

**UNITED STATES – CERTAIN COUNTRY OF ORIGIN
LABELLING REQUIREMENTS**

(WT/DS386)



**Executive Summary of the
First Written Submission of the United Mexican States**

June 23, 2010

I. INTRODUCTION

1. This dispute concerns a mandatory country of origin labeling measure (hereinafter the COOL measure) that is applied in a manner and in circumstances such that it unjustifiably discriminates against and restricts imports of Mexican cattle into the United States.
2. Historically, Mexico has been an important supplier of cattle to the United States and the largest importer of U.S. beef. Mexico and the United States have established an integrated market on this sector.
3. The COOL measure has modified the conditions of competition to the disadvantage of Mexican cattle compared to like U.S. cattle. It has also reduced the export opportunities available to, increased the handling cost of, and reduced the price of Mexican cattle. The COOL measure has resulted in adverse effects to the Mexican cattle industry.
4. The COOL measure is a mandatory internal country of origin labeling measure that, by virtue of its design, structure and application, unjustifiably discriminates against and restricts imports of Mexican cattle into the United States. Its purpose and effect is to protect the U.S. cattle industry and other domestic industries that produce covered commodities against competition with like imported products and it has achieved that purpose and effect in the case of cattle from Mexico.
5. The COOL measure violates the provisions of GATT Article III:4 and X:3 and Articles 2.1, 2.2, 2.4 and 12 of the TBT Agreement, and cannot be justified under other WTO provisions. It also nullifies or impairs benefits accruing to Mexico under the GATT 1994 within the meaning of Article XXIII:1(b) of the GATT 1994.

II. LEGAL BACKGROUND

A. THE MEASURE AT ISSUE

6. The measure at issue in this dispute – the COOL measure – comprises the following legal instruments: (i) the Agricultural Marketing Act of 1946, as amended by the Farm, Security and Rural Investment Act of 2002 (hereinafter Farm Bill 2002) and the Food, Conservation and Energy Act of 2008 (hereinafter Farm Bill 2008); (ii) the Interim Final Rule on Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Gingseng, and Macadamia Nuts; (iii) the Interim Final Rule on Mandatory Country of Origin Labeling of Muscle Cuts of Beef (including Veal), Lamb, Chicken, Goat and Pork, Ground Beef, Ground Lamb, Ground Chicken, Ground Goat, and Ground Pork, and its affirmation; (iv) the Final Rule on Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Gingseng and Macadamia Nuts; (v) the Letter from the United States Secretary of Agriculture, Thomas J. Vilsack, to Industry Representatives; (vi) any modifications, amendments, administrative guidance, directives or policy announcements issued in relations to items i through v above.

B. THE STATUTORY COOL PROVISIONS

1. The Farm Bill 2002 amended the Agricultural Marketing Act of 1946, adding Subtitle D-*Country of Origin Labeling*. The Farm Bill 2008 modified some of the statutory country of origin labeling provisions that were first introduced by the Farm Bill 2002.

The Contents of the Statutory COOL Provisions

2. The main requirement of the statutory COOL provisions is that retailers must notify consumers of the country of origin of the covered commodities.
3. In order for an entity to be considered a “retailer” for purposes of COOL, it must sell perishable agricultural commodities (i.e. fruits and vegetables, including cherries in brine) at a level above a \$230,000 per year threshold. Entities that make sales below the threshold or do not sell any fruits and vegetables are not covered by COOL provisions.
4. The commodities covered by COOL requirements in the statutory provisions are: (i) muscle cuts of beef, lamb and pork, (ii) ground beef, ground lamb and ground pork; (iii) farm raised fish; (iv) wild fish; (v) a

perishable agricultural commodity; (vi) peanuts; (vii) meat produced from goats; (viii) chicken, in whole or in part; (ix) ginseng; (x) pecans; and (xi) macadamia nuts.

5. The statutory provisions exclude from the scope of the COOL requirements those covered commodities used as an ingredient in a further processed food item, and those prepared in a food service establishment.

6. In relation to muscle cuts of beef, the statutory provisions include four labeling rules: (i) U.S. Country of Origin¹; (ii) Multiple Countries Of Origin²; (iii) Imported for Immediate Slaughter³; and Foreign Country of Origin⁴

7. Regarding ground meat, according to the statutory COOL provisions, it must be labeled indicating a list of all countries of origin of such ground meat, or a list of all reasonably possible countries of origin of such ground meat.

