

BEFORE THE WORLD TRADE ORGANIZATION

UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING REQUIREMENTS

(DS386)



**OPENING STATEMENT OF MEXICO
AT THE SECOND MEETING WITH THE PANEL**

Geneva

1st December 2010

I. Introduction

Mr. Chairman, Members of the Panel:

1. On behalf of the Mexican delegation, it is again our privilege to appear before you today to present the views of Mexico concerning this dispute. I would like to thank you for your efforts and flexibility in extensions for filing documents. I also would like to thank the Secretariat staff and interpreters in preparing for this second substantive meeting of this Panel.
2. We are here to draw the line between legitimate consumer information and plain protectionism. This is an attempt by the US to disguise a restriction on trade as a consumer information measure. If the US were serious about consumer information it would have implemented a system that would accurately provide information to consumers without ambiguity and without upsetting the balance of competitive opportunities between imported and like domestic cattle.
3. My statements today will focus on certain key points relating to Mexico's case.
4. I would like to emphasize the importance of this dispute to Mexico. Mexico has a competitive advantage in the production of feeder cattle and an efficient and competitive industry has developed in this sector. For decades, Mexican cattle exports were fully integrated into the U.S. market and were commingled with U.S. cattle at all of the production stages. The COOL measure changed this. It has broken this economic integration and has adversely affected Mexican cattle and, therefore, the Mexican industry. The principal effect of the COOL measure has been its adverse effects on the conditions of competition of Mexican cattle compared to like U.S. cattle.
5. As explained in Mexico's second written submission, the COOL measure is made up of statutory provisions, regulations and administrative guidance, all of which Mexico is challenging as a single measure. Each component is dependent upon others, starting with the COOL statutory provisions.
6. The United States has raised the point that many other country of origin labeling measures are in place by other WTO Members and argues that if the Panel finds that the U.S. COOL measure is inconsistent with WTO rules, it will undermine the measures in these other Members. This argument has no merit. As explained in Mexico's second written submission, the scope of Mexico's challenge is narrow and relates to the

specific measure and circumstances of this dispute. This dispute concerns an internal measure that discourages the use of imported inputs, specifically Mexican feeder cattle, to produce domestic U.S. beef products.

7. Non-tariff measures such as the COOL measure are particularly problematic for developing country Members such as Mexico. For this reason, it is important that the Panel carefully review the measure and cumulatively apply, in a strict manner, the WTO provisions raised in Mexico's claims.

8. As Mexico has shown during this proceeding, the COOL measure is inconsistent with the core provisions of the WTO Agreements. First, the COOL measure is inconsistent with national treatment obligation under Article III:4 of the GATT and 2.1 of the TBT Agreement. It constitutes an unnecessary obstacle to trade in violation of Article 2.2. of the TBT Agreement. The COOL measure is also inconsistent with Article 2.4 and 12 of the TBT Agreement and nullifies and impairs benefits accruing to Mexico under the GATT 1994, within the meaning of Article XXIII:1(b) of the GATT 1994.

9. As explained in Mexico's second written submission, Mexico requests that the Panel rule on each of Mexico's claims and avoid the exercise of judicial economy. This is necessary to achieve a satisfactory resolution of this dispute.

II. Mexico's *De Facto* Discrimination Claims under Article III:4 of the GATT 1994 and Article 2.1 of the TBT Agreement

10. The WTO-inconsistent nature of the COOL measure is most apparent in the *de facto* discrimination it creates against imports of Mexican cattle.

A. Less Favourable Treatment

11. The United States argues that Mexico and Canada misinterpret the meaning of past WTO Reports, in particular the Appellate Body reports in *Korea – Beef* and *Dominican Republic - Cigarettes*. Contrary to the U.S. assertions, these reports support Mexico's claims.

