

**BEFORE THE WORLD TRADE ORGANIZATION**

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

**(DS386)**

**EXECUTIVE SUMMARY OF THE OPENING STATEMENT OF MEXICO  
AT THE FIRST MEETING WITH THE PANEL**

**Geneva  
4 October 2010**

## **I. INTRODUCTION**

1. This case is about a US measure “the COOL measure” that discourages the use of Mexican cattle in the production of beef products in the United States. The COOL measure has adversely modified the competitive conditions to the disadvantage of Mexican producers and has distorted the market with the sole purpose of protecting the US cattle industry, and thereby disrupted what was previously a mutually beneficial trade relationship.

## **II. OVERVIEW OF MEXICAN CATTLE EXPORTS TO THE US**

2. The productions of cattle in Mexico and beefs in the US have been closely integrated for many decades. The Mexican cow-calf industry produces high quality, genetically desirable cattle for the US market. They have the same genetic features as calves from the United States, and are pastured on grass or winter wheat, similar to US calves. The US and Mexican cattle are clearly like products.

3. The United States has conceded that the COOL measure is not an SPS measure, or any other type of safety measure. Mexico wishes to highlight that separately the United States subjects the Mexican cattle to stringent SPS requirements. Mexico fully complies with those stringent measures.

4. In the case of Mexico, the overwhelming majority of cattle exported are young animals, usually no more than seven or eight months old, and weighing in the range of 300 to 400 pounds. At the time of slaughter, this is, when they reach 1100 to 1200 pounds, approximately 70% of the weight and value of the animal has been added within the US territory.

## **III. THE MEASURE**

5. This dispute concerns a mandatory country of origin labeling requirement 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. The COOL measure comprises statutory provisions, regulations and other administrative actions by the US government. All of the components identified by Mexico in its First Written Submission are legal elements of the COOL measure.

6. The COOL measure is an internal measure applied to US processed beef that has an adverse effect on imported inputs for that product – that is, cattle. US producers of beef products have segregated cattle of different origins entirely in order to comply with the measure, and have passed along the resulting costs to the Mexican cattle industry.

7. The COOL measure has disrupted the integrated Mexico-US market and has modified the conditions of competition to the disadvantage of Mexican cattle compared to like US cattle. It has also reduced the export opportunities available to, increased the handling cost of, and reduced the price of Mexican cattle. The adverse effects of the COOL measure on the Mexican cattle industry have been substantial. Specifically:

- US processors have restricted the number of plants that will process Mexican cattle;

- US processors have restricted the days on which plants will accept Mexican cattle;
- US processors have imposed special notice requirements;
- US processors have lowered the price of Mexican cattle expressly because of the costs of complying with the COOL measure; and
- Some US backgrounders and feedlot operators have stopped purchasing Mexican cattle entirely.

8. Mexico has presented evidence of each of these effects.

#### **IV. IN THE CIRCUMSTANCES OF THIS DISPUTE, THE US COOL MEASURE IS INCONSISTENT WITH THE WTO**

9. Mexico is not challenging mandatory country of origin labeling in general. Whether a particular mandatory country of origin labeling is WTO-consistent will depend on the specific circumstances at issue and must necessarily be assessed on a case-by-case basis.

10. For example, mandatory country of origin labeling imposed on imported products at the border is generally viewed as WTO-consistent. But the COOL measure is an internal measure that has effects only with respect to goods that are processed in the United States.

11. The COOL measure has requirements and procedures that result in a loss of competitive opportunities for imported cattle. In particular, under the COOL measure the United States refuses to acknowledge that any processing of cattle is relevant – notwithstanding that the imported Mexican cattle spend the great majority of their lives in the United States and are slaughtered and processed there under the supervision of US agricultural officials.

#### **V. THE DE FACTO NATURE OF MEXICO'S CLAIMS**

12. Mexico has been very clear that its claim is based on the de facto effects of the COOL measure.

#### **VI. LEGAL CLAIMS**

##### **A. Discrimination Claims Under Article 2.1 of TBT Agreement and Article III:4 of the GATT 1994**

##### **1. Like Product**

13. Mexico's claim concerns the treatment of Mexican cattle that are imported into the United States for processing into beef. By its structure and design, the COOL measure applies indirectly to cattle. In

other words, the effect of the COOL measure – indeed its core purpose – is to regulate the inputs to beef products – namely, cattle. Mexico presented prima facie evidence that Mexican and US cattle, both of which compete for the same processing market, are like products. The United States did not refute that evidence.

14. Long before the COOL measure came into existence, the high quality Mexican cattle exported to the US market were treated as completely interchangeable with US cattle. There is no question that Mexican and US cattle are “like products”.