8. *Audit Verification System:* The statutory COOL provisions give the U.S. Department of Agriculture (USDA) authority to conduct audits of any person that prepares, stores, handles, or distributes a covered commodity for retail sale.

9. The statutory COOL provisions include specific provisions for audit verification system for suppliers and retailers, informational obligations for suppliers, and its enforcement procedures.

C. THE REGULATIONS

10. On 1 August 2008, the Agricultural Marketing Service (AMS) of the USDA published the interim final rule for covered commodities other than fish and shellfish. On 15 January 2009 the AMS published the final rule for the mandatory country of origin labeling for all covered commodities, which came into effect on 16 March 2009.

The Contents of the Regulations Implementing the Statutory COOL Provisions

11. The U.S. origin for meat was defined in the regulations as the meat derived from animals exclusively born, raised and slaughtered in the United States.

12. The regulations further developed the statutory rule for Multiple Countries of Origin. Muscle cuts with multiple countries of origin “may” be labeled indicating first the United States, and second, the country or countries of foreign origin. Also, if the muscle cut covered commodities derived from animals born in a foreign country, and raised and slaughtered in the United States are commingled in a single production day with animals born raised and slaughtered in the United States, the origin “may” be designated as Product of the United States, Country X, and (as applicable) Country Y.

13. The regulations further developed the statutory rule for Imported for Immediate Slaughter. Muscle cuts derived from animals that were imported for immediate slaughter “shall” be labeled indicating first the country of foreign origin, and second, the United States. Also, if the muscle cut covered commodities derived from animals imported into the United States for immediate slaughter are commingled in a single production day with animals born in a foreign country, and raised and slaughtered in the United States, the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y.

¹ In order for a muscle cut to be labeled as having a U.S. country of origin, it has to derive from (i) an animal exclusively born, raised and slaughtered in the United States; (ii) an animal present in the United States on or before July 15, 2008, or (iii) an animal born and raised in Alaska and Hawaii and transported to the United States through Canada within 60 days.

² Meat derived from an animal that was not exclusively born, raised and slaughtered in the United States, or that was either born, raised or slaughtered in the United States and not imported for immediate slaughter, must be labeled indicating all of the countries in which the animal may have been born, raised, or slaughtered.

³ Meat products derived from animals imported for immediate slaughter must be labeled indicating both the country from which the animal was imported, and the United States.

⁴ Meat products with a foreign country of origin must be labeled indicating the country of origin of the meat.

14. Regarding Foreign Country Of Origin, the regulations provide that the normal customs border labeling requirements continue to apply to muscle cuts of foreign origin.

15. Also, the regulations further developed the statutory rule for ground products, specifying that the labeling of ground meat, must list all countries of origin contained in it, or all countries that may be reasonably contained in it. Regarding the term “reasonable”, when a raw material from a specific origin is not in a processor's inventory for more than 60 days, that country cannot be included on the label as a possible country of origin.

16. *Recordkeeping Requirements:* Regarding the authority given to the USDA by the statutory provisions for the audit verification system and enforcement, the regulations include a section describing the recordkeeping requirements.

D. THE VILSACK LETTER AND COMMENTS

17. On 20 February 2009, Thomas Vilsack, Secretary of Agriculture of the United States, issued a news release announcing that he had sent a letter inviting stakeholders to follow additional voluntary labeling practices. Mr. Vilsack's letter was addressed to industry representatives, and it suggested that, after the effective date of the final rule, the industry voluntarily follow the practices contained in his letter. The practices consist of:

- *Multiple countries of origin:* Including information about the production steps that occurred in each country.
- *Processed foods:* Labeling the products that are subject to curing, smoking, broiling, grilling, or steaming.
- *Inventory Allowance for Ground Meat:* Reducing from 60 to 10 days the time a raw material must be in a processor's inventory in order to be included in the notice of country of origin.

18. Mr. Vilsack's letter included a warning, stating that based on industry compliance with his suggestions, the USDA would consider whether or not it is necessary to modify the regulations.