12. Mexico is citing these reports for two principles. First, whether or not imported products are treated less favourably than like domestic products should be assessed by examining whether a measure modifies the *conditions of competition* in the relevant market to the detriment of imported products. Second, that a measure accords less favourable treatment to imported products if it gives domestic like products a

competitive advantage in the market over imported like products. Mexico also observes that the facts in *Korea – Beef* are similar to this dispute insofar as the effect of the COOL measure is to restrict Mexican born cattle access to the normal distribution chain which, under the COOL measure, is the exclusive Label “A” distribution chain which I will be discussing later in my presentation.

13. As a direct result of the COOL measure, the conditions of competition in the relevant market have been modified to the detriment of imported Mexican cattle in the following ways:

- reduction in processing plants accepting Mexican cattle;
- reduction in the number of days per week Mexican cattle are processed;
- reduction in backgrounders and feedlots that will accept Mexican cattle; and
- additional requirements imposed on Mexican cattle in the form of advanced notification requirements for processing.

14. The COOL measure has also caused U.S. packing plants to reduce the price paid for fed cattle that were born in Mexico and raised in the United States, by means of applying a discount to the purchase price. This discount continues, as evidenced by the packing plant invoices from July and August of this year included in BCI Exhibit MEX-97.

15. The United States has plainly failed to rebut these key facts.

16. The United States argues that Mexico has not proven that the number of plants accepting Mexican cattle have been reduced from 24 to 3.¹ To clarify, Mexico’s position is that only 3 out of the 24 slaughtering operations of the major packing companies (Tyson, JBS and Cargill) are currently taking Mexican born cattle.² This fact is established in Mexico’s first written submission.³ Given the integrated nature of the North American cattle market, it is not possible for Mexico to definitively prove exactly how many plants outside of the three major packing companies accepted Mexican cattle prior to the COOL measure. This is because Mexican cattle were sold at a very early

¹ Mexico, First Written Submission, paragraph 157; US, Second Written Submission, paragraph 67 and footnote 96.

² Mexico’s Response to Questions of the Panel, paragraph 100.

³ Mexico, First Written Submission, Paragraph 157; Mexico (BCI) Exhibit Mex-37.

stage and traded freely within the U.S. market, mixed with U.S. cattle and processed together with U.S. cattle at the most geographically accessible plants. The evidence indicates that prior to the COOL measure, Mexican cattle were indeed shipped as far as Washington State and Idaho.⁴ While it is not possible to confirm exact numbers, what is clear on the evidence is that the number of plants processing Mexican cattle has declined substantially. The United States has identified an additional plant belonging to a non-major packing company that appears to process Mexican cattle.⁵ However, this evidence does not undermine the *prima facie* evidence Mexico has presented on this factual point.

17. Today in paragraph 29 of its Oral Statement, the United States affirms that Mexico has presented only “*anecdotal evidence*” to substantiate its claims. Contrary of the United States’ assertion, Mexico has filed *positive evidence* in the following manner: (i) Current invoices under the BCI Exhibit MEX-97; (ii) Affidavits provided by the Mexican industry in BCI Exhibits MEX-37 and MEX-97; (iii) Documentary evidence from packers and U.S. processors that are contained in Exhibits MEX-33, MEX-42, MEX-46, MEX-64 and MEX-67.

18. These are the factors that demonstrate how the COOL measure has disrupted the integrated North American market for cattle and the conditions of competition within that market to the detriment of Mexican cattle. U.S. “like” cattle have *not* faced a reduction in processing plants, processing days, backgrounders, and feedlots. They have not faced additional requirements such as advanced notification requirements. Finally, they have not faced the COOL discount.

19. The United States also argues that there are many factors other than the COOL measure that are affecting price and trade volumes of Mexican cattle. Mexico acknowledges these other factors; however, they are relevant to “trade effects” but irrelevant to the assessment of “conditions of competition”. It is not necessary for Mexico to demonstrate adverse trade effects in order for its discrimination claims to succeed. Rather, Mexico need only demonstrate that the measure modifies the conditions of competition in the relevant market to the detriment of imported products. Mexico has clearly done so.

