6 FINDINGS AND CONCLUSIONS IN THE APPELLATE BODY REPORT WT/DS384/AB/RW

6.1. In the appeal of the Panel Report, *United States – Certain Country of Origin Labelling (COOL) Requirements – Recourse to Article 21.5 of the DSU by Canada*, WT/DS384/RW (Canada Panel Report), the Appellate Body makes the findings below.

6.2. For the reasons set out in section 5.1 of this Report, regarding the Panel's findings under Article 2.1 of the TBT Agreement, the Appellate Body:

a. with respect to the Panel's finding that the amended COOL measure increases the recordkeeping burden entailed by the original COOL measure:

   i. finds that the Panel did not err, in paragraphs 7.87-7.113 of the Canada Panel Report, in its analysis of the impact of point-of-production labelling;

   ii. finds that the Panel did not err, in paragraphs 7.114-7.127 of the Canada Panel Report, in its analysis of the impact of the elimination of the country order flexibility; and

   iii. finds that the Panel did not err, in Section 7.5.4.2.4.4 of the Canada Panel Report, in its consideration of the increased recordkeeping b4.46l

v. finds that the Panel did not err, in paragraph 7.272 of the Canada Panel Report, by failing to evaluate the operation of the exemptions prescribed by the amended COOL measure in the US market;

d. with respect to the Panel's assessment of the relevance of Label D for the analysis of whether the detrimental impact of the amended COOL measure on imported livestock stems exclusively from legitimate regulatory distinctions:

i. finds that the Panel did not err, in paragraph 7.279 of the Canada Panel Report, in finding that the requirements for Label D are not compelling evidence of arbitrary or unjustifiable discrimination in violation of Article 2.1 of the TBT Agreement;

e. with respect to the Panel's assessment of the relevance of Label E for the analysis of whether the detrimental impact of the amended COOL measure on imported livestock stems exclusively from legitimate regulatory distinctions:

i. finds that the Panel did not err, in paragraph 7.280 of the Canada Panel Report, in finding that the requirements for Label E do not evidence the amended COOL measure's violation of Article 2.1 of the TBT Agreement; and

f. with respect to the Panel's assessment of the relevance of the amended COOL measure's prohibition of a trace-back system for the analysis of whether the detrimental impact of that measure on imported livestock stems exclusively from legitimate regula

6 FINDINGS AND CONCLUSIONS IN THE APPELLATE BODY REPORT WT/DS386/AB/RW

finds that the Panel did not err, in paragraph 7.275 7f the Mexico Panel Report, in

6.1. In the appeal of the Panel Report, *United States – Certain Country of Origin Labelling (COOL) Requirements – Recourse to Article 21.5 of the DSU by Mexico*, WT/DS386/RW (Mexico Panel Report), the Appellate Body makes the findings below.

6.2. For the reasons set out in section 5.1 of this Report, regarding the Panel's findings under Article 2.1 of the TBT Agreement, the Appellate Body:

a. with respect to the Panel's finding that the amended COOL measure increases the recordkeeping burden entailed by the original COOL measure:

   i. finds that the Panel did not err, in paragraphs 7.87-7.113 of the Mexico Panel Report, in its analysis of the impact of point-of-production labelling;

   ii. finds that the Panel did not err, in paragraphs 7.114-7.127 of the Mexico Panel Report, in its analysis of the impact of the elimination of the country order flexibility; and

   iii. finds that the Panel did not err, in Section 7.5.4.2.4.4 of the Mexico Panel Report, in its consideration of the increased recordkeeping burden entailed by the amended COOL measure within its analysis of whether the detrimental impact of that measure on imported livestock stems exclusively from legitimate regulatory distinctions;

b. with respect to the Panel's findings regarding the potential for label inaccuracy under the amended COOL measure:

   i. finds that the Panel did not err, in paragraph 7.269 of the Mexico Panel Report, in its consideration of the potential for label inaccuracy with respect to Labels B and C as prescribed by the amended COOL measure; and

   ii. finds that the Panel did not err, in Section 7.5.4.2.4.4 of the Mexico Panel Report, in its consideration of the potential for label inaccuracy under the amended COOL measure within its analysis of whether the detrimental impact of that measure on imported livestock stems exclusively from legitimate regulatory distinctions;

c. with respect to the Panel's findings regarding the exemptions prescribed by the amended COOL measure:

   i. finds that the Panel did not err, in paragraph 7.203 of the Mexico Panel Report, in finding that the exemptions prescribed by the amended COOL measure are relevant for the analysis of whether the detrimental impact of that measure on imported livestock stems exclusively from legitimate regulatory distinctions;