III. FACTUAL BACKGROUND: THE IMPACT OF COOL ON IMPORTS OF MEXICAN CATTLE

1. Overview

19. The cattle and beef industries of Mexico and the United States have been historically integrated and interrelated. Mexico produces and exports feeder cattle to the United States where it is raised in grasslands and feedlots and subsequently slaughtered. The industry of feeder cattle for export has become of such importance for Mexico, that from 2003 to 2007, the years prior to COOL implementation, Mexico exported an average of over 1,200,000 head of cattle per year, with a value of over USD\$500 million dollars per year.

2. The Production Process of Beef Derived From Livestock Born in Mexico

20. The Mexican industry dedicated to the production of feeder cattle for export is composed by a large number of independent cow-calf operators. The core business of the cow-calf operators is to generate the birth of calves and then raise them until they are weaned and ready to be sent to the grasslands. Therefore, the usual commercial practice is to sell calves at a weight ranging between 300 and 400 pounds.

21. There are different ways through which Mexican cattle for export are sold to the U.S. market. Depending on a cow-calf operator's capacity, it can either sell calves directly to the buyer in the United States, or sell calves to a broker who will complete the transaction with the buyer in the United States. The sale of the calves from the broker or cow-calf operator to their clients in the U.S. usually takes the form of a direct transaction between them.

22. The selling price of Mexican calves for export is usually determined in advance by the buyer and the seller before the cattle crosses the Mexico-U.S. border. The selling price is negotiated between the buyer and the seller taking into account several factors, which include the market demand for calves, the quality of the calves determined by the USDA grading system, the reference prices used in the livestock auctions in the United States, the costs for transporting the calves, the future prices and the costs of feeding. Because the feeder cattle are a commodity product, Mexican sellers must maintain a competitive price in order to retain their clients in the United States. A small increase in the cost of the cattle can result in lost clients.

23. In general, the calves from the Mexican exporting states, mostly located in the Northern region of Mexico, have the same genetic features as the calves from the Southwestern regions of the United States. There are no qualitative differences between the Mexican calves for export and calves that are born in the United States.

24. Once the cattle are exported to the United States, they are shipped throughout U.S. territory. The cattle are sent to grasslands where they are raised and fed with grass. They remain grazing on the grasslands until they reach a weight ranging between 600 to 700 pounds.

25. Once the cattle reach 600 to 700 pounds, they are sent to feedlots where it receives intensive feeding based on grains. They remain confined in the feedlots until it reaches a weight between 1,100 to 1,200 pounds.

26. When the animals reach 1,200 pounds, they are considered as fed cattle ready for slaughter, and thus, the animals are sent to the slaughterhouses. The chilled carcass is broken down in to pieces of meat that are placed in boxes. The boxed meat is then transported to distribution centers, and subsequently to retail markets.

3. Changes in the Beef Production Process after the Implementation of the Cool Provisions

27. The implementation of the COOL provisions disrupted the well integrated cattle-beef market between Mexico and the United States. Before COOL, beef labeled as “Product of the U.S.” could refer to beef derived from an animal that was born in Mexico but slaughtered in the United States. This allowed Mexican-born cattle and U.S.-born cattle to be fed, slaughtered, processed, boxed and sent to the retail market together without having to segregate them in each of those steps.

28. After the COOL measure, meat derived from cattle born in Mexico and raised and slaughtered in the United States must be labeled as “Product of U.S. and Mexico. This makes it impossible for the meat derived from cattle born in Mexico to be slaughtered and processed in U.S. plants together with cattle born and raised in the United States. Implementation of the COOL measure necessarily requires segregation through the cattle-to-beef chain.

29. The U.S. beef processors must now incur additional costs to segregate cattle throughout the production process of beef and keep evidentiary records of such segregation. To limit those costs, each of the four major U.S. beef processors has decided to slaughter and process Mexican cattle at only one of their plants. Also, in the case of one processor, its facilities may process Mexican born cattle only limited days per week and with a 14-day advance notice.

30. In the feedlots and grasslands cattle has to be segregated as well. Also, considering that the few processing facilities that accept Mexican-born cattle are located near the U.S.–Mexico border, it has become economically unviable for grasslands and feedlots other than those located near the border to acquire Mexican calves. Thus, some backgrounders and feedlot operators who formerly purchased Mexican-born cattle have simply decided to suspend those purchases, in order to avoid the costs of compliance with the COOL measure and also to adjust to the new policies of the U.S. processors.

31. In addition, the need to segregate has caused a price decrease of Mexican feeder cattle relative to comparable U.S. cattle, which ranges between US \$40 and US \$60 dollars per head.