⁴ Exhibit Mex-34.

⁵ BCI Exhibit US-102

B. Segregation

20. The United States argues that Mexico has not proven that the COOL measure requires segregation. Mexico's discrimination claims are based on the modification of the conditions of competition as I have described. Segregation is one of the factors created by the COOL measure that leads to the modification of the conditions of competition that Mexico complains of.

21. Although segregation is not explicitly required by the COOL measure, in practice it is necessary for the industry to comply with the measure. In other words, it is inherent in the measure. Mexico has presented *prima facie* evidence demonstrating that segregation exists as a consequence of the COOL measure:

- a) In light of how the COOL measure is structured and designed, as a practical matter there is no way to comply with the measure without segregating. The COOL measure requires industry participants to be able to identify and document the origin of the cattle they are producing, buying, feeding and processing, and the origin of the meat they are distributing and selling. The COOL measure requires participants to have this information but prohibits the implementation of any U.S. origin cattle tracing system. Therefore, the industry participants have to identify the cattle with the documentation used in the normal course of business. As a practical matter, the economically and commercially rational way to comply with the measure is by segregating the cattle that were not born in the United States.
- b) USDA has recognized that segregation is a necessary means to comply with the COOL measure. It created guidelines and recommendations indicating that, in order to comply with COOL, segregation is necessary. As Mexico has shown in Exhibit MEX – 41, one element recommended by USDA to comply with the COOL measures is a “*segregation plan*” which is listed for each of the six categories of market participants, from the cow-calf operator to the distributor.
- c) U.S. packing companies are segregating in order to comply with the COOL measure as demonstrated in the evidence provided by Mexico concerning the actions of one of the major U.S. packing companies.⁶

⁶ See Exhibit MEX-33 and MEX 64.

- d) Studies show that segregation is required in order to comply with the COOL measure.⁷

22. The United States asserts that the COOL measure does not require segregation. It attempts to support its assertion by pointing to 4 different options which, in its view, show that it is possible to avoid segregating cattle during processing into muscle cuts of beef. Its assertion is without merit for the following reasons:

- a) The first option presented by the United States is that U.S. slaughterhouses could process only livestock of domestic origin. This option inherently involves segregation because it excludes non-U.S. origin cattle from the processing stream and thereby segregates that source completely. If all U.S. processors adopted this option it would mean that Mexico would have to stop exporting cattle to the United States. Indeed, a number of U.S. plants have taken this option, thereby preventing Mexican cattle from being freely processed in all the slaughterhouses in the United States. This is precisely the type of result that the WTO rules protect against.
- b) The second option presented by the United States is that slaughterhouses could process livestock of exclusively mixed non-U.S. origin. Mexico assumes this refers to livestock such as those from Mexico that are born outside of the United States but raised, slaughtered and processed within the United States. This option is not economically feasible because, as the United States has acknowledged, the number of cattle exported from Mexico to the United States compared to the number of cattle grown for slaughter in the United States is small.
- c) The third option is that slaughterhouses could use the commingling provisions and process domestic and mixed non-U.S. origin livestock on the same production day. Even though a slaughterhouse could agree on using label “B” only, it would still need to segregate the input stream in order to make sure that at least one Mexican born animal was commingled during a single production day with at least one U.S. born animal.

⁷ See e.g. Exhibit MEX-58, Exhibit CDA-117.

- d) Under the final option, the slaughterhouses could process domestic and mixed origin livestock on separate days. This option inherently involves segregation in the sense that different origins are segregated by day of processing.

23. Thus, it is clear that segregation in some form is required by the COOL measure.

C. The Costs of Compliance with COOL can be Minimized by using U.S. Born Cattle Only

24. The United States further argues that “a quick comparison” of the four options presented by the United States will “show that the cost of processing only U.S. origin livestock is not significantly different from the cost of complying with COOL by other means that also do not require segregation”.⁸ This is incorrect.