   ii. finds that the Panel did not err, in paragraphs 7.273-7.276 of the Mexico Panel Report, by not attributing significance to the fact that the exemptions under the amended COOL measure apply equally to meat derived from imported and domestic livestock;

   iii. finds that the Panel did not err, in paragraph 7.275 of the Mexico Panel Report, in considering, with respect to the cost considerations that allegedly justify the existence of the exemptions, that cost considerations do not constitute a supervening justificati.1(ic)5.2(a(h)3vestoc7l)-6.7(y)4 6 Tm sy

v. finds that the Panel did not err, in paragraph 7.272 of the Mexico Panel Report, by failing to evaluate the operation of the exemptions prescribed by the amended COOL measure in the US market; and

d. with respect to the Panel's assessment of the relevance of Label E for the analysis of whether the detrimental impact of the amended COOL measure on imported livestock stems exclusively from legitimate regulatory distinctions:

i. finds that the Panel did not err, in paragraph 7.280 of the Mexico Panel Report, in finding that the requirements for Label E do not evidence the amended COOL measure's violation of Article 2.1 of the TBT Agreement.

6.3. For the reasons set out in section 5.2 of this Report, regarding the Panel's findings under Article 2.2 of the TBT Agreement, the Appellate Body:

a. with respect to the sequence and order of the Panel's "necessity" analysis:

i. finds that the Panel did not err, in paragraph 7.298 of the Mexico Panel Report, in stating that "a 'comparative analysis' would be redundant only in exceptional circumstances", and in concluding, in paragraphs 7.301-7.303 and 7.424 of the Mexico Panel Report, that such "exceptional circumstances" must be demonstrated before any "overall" conclusions with respect to Article 2.2 may be drawn from the "relational" analysis;

b. with respect to the Panel's analysis of the contribution of the amended COOL measure to its objective:

i. finds that the Panel erred, in paragraph 7.356 of the Mexico Panel Report, by excluding Labels D and E in reaching its conclusion that the amended COOL measure makes a "considerable but necessarily partial" contribution to its objective;

c. with respect to the interpretation and application of the phrase "taking account of the risks non-fulfilment would create" in Article 2.2 of the TBT Agreement:

i.

vi. finds that there are not sufficient undisputed facts on the record to complete the legal analysis of Mexico's claims under Article 2.2 of the TBT Agreement in respect of the first and second proposed alternative measures; and

d. with respect to the third and fourth proposed alternative measures:

i. reverses the Panel's findings, in paragraphs 7.564 and 7.610 of the Mexico Panel Report, that Mexico did not make a *prima facie* case that its third and fourth proposed alternative measures are reasonably available for purposes of its claims under Article 2.2 of the TBT Agreement.

6.4. For the reasons set out in section 5.3 of this Report, regarding the Panel's analysis under Article III:4 of the GATT 1994, the Appellate Body:

a. finds that the Panel did not err by not attributing contextual relevance to Article IX of the GATT 1994 in its interpretation of Article III:4 of the GATT 1994; and

6.5. For the reasons set out in section 5.4 of this Report, the Appellate Body:

a. finds that the Panel did not err, in paragraphs 6.73 to 6.75 of the Mexico Panel Report, in the way it addressed the United States' request, at the interim review stage, relating to the availability of Article XX of the GATT 1994 as an exception to Article III:4 of the GATT 1994 with respect to the amended COOL measure.

6.6. For the reasons set out in section 5.5 of this Report, the Appellate Body:

a. finds that the condition upon which Mexico's appeal under Article XXIII:1(b) of the GATT 1994 is premised is not satisfied and, consequently, makes no finding with respect to whether the Panel erred by exercising judicial economy with respect to Mexico's claim under Article XXIII:1(b); and

b. finds that the condition upon which the United States' appeal under Article XXIII:1(b) of the GATT 1994 is premised is not satisfied and, consequently, makes no finding with respect to whether the Panel erred, in paragraph 7.663 of the Mexico Panel Report, in finding that Mexico's claim under Article XXIII:1(b) was within the Panel's terms of reference.

6.7. The Appellate Body recommends that the DSB request the United States to bring its measures found in this Report, and in the Mexico Panel Report as modified by this Report, to be inconsistent with the GATT 1994 and the TBT Agreement into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 24th day of April 2015 by:

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Ricardo Ramírez-Hernández
Presiding Member

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Seung Wha Chang
Member

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Peter Van den Bossche
Member

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