32. For an industry that has historically operated using domestic and imported cattle without distinction, the enactment of the COOL measure signifies a drastic modification of its operations, which in turn has resulted in significant losses in the volume and value of the Mexican exports of cattle to the United States.

IV. THE PROTECTIONIST OBJECTIVE OF COOL

33. 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 U.S. feeder cattle. A measure that creates a new system, independent from an existing one, and provides information on the country of origin of inputs of a product manufactured in the United States but only for *some* products that are purchased in *certain* retail stores and that excludes such information for inputs into *certain* processed products cannot be characterized as being designed and structured to achieve a legitimate consumer information objective.

34. The protective effect of the COOL measure is confirmed by its legislative history and the actions of the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF), the main proponents and supporters of the COOL measure. Country of origin labeling was seen by R-CALF and its supporters as a means to protect the U.S. cattle industry from foreign competition.

V. LEGAL ARGUMENT

35. The measure at issue in this dispute is inconsistent with the obligations of the United States under the following provisions: (i) Articles III and X of the GATT 1994, and (ii) Articles 2 and 12 of the TBT Agreement. (iii) It also nullifies or impairs benefits that accrue to Mexico under the GATT 1994 within the meaning of GATT Article XXIII:1(b).

A. ARTICLE III OF THE GATT 1994

36. The COOL measure accords Mexican feeder cattle treatment less favourable than that accorded to U.S. feeder cattle in a manner that is inconsistent with Article III:4 of the GATT 1994.

37. In *Korea – Beef*, the Appellate Body explained that a Member's measure is deemed to breach Article III:4 if three elements are met: (i) imported and domestic products at issue are "like products"; (ii) the measure at issue is a law, regulation or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use; (iii) the imported products are accorded "less favourable" treatment than that accorded to like domestic products. The three elements are met by the COOL measure.

1. Like Products

38. Mexico's claims relate to the treatment accorded to Mexican exports of live feeder cattle produced by Mexican cow-calf operators. Live feeder cattle born in Mexico, and raised in the United States, and live feeder cattle born, raised and slaughtered in the United States are "like products", considering the criteria established in the findings and recommendations from the WTO DSB on this specific issue:

- The physical properties of Mexican feeder cattle are equivalent to U.S. feeder cattle. Feeder cattle, whether from Mexico or the United States, meet the same standards and industry requirements.
- Regarding end-uses, the feeder cattle, whether from Mexico or the United States are used principally to produce beef. Prior to the COOL measure, Mexican and U.S. cattle were employed without distinction in the production and processing of beef.
- As to the perceptions and behavior of consumers, the consumers of feeder cattle are the U.S. backgrounders, feedlots and the packing plants in which the cattle are processed. Prior to the COOL measure, such backgrounders, feedlots and packing plants perceived and treated Mexican and U.S. feeder cattle identically.
- Finally, both Mexican and U.S. cattle are classified under subheading 0102.90 of the Harmonized System (live bovine animals – other).

39. Accordingly, by all relevant criteria, Mexican and U.S. feeder cattle are like products.

2. Laws, Regulations and Requirements Affecting their Internal Sale, Offering for Sale, Purchase, Transportation, Distribution or Use

40. The COOL measure comprises a series of laws and regulations that set out the country of origin labeling requirement. These laws, regulations and requirements "affect the internal sale, offering for sale, purchase, transportation, distribution or use" of feeder cattle.

41. The COOL measure applies to a specified group of "covered commodities", among which is beef. The COOL measure imposes a requirement on retailers to notify their customers of the country of origin of beef. The measure also imposes recordkeeping and verification requirements to substantiate the origin claims that apply to all persons engaged, either directly or indirectly, in the supply of beef to retailers including stockbreeders, backgrounders, feedlot operators and meat processors and packers. While the COOL measure does not directly regulate feeder cattle, it *affects* the internal sale, offering for sale, purchase, transportation, distribution or use of feeder cattle because it regulates retail beef, which is derived from those cattle.

42. The COOL measure therefore pertains to the category of laws, regulations and requirements that *affect* the internal sale, offering for sale, purchase, transportation, distribution or use of Mexican feeder cattle within the meaning of Article III:4. Thus, the national treatment obligation in that article applies.