25. Segregation inherently represents compliance costs, and meat processors can minimize the costs of compliance by using U.S. born cattle only. Although processing solely Mexican born animals could also help avoid costs of compliance, as I have explained, this option is not feasible due to the small volume of Mexican cattle entering the U.S. market.

26. Regarding the U.S. arguments that commingling avoids segregation, as explained above, even if slaughterhouses use the commingling rules, they need to segregate to be certain that they are complying with the rules and therefore must bear the attendant segregation costs.

27. Finally, the U.S. argument that processing cattle from different origins during different days does not result in additional costs is simply wrong. This requires the packing plant to segregate in order to identify the cattle and also the feedlot to segregate and gather animals from the same weight and the same origin.

D. The Increase of Exports of Mexican Cattle Relative to the Previous Year Does not Eliminate the Described Effects of the COOL Measure

28. The United States refers to the recent increase in exports of Mexican cattle to the U.S. as evidence that the COOL measure is not having discriminatory or trade restrictive effects. This is factually incorrect and legally irrelevant to Mexico’s claims.

⁸ United States, Second Written Submission, paragraph 45.

29. Increased exports to the U.S. have been due to factors such as general supply and demand conditions in the U.S. market. However, the modification of conditions of competition that Mexico has described continues. But for the COOL measure, the volume and selling prices of Mexican cattle to the U.S. would be even higher.

30. It is not necessary for Mexico's claims to demonstrate adverse trade effects. It only needs to demonstrate that the conditions of competition have been modified by the COOL measure. Mexico has done this.

E. Actions of Private Parties

31. The United States argues that it is not the COOL measure that is causing the problems facing Mexican cattle but, rather, the actions of private participants in the U.S. market. The United States cites the Appellate Body report in *Korea – Beef* as authority for its position that the COOL measure is not violating the non-discrimination obligations in Articles III:4 of the GATT 1994 and 2.1 of the TBT Agreement.

32. In making this argument, the United States misinterprets and misapplies the Appellate Body's reasoning in *Korea – Beef*.

33. The Appellate Body stated 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”.⁹ The Appellate Body further elaborated as follows:

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. [...] [T]he 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.

34. In this dispute, the necessity of U.S. market participants to take action to reduce the number of plants processing Mexican cattle, reduce the number of processing days, reduce the number of backgrounders and feedlots that will accept Mexican cattle and

⁹ Appellate Body Report, *Korea – Various Measures of Beef*, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, paragraph 149.

impose additional requirements such as advance notice is imposed by the COOL measure itself. If not for the COOL measure, these actions would not have taken place.

35. Thus, it is clear that it is the measure and not private choice that is modifying the conditions of competition.

F. Origin Neutral Measures

36. The United States argues that the COOL measure is origin neutral. In support of its argument, it cites as authority the Appellate Body report in *Dominican Republic – Cigarettes*.

37. First, in *Dominican Republic – Cigarettes* the Appellate Body was of the view that the mere fact that some cigarettes produced by two domestic producers were advantaged by the effect of the measure compared to the cigarettes carried by one importer was not sufficient to establish less favourable treatment. In the current dispute the discriminatory effect is not between certain producers and importers but on the group of Mexican products overall (i.e., Mexican cattle) compared to the group of like U.S. products (i.e., U.S. cattle). Second, in *Dominican Republic – Cigarettes* the Appellate Body was of the view that the “mere demonstration that the per-unit cost of the bond required for imported cigarettes was higher” was not sufficient because this difference was explained by the smaller market share of the importer, a fact that did not depend on the foreign origin of the product. To take the Appellate Body’s reasoning further, on the facts as they were presented, it would not matter from which country the “importer”, or more generically the re-seller, purchased the cigarettes (e.g., domestic or foreign or which foreign country) because the alleged adverse effect related solely to the volume of cigarettes carried by the importer/re-seller.

38. The discrimination in this dispute, however, does not depend on the characteristics of individual importers but, rather, on the origin of the cattle. To continue the *Dominican Republic – Cigarettes* example, in this dispute *it does matter* from which country the importer/re-seller purchased the cattle.

