

BEFORE THE WORLD TRADE ORGANIZATION

UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

(DS386)



**CLOSING STATEMENT OF MEXICO
AT THE MEETING WITH THE ARBITRATOR**

**Geneva
16th September 2015**

1. In their submissions and during this hearing, the United States has tried to blur the lines between the different models, and has avoided precision. It has vaguely tried to transpose issues related to one model to all the models, which may cause confusion.
2. Therefore, it is relevant to note that Mexico's econometric model is different from Canada's. Moreover, there are different models for price basis and quantity that respond to the specific characteristics to Mexico. It is crucially important that the Arbitrator examine each model individually, on its merits.
3. In the case of Mexico's analysis, the price basis compares prices of Mexican feeder cattle sold within the United States to prices of U.S. feeder cattle sold in close-by locations. The United States has not been able to explain why variables such as a recession would have any relevance on differential prices for Mexican and U.S. cattle purchased by U.S. buyers in Texas and New Mexico. Nor has it explained why feed costs, weather, or other variables on its list could possibly have any impact on Mexico's model. There are no differential transportation costs, and U.S. buyers choosing between Mexican and U.S. cattle are affected in exactly the same manner by all those factors. There are no relevant variables missing from Mexico's price basis model.
4. Therefore, with respect to Mexico's price basis model, the United States must rely exclusively on its hypothesis that a price basis cannot be used to measure the impact of the COOL measure. But the panel in the prior proceedings found that there is indeed a "COOL discount." That is what Mexico's price basis model measures. Mexico has also explained in detail in its response to the arbitrator's question 5.c that an econometric analysis based on absolute prices would suffer from a "unit root" problem, which in econometrics means that the results would not be reliable. The price basis is clearly the most reliable way to isolate the effects of the COOL measure.
5. With regard to Mexico's calculations of the COOL measure's impact on quantities, Mexico was forthright in acknowledging that an econometric analysis would not be appropriate because there is not available reliable information to use for a variable that accounts for the expectations of producers about the length and intensity of the drought. Mexico therefore prepared a simulation that relies on its price basis model and is designed to hold all other factors equal. The United States has not identified any specific defects in Mexico's simulation model. It has just made casual assertions that one variable or another should be added, without seeking to explain what difference it would make.

6. The U.S. EDM model is fatally flawed. It does not rely on actual data. The model is based on a large number of assumptions, including extremely unrealistic elasticities. It is also incorrectly designed, as shown in Mexico's Exhibit 29. The United States tried to justify use of its EDM on the basis that the market is very complicated. But when asked to include segregation costs, the United States made a very simplified adjustment that does not account for those purported complexities of the market. It therefore undermined its own justification for use of the EDM.

7. With regard to the domestic price suppression element of Mexico's calculations, the United States has expressly agreed that a reduction in the prices of export livestock affects domestic prices of livestock.

8. The United States has sought to create an artificial legal barrier to including the impact of the COOL measure on the Mexican domestic market for feeder cattle. There is no support in the relevant agreements for drawing the line as the United States proposes. The provisions under the WTO Agreements on nullification or impairment were designed to ensure that the benefits accruing under the covered agreements are created or protected by the rights and obligations under the covered agreements. The term "benefit accruing" has been interpreted broadly. This is particularly relevant to developing countries as it is recognized by the WTO Agreements.

9. Moreover, the term "trade effects" is not found in the agreements, and prior arbitrators have agreed that there is no such limitation. There have been prior cases in which non-trade effects were found to be overly speculative, but that related to the issue of whether there was a causal connection, not whether they affected a benefit. As Mexico has explained repeatedly, we have limited the scope of the impact to the domestic market for feeder cattle, which is the same product that is traded. The effects are not speculative, and they are directly related to the COOL measure.

10. For these reasons, Mexico respectfully requests that the Panel find that Mexico's requested level of suspension of benefits is appropriate.

11. We would finally like to thank the arbitrators for your attention in this meeting, the Secretariat staff for your support, and also the interpreters for your assistance.