3. Less Favourable Treatment

43. The COOL measure requires that beef sold at the retail level be labeled with information indicating the place where the cattle are born, raised and slaughtered and impose record keeping and verification requirements to support the labels. The COOL measure by itself does not *de jure* distinguish between domestic and imported like products nor do the measures *de jure* distinguish between like Mexican and U.S. feeder cattle. However, GATT Article III:4 applies to both *de jure* and *de facto* inconsistency. The focus is whether the measure modifies the conditions of competition, and the COOL measure gives U.S. feeder cattle a competitive advantage over like Mexican feeder cattle in the U.S. feeder cattle market.

44. The COOL measure has caused U.S. packing plants to cease commingling fed cattle born in Mexico and raised in the United States with fed cattle born and raised in the United States and instead segregate by: (i) reducing the number of plants that slaughter and process fed cattle that was born in Mexico and raised in the United States. (ii) reducing the number of days per week that such cattle are slaughtered and processed; (iii) reducing the overall number of such cattle that are slaughtered and processed; and (iv) requiring advance notice prior to accepting such cattle.

45. The COOL measure has also caused U.S. packing plants to reduce the price paid for fed cattle that was born in Mexico and raised in the United States, by means of applying an additional discount to the purchase price. The discount ranges between US\$ 40 and US\$ 60 dollars per head.

46. These actions have had the following direct adverse upstream effects: (i) some backgrounders and feedlots have simply stopped buying feeder calves born in Mexico; (ii) the only backgrounders and feedlots that are willing to receive feeder calves that were born in Mexico are those that are close to the packing plants that are still receiving finished cattle that were born in Mexico; (iii) finished cattle that were born in Mexico and raised in the United States are segregated from finished cattle born in the United States for shipping and transportation to packing plants and, in some cases, at backgrounding and feedlot facilities. (iv) the discount applied by packing plants against the purchase price of finished cattle that were born in Mexico and raised in the United States has been ultimately passed on to the Mexican cow-calf operators that produce the Mexican feeder calves.

47. In addition, the uncertainty created by Secretary Vilsack's letter has had the effect of encouraging the U.S. packing plants, backgrounders and feedlots to make the actions described above even stricter.

48. Similar actions have not been taken in respect of the stockbreeding, backgrounding, feeding and transport of like U.S. born cattle.

49. These actions have modified the conditions of competition in the U.S. market to the detriment of Mexican feeder cattle. In this way, the COOL measure gives U.S. feeder cattle a competitive advantage over like Mexican feeder cattle in the U.S. feeder cattle market and thereby violate the national treatment obligation in Article III:4.

B. AGREEMENT ON TECHNICAL BARRIERS TO TRADE

50. The COOL measure is a technical regulation within the meaning of Annex 1.1 of the TBT Agreement that is inconsistent with Articles 2.1, 2.2, 2.4, 12.1 and 12.3 of the Agreement.

1. The COOL Measure is a "Technical Regulation" for Purposes of the TBT Agreement

51. The obligations in Articles 2.1, 2.2 and 2.4 of the TBT Agreement apply to technical regulations, as defined by Annex 1.1 of the TBT Agreement. The COOL measure falls within the scope of the TBT Agreement, because it constitutes a "technical regulation" pursuant to the definition contained in Annex 1.1, for the following reasons:

- The COOL measure is contained in a set of published legal instruments that are undoubtedly "documents" within the meaning of Annex 1.1 of the TBT Agreement. These documents meet the three criteria to be considered a "technical regulation": (i) they apply to an identifiable product or group of products; (ii) they

lay down one or more characteristics of the product; (iii) compliance with those product characteristics is mandatory.

- The COOL provisions expressly state that the country of origin labeling requirements apply to a specific group of “covered commodities”. Muscle cuts of beef and ground beef are included among those covered commodities. Secretary Vilsack’s letter and its press release apply to the same group of “covered commodities”. Thus, the COOL measure expressly applies to an identifiable group of products.
- Regarding the second criterion, the definition of “technical regulation” expressly includes “marking or labelling requirements”. The Appellate Body in *EC – Asbestos* clarified that a “labeling requirement” is a product characteristic. The COOL measure imposes on retailers the obligation of informing consumers of the country of origin of the covered commodities. It further describes the method for identifying the country of origin of the covered commodities, namely, by means of a label, stamp, mark, placard, or other visible sign. In the case of some covered commodities, such as muscle cuts of beef, the COOL measure lays down rules for determining when this product can be labeled as having a U.S origin, multiple countries of origin or foreign countries of origin. These features contained in the COOL measure leave no doubt that they fulfill the second criterion of laying down product characteristics consisting of marking or labeling requirements.
- Finally, the COOL measure imposes a mandatory obligation on retailers to inform consumers about the country of origin of the covered commodities. It is clear from the statutory COOL provisions that the United States imposes a mandatory scheme. With respect to the letter of Secretary Vilsack and its press release, they also have a mandatory nature, evident from the threat implied therein, that additional modifications will depend on the industry’s compliance, threat that is seriously taken by the industry.

