

MISIÓN PERMANENTE DE MÉXICO ANTE LA
ORGANIZACIÓN MUNDIAL DEL COMERCIO
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SECRETARÍA
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March 28, 2012
OF/OMC/19/12

Mr. Werner Zdouc
Director
Appellate Body Secretariat
World Trade Organization
Centre William Rappard
154 rue de Lausanne
1211 Geneva 21

Re: *United States – Certain Country of Origin Labelling (COOL) Requirements*
(WT/DS386)

Dear Mr. Zdouc:

1. Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Rule 23(1) of the *Working Procedures for Appellate Review*, the United Mexican States (“Mexico”) hereby notifies its decision to appeal to the Appellate Body certain issues of law and certain legal interpretations developed by the Panel in *United States – Certain Country of Origin Labelling (COOL) Requirements* (WT/DS386) (“Panel Report”).

2. Pursuant to Rule 23(2)(c)(ii) of the *Working Procedures for Appellate Review*, this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Mexico’s ability to refer to other paragraphs of the Panel Report in the context of this appeal.

I. CONDITIONAL APPEAL OF THE PANEL’S DECISION TO EXERCISE JUDICIAL ECONOMY WITH RESPECT TO MEXICO’S CLAIMS UNDER ARTICLES III:4 OF THE GATT 1994

3. This appeal is conditional in the event that the Appellate Body overturns the Panel’s finding that the COOL measure is inconsistent with Article 2.1 of the TBT Agreement.

4. If this condition is triggered, Mexico appeals the Panel’s decision to exercise judicial economy in respect of Mexico’s claim under Article III:4 of the GATT 1994¹.

5. The Panel erred in its decision to exercise judicial economy with respect to Mexico’s claims under Article III:4 of the GATT 1994, considering the particular circumstances of this

¹ Panel Report, 7.807, 8.4(a)

case, where, if the Panel's finding on inconsistency of Article 2.1 of the TBT Agreement is overturned, the Panel's legal basis for exercising judicial economy will no longer exist and Mexico will be left with no positive solution to its discrimination claims under Article III:4 of the GATT 1994.

6. As a result of the foregoing error, Mexico requests the Appellate Body to modify the Panel's legal conclusions and findings in paragraph 8.4 (a) and paragraph 7.807 of the Panel Report, complete the analysis of Mexico's claims under Article III:4 of the GATT 1994, and find that the COOL Measure is inconsistent with Article III:4 of the GATT 1994.

II. CONDITIONAL APPEAL OF THE PANEL'S FINDING REGARDING THE IDENTIFICATION OF THE OBJECTIVE PURSUED BY THE COOL MEASURE AND THE EXAMINATION OF ITS LEGITIMACY

7. This appeal is conditional in the event that the Appellate Body overturns the Panel's finding that the COOL measure is inconsistent with Article 2.2.

8. If this condition is triggered, Mexico appeals the Panel's finding that the objective of the COOL measure is to "*provide as much clear and accurate information as possible to consumers*"² and that "*providing consumer information on origin is a legitimate objective within the meaning of Article 2.2*"³.

9. The Panel applied an incorrect legal analysis to determine the objective and, by doing so, it incorrectly identified that objective. Having erred in identifying the objective, the Panel incorrectly found that the objective was legitimate.

10. Moreover, because the legal errors led to the exclusion of relevant facts, the approach is also factually erroneous. In this sense, the Panel failed to make an objective assessment of the matter before it and thereby acted inconsistently with Article 11 of the DSU.

11. As a result of the foregoing errors, Mexico requests the Appellate Body to modify the Panel's legal conclusions and findings in paragraphs 7.620, 7.651, *inter alia*, of the Panel Report, apply the correct analysis to identify the objective and examine its legitimacy, and find that the objective is inconsistent with Article 2.2 of the TBT Agreement.

III. CONDITIONAL APPEAL OF THE PANEL'S DECISION TO EXERCISE JUDICIAL ECONOMY IN RESPECT OF THE EXISTENCE OF AN ALTERNATIVE MEASURE THAT IS LESS TRADE RESTRICTIVE AND THAT FULFILS THE LEGITIMATE OBJECTIVE TAKING INTO ACCOUNT THE RISKS NON-FULFILMENT WOULD CREATE

12. This appeal is conditional in the event that the Appellate Body overturns the Panel's finding that the COOL measure is inconsistent with Article 2.2 of the TBT Agreement.