39. It is notable that the examples that the United States presents of pre-COOL segregation (i.e., USDA grade labels, private premium label programs, export market programs and animal production and label programs) are origin neutral in the sense that it does not matter what the origin of the cattle or beef is because the labels are based on the product characteristics of the beef rather than its origin. By contrast, the COOL

measure is *not* origin neutral. The origin of the cattle is precisely what the COOL measure is about.

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

A. Introduction

40. The United States has not raised any new arguments regarding Mexico's claim under Article 2.2 of the TBT Agreement. I will address a few points that the United States has elaborated upon in its second written submission and in its responses to questions from the Panel.

B. The Evidence Presented by the United States About Consumers Demanding Country of Origin Information does not Support the United States' Arguments

41. The United States presents as evidence comments from individual consumers indicating their desire to know the origin of the food that they buy. However, the evidence presented does not support the United States' arguments.

42. The vast majority of the statements presented by the United States relate to country of origin in general that is for fruits, vegetables and meat products, and not for the specific origin rules created by the United States for meat products, and, specifically not for the origin of the input used to produce the meat. Thus, in the narrow context of the subject matter of this dispute, they cannot be used to justify the COOL measure.

43. All the statements introduced by the United States were made after the creation of the 2002 Farm Bill, so they do not serve as evidence of the reasons why the U.S. government created the COOL measure. The COOL measure was in place prior to these comments being made rather than the statements being made prior to the COOL measure.

44. The Panel should disregard the United States' evidence on consumer perceptions to the extent that such evidence relates to statements made after the COOL measure was enacted.

45. In *EC – Sardines* the panel 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 same regulatory intervention on the basis of governmentally created consumer expectations.¹⁰

46. By its very nature, the introduction of the COOL measure in the 2002 Farm Bill and the discussions concerning that measure would have shaped consumer expectations and perceptions to reflect the attributes of the COOL measure rather than the expectations and perceptions that would exist in the absence of the measure.

47. The U.S. claim that consumer's interest in knowing where the cattle were born drove the creation of COOL is not supported by the evidence. The evidence presented by Mexico clearly shows that the intent of the measure was to protect U.S. ranchers and cattle producers with the political cover of providing information to the consumer at the retail level.

48. Finally, the consumer poll referred to by the U.S. does not represent a reliable source to demonstrate what consumers want in the context of this dispute. The question used in the poll refers to "a cow [...] born and raised in Mexico, and then sent to the U.S. to be fattened for two months, slaughtered and sold" refers to a factual situation that is hypothetical and that does not exist in the real world.¹¹ Mexican calves weighing approximately 300 pounds are exported to the United States where they are raised for 10 to 12 months until they attain a weight of approximately 1200 pounds.¹²

C. The COOL Measure does not Fulfill the Stated Objective of the United States and Instead Fulfill's a Protectionist Objective

49. As addressed in detail in Mexico's written submissions and responses to questions from the Panel, the objective of the COOL measure is protectionist and is not legitimate.

50. If the Panel finds that the objective of the measure is legitimate, the COOL measure does not fulfill that objective. The stated objective of the measure is providing consumer information and preventing consumer confusion. The COOL measure does not achieve this. Rather, it misleads consumers when labels other than the "A" label are used.

¹⁰ 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.

¹¹ Exhibit US-138.

¹² Mexico, First Written Submission, paragraphs 137-143.

51. In the case of Mexico, it misleads the consumer when label B (Product of the United States and Mexico) is used. The most diligent consumer will never know that the meat labeled as “B” was produced in the United States from an animal that (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 for 4-5 months in the same grasslands on which cattle born in the United States are fed, (iii) was sent thereafter for 6-7 months 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. Meat labeled as “B” could also be label “A” meat that is commingled with label “B” meat, further confusing the consumer.