52. In conclusion, the COOL measure falls within the scope of the TBT Agreement, for it constitutes a “technical regulation” pursuant to the definition contained in Annex 1.1 of the TBT Agreement.

2. The COOL Measure is Inconsistent with Article 2.1 of the TBT Agreement

53. As already explained when analyzing Article III of The GATT 1994, the COOL measure accords Mexican feeder cattle treatment less favourable than that accorded to U.S. feeder cattle, contrary to Article 2.1 of the TBT Agreement.

54. There is a close resemblance between the terms used in Article 2.1 of the TBT Agreement with those of Article III:4 of the GATT 1994. Accordingly, the essential elements of an inconsistency with Article 2.1 are: (i) that the measure at issue is a “technical regulation”; (ii) that the imported and domestic products at issue are “like products” within the meaning of that provision; and (iii) that the imported products are accorded “less favourable” treatment than that accorded to like domestic products.

55. As already explained, the COOL measure indeed is a “technical regulation”, the products at issue are “like products”, and the COOL measure accords products imported from Mexico, treatment less favourable than that accorded to like products of national origin. For these reasons, the COOL measure is inconsistent with Article 2.1 of the TBT Agreement.

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

56. The COOL measure is inconsistent with Article 2.2 of the TBT Agreement because it was prepared, adopted and applied with a view to, and with the effect of, creating unnecessary obstacles to international trade, and is more trade restrictive than necessary to fulfill a legitimate objective taking account of the risks non-fulfillment would create.

57. Two issues must be addressed under this provision, specifically, whether the technical regulation: (i) fulfills or is capable of fulfilling a legitimate objective; (ii) is not more trade-restrictive than necessary to fulfil such objective taking account of the risks non-fulfilment would create.

58. The COOL measure does not fulfill a legitimate objective nor is it capable of fulfilling such an objective as described hereinafter. If the Panel disagrees with that assertion, Mexico submits that the measure is certainly

more trade restrictive than necessary to fulfil that objective, taking account of the risks non-fulfilment would create. Therefore, the COOL measure constitutes an unnecessary obstacle to international trade.

a) The COOL Measure Does Not Fulfil A Legitimate Objective

59. In the case at issue, the objective of the COOL measure is not legitimate for the following reasons:

60. As explained above, the COOL measure does not pursue a legitimate objective since the real objective of the measure is to protect domestic producers in the United States by altering the operation of the U.S. beef industry in favour of U.S. feeder cattle to the disadvantage of like Mexican feeder cattle. The objective of the measure is clearly protectionist.

61. However, if this Panel finds that the objective of the COOL measure is the provision of consumer information, Mexico is of the view that while in certain circumstances providing consumer information can be a legitimate objective within the meaning of the provision, it is not a legitimate objective in *all* circumstances. Whether the objective is legitimate will depend on the specific type of information being provided to consumers and whether the provision of that information is “justifiable” in the light of all relevant circumstances relating to that information.

62. In the case of the COOL measure, both the character and the intrinsic value of the information given to consumers are inherently protectionist.

63. Regarding the character of the information, it is that U.S. origin beef is produced from cattle that are “born, raised, slaughtered and processed” in the United States. Such detailed and specific information has only one purpose which is inherently protectionist.

64. As to the value of the information, the COOL measure provides a type of information whose value to the consumer is, as well, solely protectionist. By enacting the COOL measure, the United States is trying to shape consumer perception through regulatory intervention, and justify the legitimacy of this intervention on the basis of a governmentally created consumer perception. In such circumstances, it cannot be said that the provision of consumer information conforming to this regulatory intervention is a “legitimate objective”.