## **2. Less Favorable Treatment under 2.1. of the TBT Agreement and GATT Article III:4**

15. By its design and structure, the COOL measure creates a situation where the most economically rational and low-cost method for compliance with the measure is to restrict the processing of Mexican cattle in the United States. What I mean by “restrict” is the reduction of processing facilities, the reduction of processing days, the imposition of advance notification requirements, and the imposition of a discount against the price of Mexican cattle.

16. By any standard, these effects are clearly a denial of competitive opportunities.

### **B. Obstacles to Trade Under TBT Article 2.2**

17. The COOL measure not only discriminates against Mexican cattle, it also creates a restriction against imports of such cattle. This restriction is in the form of an unnecessary obstacle to trade, which violates TBT Article 2.2.

18. The United States argues that the legitimate objective is “consumer information.” Mexico does not deny that providing consumer information, in the abstract, can be a legitimate objective. However, the legitimate objective must be defined at a level of specificity that accurately describes the measure that is being justified. In this dispute, the objective has to be defined as informing the consumer where the cattle incorporated in the beef were born.

19. Consumer information objectives must be assessed on a spectrum. If the consumer information provided is to protect safety or health, such as a listing of ingredients, or to provide economic protection to purchasers, such as mandating accurate data about weight and volume, the measure is likely to be legitimate. If the information is in fact misleading, or intended to discourage purchases of products made with foreign inputs, the objective likely is not legitimate.

20. In this instance, when viewed from the perspective of its design, structure, application and all other relevant circumstances, the objective of this measure is solely protectionist and, therefore, clearly not legitimate.

21. In this regard, the sole reason to provide information on the birthplace of the cattle incorporated into the beef is to give US domestic cattle a competitive advantage. Moreover, a fundamental flaw of the COOL measure is that it does not provide accurate information to consumers.

**C. TBT Article 2.4**

22. The COOL measure is not based on the applicable CODEX standard, and therefore is inconsistent with TBT Article 2.4. The US position is that if a relevant international standard would prevent the United States from implementing a measure, the international standard must be inappropriate and ineffective. Obviously, the US approach to this issue would make Article 2.4 completely meaningless.

23. In this regard, the United States has asserted that the CODEX standard does not define the word “processing”, and suggests that this constitutes a gap in the standard. In fact, the United States has rejected the CODEX standard entirely for beef products. The COOL measure disallows the possibility that any processing – including raising the animal from a young age, slaughtering and processing – could affect the country of origin of the resulting beef product.

24. At the same time, the United States determines country of origin consistently with the CODEX standard for beef products imported from other countries, for parts of the cattle other than muscle cuts and ground beef, and for the great majority of other food products.

**D. TBT Articles 12.1 and 12.3**

25. Regarding TBT Articles 12.1 and 12.3, the United States has taken the position that simply allowing Mexico to submit comments on the regulations was sufficient to satisfy the US obligation to take into account of the special needs of developing countries. That interpretation of Articles 12.1 and 12.3 would render them meaningless. The United States does not, and can not, point to anything it did in the preparation and application of the COOL measure with a view to avoid creating an unnecessary obstacle to exports from Mexico. Rather, it ignored Mexico’s comments and the impact that it knew the COOL measure would have on Mexican exports.

**E. GATT Article X**

26. Mexico’s claim under GATT Article X helps to emphasize the inconsistent and arbitrary manner in which the COOL measure has been implemented. The COOL measure has truly been a “moving target”. There have been changes to the statute and changes to the regulations, as well as both formal and informal pressure by the US authorities to restrict the manner in which US processors can comply with their legal obligations.

27. The Vilsack letter is part of continuing actions by the United States government, under authority of the COOL statute, to pressure the US industry not to use foreign cattle

28. Furthermore, the Vilsack letter pressured the industry to undertake additional labeling requirements when using the multiple label. This is evidence of US government pressure on companies not to use the multiple origin label. This in turn eliminated the economic feasibility of commingling Mexican and US cattle.

## **F. Non-Violation Nullification and Impairment**

29. With regard to Mexico's non-violation nullification or impairment claim, the United States argues that Mexican cattle enter the United States under the NAFTA tariff concessions and not those of the WTO. The NAFTA tariff is zero and the US MFN bound tariff is 1 cent per kilogram, 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 \$1.36-1.81 per animal compared to like US products. The actual price discount created by the COOL measure is between \$40.00-\$60.00 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 \$1.36-1.81 per animal.

30. Thus, the COOL measure nullifies or impairs benefits accruing to Mexico under both its NAFTA and WTO tariff bindings.

## **VII. CONCLUSION**

31. From the facts of this dispute and the evidence provided by Mexico it is clear that the COOL measure adopted by the United States adversely affects Mexican exports of cattle. Even though US is trying to justify its measure by characterizing it as a facially neutral measure aimed at providing additional information to the consumers, the measure is discriminatory because it upsets the conditions of competition of Mexican cattle in favor of like US cattle and creates an unnecessary obstacle to trade. Such a measure is not permitted by the WTO rules.

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