52. The United States refers in paragraph 42 a) of its Oral Statement, to the ability of U.S. producers to distinguish their products for their quality. This assertion is without merit. The beef produced from cattle that was born in Mexico, has identical quality from beef produced from a cattle that was born in the United States. The Mexican and U.S. cattle are genetically identical. The cattle that was born in Mexico is raised in the United States and the meat products at issue are all produced by U.S. processors.

53. The only label giving accurate information to the consumer is label “A” (i.e. meat derived from animals exclusively born, raised and slaughtered in the United States, and not commingled). The United States argues that the COOL measure fulfills its stated objective of consumer information at the level it considers appropriate. However, the level it considers appropriate is the level that will allow the United States to achieve its protectionist objective by isolating label “A” beef and maximizing production under that label (i.e., maximizing production of beef from U.S. born animals).

D. Mexico has Presented at Least Three Reasonably Available Alternatives

54. Mexico has identified three less trade restrictive alternatives that fulfill any legitimate consumer information objective.

1. Voluntary Labeling is a Reasonably Available Alternative

55. The first alternative is voluntary country of origin labeling of meat, with the strict COOL “born, raised and slaughtered” rule. Although this alternative will satisfy

consumers who are interested in this information, it is not accepted by the United States because in the view of the United States it will not be sufficiently adopted by participants in the U.S. market. It is notable that this alternative will transfer the costs of the labeling to their domestic industries (which might be willing to absorb the cost of the labeling if the consumers would pay for that information), and their consumers (which the United States believes are not sufficiently interested in the information to pay for it).

2. Labeling Based on Substantial Transformation is a Reasonably Available Alternative

56. The second alternative is mandatory labeling for meat which follows the normal substantial transformation rule that is applied by the United States to imported beef. The benefit to the United States of this alternative is that it can be a mandatory measure that does not depend on voluntary implementation in the U.S. market. This alternative is apparently not acceptable to the United States because it would not target meat based on where the animal was born. In other words, it would not support the protectionist element of the COOL measure, i.e., favour U.S. cattle producers.

3. A Real Traceback System is a Reasonably Available Alternative

57. The third alternative is a tracing system that should ensure tracking from the farm where the animal was born to the table where the meat is consumed. Since such a measure tracks cattle based on the farm on which they originate, it does not discriminate based on national origin. There is no incentive under such a system to reduce access for Mexican cattle in the distribution stream because such an action would not reduce compliance costs. The same costs will have to be incurred irrespective of the country of origin of the cattle.

58. However, the United States cattle producers, which strongly support the COOL measure, have strongly opposed a tracing system that would create equal costs to every participant, instead of creating a disproportionate cost on Mexican cattle.

IV. The COOL Measure is Inconsistent With Article 2.4 of the TBT Agreement

59. The COOL measure is inconsistent with Article 2.4 because it is not based on the relevant international standard that is both effective and appropriate for the purpose of informing consumers about the country of origin of the product at issue.

60. The United States argues that some meat sold in U.S. stores is not prepackaged. But it offers no defense to the fact that the Codex standard applies to the prepackaged meat products that compose most of the meat sales by large grocery stores. Indeed, all the labels you have seen are on pre-packaged meat products.

61. The very purpose of the Codex standard is to avoid deception and confusion for consumers, which the United States says is the purpose of the COOL measure. The United States has not explained why the substantial transformation rule is not effective or appropriate for the purpose of informing the country of origin of meat produced in the United States. Clearly, however, it is only protectionism that cannot be achieved by applying the CODEX international standard..

V. The COOL Measure is Inconsistent with Article 12.3 of the TBT Agreement

62. Contrary to the U.S. assertions, it did not take into account Mexico's special financial and trade needs as a developing country as required by Article 12.3.

63. The United States did not notify or give any opportunity to Mexico to participate in the drafting of the COOL Measure (i.e., in the drafting of the 2002 Farm Bill). Only after the COOL Measure was approved by the U.S. Congress, signed by the President and was ready to be implemented, was Mexico able to provide comments to the United States. Therefore, the opportunity for Mexico to comment and request the United States to take into account its special needs as a developing country was only after the enactment into law of the COOL Measure. This situation cannot amount to compliance with Article 12.3 of the TBT Agreement.