65. Furthermore, if the Panel finds that, in the circumstances of this dispute, the provision of consumer information is a legitimate objective, Mexico submits that the COOL measure does not fulfil that consumer information objective because of the substantial gaps in its coverage and because of the ambiguity and uncertainty that it creates.

66. Regarding the gaps in the coverage, the COOL measure is limited to certain commodities, only governs certain retailers, and certain processed food items are excluded from the coverage. A measure that provides information on the country of origin of inputs in a product manufactured in the United States but only for some products that are purchased in certain retail stores and that excludes such information for inputs into certain processed products cannot reasonably be characterized as intended to “fulfil” a consumer information objective.

67. Regarding the ambiguity and uncertainty created by the COOL measure, first, the United States has long had a comprehensive system in place for regulating the information provided to consumers on packaging of meat products; second, the labeling “Product of U.S.A. and Mexico” under the COOL, in itself, is confusing because consumers will not know that the entire process of meat production took place in the United States while only the birth and minimal raising of the animal occurred in Mexico. A measure that creates new rules for determining the origin of beef for labeling purposes that differ from pre-existent criteria, and imposes such confusing labels cannot fulfil a legitimate consumer information objective.

b) Even if the COOL Measure was Considered to Fulfil a Legitimate Objective, the Measure is More Trade-Restrictive than Necessary to Fulfil that Objective, Taking Account of the Risks Non-Fulfilment Would Create.

68. In the event that the Panel concludes that the COOL measure fulfills a legitimate objective, Mexico submits that the COOL measure is more trade restrictive than necessary to fulfil that objective, taking account of the risks non-fulfilment would create.

69. The USDA has found that the value of the information provided and its contribution to the needs of a U.S. consumer is minimal and restricted to a limited sub-set of U.S. consumers. Thus, the importance of the objective of providing consumer information is low. Likewise, the possibility of adverse consequences arising should the objective not be carried out is low and to the extent that those consequences arise they will be restricted to a limited sub-set of U.S. consumers.

70. It is clear that the COOL measure is more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment would create. The measure is highly trade restrictive as evidenced by its adverse effect on imports of Mexican feeder cattle.

71. Finally, there are at least other alternative measures that are reasonably available that provide the equivalent contribution to the objective. The first alternative is a *voluntary* country of origin labeling requirement. A second alternative is to modify the labeling criteria to conform to the pre-existing criteria (change of tariff classification and processing, both including the rule of substantial transformation or a change in nature).

72. In this way, the U.S. measure is inconsistent with Article 2.2 of the TBT Agreement.

4. The COOL Measure Is Inconsistent With Article 2.4 Of The TBT Agreement

73. The COOL measure is not based on an existing relevant international standard, contrary to the obligation contained in Article 2.4 of the TBT Agreement.

74. The COOL measure is inconsistent with Article 2.4 of the TBT Agreement because: (i) a relevant international standard exists; (ii) the United States failed to base its regulation on that international standard; and (iii) the relevant international standard is not an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued.

75. CODEX-STAN 1-1985 is the “General Standard for the Labelling of Prepackaged Foods.” It is a standard because it falls within the definition of “standard” contained in Annex 1.2 of the TBT Agreement. It is relevant because it contains rules for the labeling of pre-packaged foods, including rules regarding the country of origin for labeling such foods, and muscle cuts of beef and ground beef are within its the scope. It is international because it was approved by an international body.

76. According to the CODEX-STAN 1-1985, if labeling with a country of origin is considered necessary, meat that is derived from cattle that are born in Mexico and subsequently raised and slaughtered in the United States should be labeled as having a U.S. country of origin. In direct contradiction to this international standard, the COOL measure confers the United States country of origin only to muscle cuts of beef and ground beef that derive from cattle that are exclusively born, raised, and slaughtered in the United States. Thus, the United States failed to base its regulation on the relevant international standard,

77. Finally, in the event that the Panel concludes that the COOL measure pursues a legitimate objective, Mexico submits that the rule in CODEX-STAN 1-1985 is an effective and appropriate means for the fulfillment of a legitimate objective.

