸

188. As described in Mexico's First Written Submission at paragraph 258, USDA later reversed course and privately contacted major US. processors such as Tyson to tell them not to use mixed origin labels. USDA later issued the Vilsack letter to put more pressure on the industry, by stating that processors and retailers should "voluntarily" adopt additional burdens if they used a multiple country of origin label (B or C); this made obvious that USDA preferred that labels B and C not be used at all. The continuing changes in USDA policy – first indicating that mixed origin labels were permissible, then discouraging them – significantly contributed to the disruptions experienced by the Mexican industry. It is also evidence of unreasonable, arbitrary administration of the law, as USDA's change in position was made in reaction to political pressure motivated by protectionism.

189. Plainly, the COOL measure has not been administered in a uniform, impartial and reasonable manner, contrary to the obligation of GATT Article X.3(a).

⁹⁷ Farm and Dairy, "Country-of-origin labeling rule gets chilly reception", available at <http://www.farmanddairy.com/news/country-of-origin-labeling-rule-gets-chilly-reception/10250.html>. Exhibit MEX-83.

⁹⁸ Exhibit CDA-29, p. 7.

**G. Non-Violation Nullification or Impairment under GATT Article
XXIII:1(b)**

190. As explained in Mexico's response to Question 88 of the Panel, tariff concessions made by the United States and inscribed in its WTO tariff schedule are being nullified or impaired under Article XXIII:1(b) of the GATT 1994.⁹⁹

191. The U.S. bound tariff is 1 cent per kilogram,¹⁰⁰ which is about \$1.36 to \$1.81 for a 300 to 400 pound animal. Based on this WTO tariff binding, Mexico could legitimately expect that its cattle would have a competitive disadvantage of \$1.36 to \$1.81 per animal compared to like US products. The actual price discount created by the COOL measure has been up to \$60 for the same 300-400 pound animal. The competitive disadvantage or level of protection reflected in this price discount vastly exceeds Mexico's legitimate expectation of \$1.36 to \$1.81 per animal.

192. Thus, the COOL measure nullifies or impairs benefits accruing to Mexico under the WTO tariff bindings of the United States.

193. The United States argues that Mexico could have reasonably anticipated that the United States would enact the COOL measure's origin labeling requirements for meat products, citing to prior proposed legislation dating back to the 1960s.¹⁰¹ Even assuming that such proposed legislation is relevant to the determination of whether a measure should have been "reasonably anticipated" (it is not), Mexico observes that none of the legislative proposals submitted by the United States included the born/raised/slaughtered origin rule for meat products. Rather, those proposals involved general requirements for origin labeling, which are unrelated to Mexico's claims in this proceeding.¹⁰²

194. In summary, Mexico has demonstrated with sufficient evidence that the benefits provided to its imports of livestock to the US under the relevant tariff concessions have been nullified or impaired.

V. CONCLUSIONS

195. On the basis of the foregoing, Mexico requests that the Panel find that the COOL measure is inconsistent with Articles III:4, X:3 and XXIII:1(b) of the GATT 1994 and Articles 2.1, 2.2, 2.4 and 12 of the TBT Agreement and make such recommendations that are necessary for the United States to bring itself into conformity with these provisions.

⁹⁹ This is discussed in Mexico's oral statement at the first substantive meeting of the panel.

¹⁰⁰ Exhibit MEX- 84.

¹⁰¹ U.S. First Written Submission, paragraph 309.

¹⁰² In support of its argument that Mexico should have expected the COOL measure, the United States cites to an exhibit submitted by Canada (Exhibit CDA-9), which is an early version of the COOL measure itself that was proposed in 1999, just three years before the COOL measure was enacted.

List of Exhibits

Number	Title
MEX-85	Washington Trade Daily Report, March 10, 2009.
MEX-86	Wendy's Arby's Group Inc Advertisement.
MEX-87	U.S. Customs and Border Protection, Notice of Proposed Rulemaking, Uniform Rules of Origin for Imported Merchandise, 73 Fed. Reg. 43385, 43386 (July 25, 2008).
MEX-88	Dermot J.Hayes and Steve R. Meyer, "Impact of Mandatory Country of Origin Labeling on U.S. pork Exports".
MEX-89	107 th Cong. Rec. H2033 (daily ed. May 2, 2002) (Statement by Hon. Mr. Lucas from Oklahoma).
MEX-90	107 th Cong. Rec. H2055 (daily ed. May 2, 2002) (Statement by Hon. Mr. Kolbe).
MEX-91	107 th Cong. Rec. S3998 (daily ed. May 8, 2002) (Statement by Hon. Tim Johnson).
MEX-92	107 th Cong. Rec. S4022 (daily ed. May 8, 2002) (Statement by Hon. Mr. Inouye).
MEX-93	107 th Cong. Rec. S4043 (daily ed. May 8, 2002) (Statement by Hon. Mr. Wyden)
MEX-94	Hearing before the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, July 24, 2001 (Statement by Mr. Dennis McDonald from R-CALF).
MEX-95	R-CALF letter from 27 Cattle Associations to members of the U.S. Congress. (2001)
MEX-96	Hearing before the Subcommittee on Livestock, Dairy, and Poultry of the Committee on Agriculture, U.S. House of Representatives, April 17, 2007 (Statement of Tom Buis, President of the National Farmers Union).
MEX-97	BCI Second affidavit from CNOG (Confederación Nacional de Organizaciones Ganaderas).