64. Also, as explained by Mexico, the United States did not undertake any discernible effort to take into account Mexico's special needs as a developing country in the creation of the COOL Measure. It is not enough in order to comply with TBT Article 12.3 to simply let a country express itself through meetings, letters and statements. In this case, Mexico is not arguing that the U.S. did not permit comments from Mexico or did not allow Mexico to make a formal statement of this issue in an official meeting. Rather, the issue is that the U.S. did not take seriously the special needs of Mexico as a developing country in accordance with Article 12.3 of the TBT Agreement. It is Mexico's position that the United States was obligated to make a serious effort to take into account Mexico's special needs. The United States did not meet this obligation.

VI. The COOL Measure is Inconsistent with Article X:3 of the GATT 1994

65. The United States argues that the COOL Measure is not in breach of Article X:3, and focuses on the Vilsack letter and the development of the 2009 Final Rule, claiming that neither put the COOL Measure into practical effect. The United States ignores the evidence put forward by Mexico that USDA pressured U.S. processors not to commingle U.S. cattle with imported cattle.

66. The United States is wrong in its interpretation of “administration” under Article X:3.

67. The continuing change in the criteria expressed by the USDA with regard to the compliance with the COOL measures, which included but was not limited to the issuance of the Vilsack letter, are clear examples of a measure that is not administered in a reasonable and predictable manner within the meaning of GATT Article X:3.

68. Mexico does not see how those actions taken for purposes of the administration of the measure cannot be considered as part of the administration of the measure.

VII. The COOL Measure Nullifies or Impairs Benefits Accruing to Mexico within the Meaning of Article XXIII:1(b) of the GATT 1994

69. The United States argues that Mexico has failed to identify a relevant benefit under the covered agreement and to demonstrate that they could not have reasonably anticipated the COOL Measure at the time that the WTO tariff concessions were negotiated.

70. As already explained, although Mexico and the United States are NAFTA partners and extend different tariff rates to each other than they do to most other WTO Members, the nullification or impairment not only exceeds the NAFTA tariff but also the WTO tariff, and thus, nullifies and impairs benefits under the covered agreements.

71. Also, contrary to the U.S. arguments, none of the previous initiatives presented by the United States demonstrates that Mexico, after years of trade in cattle with the United States, could have expected a rule that would require the labeling of the meat derived from cattle born in Mexico, but raised and slaughtered in the United States as “Product of the United States and Mexico”, and the consequences derived from that rule. A reasonable assessment of the facts demonstrated that Mexico could have not expected such rule, and the consequences of compliance with such rule.

VIII. Conclusion

72. During this dispute Mexico has presented a *prima facie* case that demonstrates that the COOL measure is a protectionist measure that is inconsistent with core provisions of the WTO.

73. The COOL measure also constitutes an unnecessary obstacle to international trade in cattle between Mexico and the U.S. The United States has tried to justify its measure arguing that is aimed at providing additional information to consumers at the retail level and at alleviating consumer confusion about the origin of the meat that they buy in a retail store. The U.S. has plainly failed to justify its measure and it has failed to rebut Mexico's case.

74. Mr. Chairman and Members of the panel, for the reasons I have outlined and the arguments presented in our written submissions, Mexico respectfully requests that the Panel find that the COOL measure:

- Is inconsistent with Article III:4 of the GATT 1994 and Article 2.1. of the TBT Agreement;
- Is inconsistent with Articles 2.2., 2.4, 12.1 and 12.3 of the TBT Agreement;
- Is inconsistent with Article X:3 of the GATT 1994; and
- Nullifies and impairs benefits accruing to Mexico under the GATT 1994 within the meaning of Article XXIII:1(b).

75. This concludes our opening statement. We would be pleased to respond to any questions that the Panel may have.