78. The United States has stated that the objective of COOL measure is to inform consumers and give them accurate information pertaining to the country of origin, for the purposes of making purchasing decisions. CODEX-STAN 1-1985 is an effective means for achieving the pursued objective because it seeks to protect consumers from deceptive practices, and information on the country of origin is conveyed through a label. It is an appropriate means for informing consumers of the country of origin of the covered commodities because the rules regarding country of origin contained therein are specially designed, and thus suitable, for achieving the purpose of informing consumers about the country of origin of prepackaged foods.

79. In this way, the U.S. measure is inconsistent with Article 2.4 of the TBT Agreement.

5. The COOL Measure Is Inconsistent With Articles 12.1 And 12.3 Of The TBT Agreement

80. The COOL measure is contrary to the obligations of the United States under articles 12.1 and 12.3 of the TBT Agreement of providing special and differential treatment to developing countries.

81. The obligation set forth in Article 12.3 can be divided into two elements: (i) the obligation of the United States to take into account the special development, financial and trade needs of Mexico as a developing country in the preparation and application of technical regulations; and (ii) the obligation of the United States to ensure that the COOL measure does not create unnecessary obstacles to exports from Mexico as a developing country.

82. Neither of those two actions was carried out by the United States.

83. First, during the preparation process of the COOL measure, both the U.S. Congress and the USDA were made aware that the COOL measure would harm imports of Mexican feeder cattle. There is no doubt that the United States was cognizant of the possible negative effects on Mexican exports of feeder cattle. The U.S. Congress and the USDA, however, did not address those comments and consequently made no effort to take into account the special development and financial trade needs of Mexico in its capacity of developing country.

84. Last, the COOL measure has the effect of creating unnecessary obstacles to trade, and thus the United States failed to comply with its obligation of ensuring that the technical regulations do not create unnecessary obstacles to exports from Mexico as a developing country Member.

C. ARTICLE X:3(a) OF THE GATT 1994

85. The COOL measure is inconsistent with Article X:3(a) of the GATT 1994, because the administration of the COOL measure has been anything but predictable and reasonable. The administration of the details of the measure changed over the course of the interim final rule and the final rule and the associated guidelines issued by USDA over this period. These uncertainties continued with Vilsack's letter. Administration of a law or regulation in such a manner cannot amount to uniform (i.e., predictable) and reasonable administration.

D. NON-VIOLATION NULLIFICATION OR IMPAIRMENT: ARTICLE XXIII:1(b) OF THE GATT 1994

86. The COOL measure also nullifies or impairs benefits accruing to Mexico based on tariff concessions made by the U.S. in respect of live cattle at the end of successive multilateral rounds of trade negotiations, in a manner that is inconsistent with Article XXIII:1(b) of the GATT 1994.

87. The Article provides that a Member may have recourse to WTO dispute settlement if it considers that any benefit accruing to it *directly or indirectly* under the GATT 1994 is being nullified or impaired as the result of the application by another Member of any measure, whether or not it conflicts with the provisions of the GATT 1994.

88. In the case at issue, first, the United States enacted and implemented the COOL measure through a series of measures including statutory provisions, regulations and other implementing guidance, directives of policy announcements issued in relation to those measures. Thus, a measure was applied.

89. Second, Mexico is entitled under Article XXIII:1(b) of the GATT 1994 to expect market access to the United States for its feeder cattle that is related to the tariff concessions that would apply, on a Most-Favoured-Nation (MFN) basis, between Mexico and the United States under the WTO Agreement. Mexico does not view these tariff concessions as creating a guarantee of trade volumes, but rather as creating trade expectations as to the competitive relationship between Mexican and U.S. feeder cattle. Thus, there are benefits accruing to Mexico under the GATT 1994.

90. Last, given the low MFN rates of the United States in respect of feeder cattle, Mexico reasonably expected that its access to the U.S. market for feeder cattle would be virtually unrestricted. The COOL measure drastically restricts this access in a manner that could not have been anticipated at the time of the conclusion of the Uruguay Round. It therefore nullifies and impairs the benefits under the GATT 1994 that Mexico negotiated during the Round.

VI. CONCLUSIONS

91. On the basis of the foregoing, Mexico respectfully requests that the Panel find that U.S. measures are inconsistent with Articles III:4 and X:3 of the GATT 1994 and Articles 2.1, 2.2, 2.4 and 12 of the TBT Agreement. Mexico also requests that Panel find the U.S. measure also nullifies or impairs benefits accruing to Mexico under the GATT 1994 within the meaning of Article XXIII:1(b) of the GATT 1994.