13. If this condition is triggered, Mexico appeals the Panel's decision to exercise judicial economy in respect of "whether the COOL measure is 'more trade-restrictive than necessary' based on the availability of less trade-restrictive alternative measure that can equally fulfil the identified objective".⁴

14. The Panel erred in its decision to exercise judicial economy in respect to Mexico's claims that the COOL measure is more trade restrictive than necessary. In particular, there are alternative measures that are less trade restrictive and that fulfil the legitimate objective taking into account the risks non-fulfilment would create and, considering the particular circumstances of this case, if the Panel's finding on inconsistency of Article 2.2 of the TBT is overturned, the Panel's legal basis for exercising judicial economy will no longer exist and

² Panel Report, 7.620

³ Panel Report, 7.651

⁴ Panel Report, 7.719

Mexico will be left with no positive solution to its claims under Article 2.2 of the TBT Agreement.

15. As a result of the foregoing error, Mexico requests that the Appellate Body modify the Panel's legal conclusions and findings in the second sentence of paragraph 7.719 of the Panel Report, complete the analysis and find that the COOL measure is inconsistent with Article 2.2 of the TBT agreement.

IV. CONDITIONAL APPEAL OF THE PANEL'S DECISION TO EXERCISE JUDICIAL ECONOMY WITH RESPECT TO MEXICO'S CLAIM OF NON-VIOLATION NULLIFICATION OR IMPAIRMENT UNDER ARTICLE XXIII:1(B) OF THE GATT 1994.

16. This appeal is conditional in the event that the Appellate Body overturns the Panel's findings that the COOL measure is inconsistent with Article 2.1 of the TBT Agreement and does not complete the analysis and find that the measure is inconsistent with Article III:4 of the GATT 1994.

17. If this condition is triggered, Mexico appeals the Panel's decision to exercise judicial economy with respect to Mexico's claim of non-violation nullification or impairment under Article XXIII:1(b) of the GATT 1994⁵.

18. The Panel erred in its decision to exercise judicial economy with respect to Mexico's claim of non-violation nullification or impairment under Article XXIII:1(b) of the GATT 1994, considering the particular circumstances of this case, where, if the Panel's finding on inconsistency of Article 2.1 is overturned and there is not a finding that the measure is inconsistent with Article III:4 of the GATT 1994, the Panel's legal basis for exercising judicial economy will no longer exist and Mexico will be left with no positive solution to its claim of non-violation nullification or impairment under Article XXIII:1(b) of the GATT 1994.

19. As a result of the foregoing error, Mexico requests the Appellate Body to modify the Panel's legal conclusions and findings in paragraph 8.5 and paragraph 7.907, inter alia, of the Panel Report, complete the analysis of Mexico's claim, and find that the COOL measure nullifies or impairs benefits accruing to Mexico under the GATT 1994 within the meaning of Article XXIII:1(b) of the GATT 1994.

20. Pursuant to Rule 23(2)(c) of the *Working Procedures for Appellate Review*, the service address, telephone and facsimile numbers for Mexico are:

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Mexico is providing a copy of this Notice of Other Appeal directly to the United States, Canada and to the third participants.

Yours sincerely

Mr. Fernando de Mateo
 Permanent Mission of Mexico

cc: H.E. Mr. Michael Punke, Permanent Mission of the United States

⁵ Panel Report, 7.907, 8.5

H.E. Mr. John Gero, Permanent Mission of Canada
H.E. Mr. Alberto Pedro D'Alotto, Permanent Mission of Argentina
H.E. Mr. Tim Yeend, Permanent Mission of Australia
H.E. Mr. Roberto Carvalho de Azevêdo, Permanent Mission of Brazil
H.E. Mr. Yi Xiaozhun, Permanent Mission of the People's Republic of China
H.E. Mr. Eduardo Muñoz Gómez, Permanent Mission of Colombia
H.E. Mr. Angelos Pangratis, Permanent Mission of the European Union
H.E. Mr. Eduardo Ernesto Sperisen-Yurt, Permanent Mission of Guatemala
H.E. Mr. Jayant Dasgupta, Permanent Mission of India
H.E. Mr. Yoichi Otabe, Permanent Mission of Japan
H.E. Mr. Park Sang-ki, Permanent Mission of Korea
H.E. Mr. John Adank, Permanent Mission of New Zealand
H.E. Mr. Luz Betty Caballero de Clulow Permanent Mission of Peru
Mr. Yi-fu Lin, Permanent Mission of the Separate Customs Territory of Taiwan,
Penghu, Kinmen and Matsu