As delivered

BEFORE THE WORLD TRADE ORGANIZATION

UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING REQUIREMENTS

Recourse to Article 21.5 of the DSU by Mexico

(DS386)

CLOSING STATEMENT OF MEXICO

AT THE MEETING WITH THE PANEL

Geneva

19th February 2014

Mr. Chairman and members of the Panel:

1. As a first point, we want to again emphasize that the Mexican cattle industry has been burdened by the COOL measure and now by the Amended COOL Measure since 2008.

2. The U.S. COOL measure, which ostensibly is intended to provide important information demanded by U.S. consumers, still does very little to inform consumers. In fact, many U.S. consumers of beef are not being informed at all about points of production, and those that are often see labels that hide the information, or provide it through cryptic terms and abbreviations. There is no reason for consumers to be interested in this information in any event, because there is no qualitative difference between beef products made from cattle born in the United States and cattle born in Mexico.

3. Meanwhile, the Amended COOL Measure, even more than the original measure, discriminates against imports of cattle from Mexico and restricts trade. The reports in this dispute adopted by the DSB confirmed the discriminatory nature of the original measure. Now the Amended COOL Measure has worsened the trade restrictive impact. Mexico has fully demonstrated those trade restrictive effects.

4. To be clear, Mexico does not oppose the objective of providing information to consumers related to the origin of products. However, costs related these kinds of programs should be distributed proportionately. Imported products should not bear all the costs.

I. ARTICLE 2.1 OF THE TBT AGREEMENT

5. With respect to Article 2.1, the United States accepted that the Amended COOL Measure has not reduced the trade restrictive effects of the original COOL Measure. In fact, the Amended COOL Measure has worsened the trade restrictive effects. Thus, there is no question that it has had a detrimental impact on Mexican cattle imports within the meaning of Article 2.1 of the TBT Agreement and that detrimental impact does not stem exclusively from a legitimate regulatory distinction.

6. If it is so important for the United States to provide consumer information, Mexico cannot understand why such a measure is not being applied broadly, especially in the market sectors where meat products are consumed. In its opening statement, the United States mentions that the measure requires labeling in over 30,000 grocery stores and other retailers. This is but a small portion of the over 200,000 food stores in the United States that sell beef products.[1] The United States has not even attempted to eliminate the second information asymmetry found by the Appellate Body. In addition, its attempt to eliminate the first information asymmetry has been incomplete. Moreover, Mexico has identified additional factors that demonstrate the detrimental impact does not stem exclusively from a legitimate regulatory distinction, which Mexico elaborated upon in its opening statement.

7. There is no question that Mexico has presented a prima facie case that the Amended COOL Measure remains inconsistent with Article 2.1 and that the United States has failed to rebut that prima facie case.

II. ARTICLE III:4 OF THE GATT 1994

8. The United States' only defense to Mexico's claim with respect to Article III:4 of the GATT is to propose an interpretation which is fundamentally at odds with the rules of interpretation under the Vienna Convention and the rulings of the Appellate Body. The United States has not raised any other defense.

9. Thus, Mexico's prima facie case has not been rebutted and the Panel should find that the Amended COOL Measure is inconsistent with Article III:4 of the GATT.

III. ARTICLE 2.2 OF THE TBT AGREEMENT

10. Mexico has explained in detail why Article 2.2 requires a careful evaluation of the necessity of this trade restrictive technical regulation. Mexico's two-part necessity test is grounded in the rulings of the Appellate Body under Article 2.2 of the TBT Agreement as well as

[1] See NAICS codes 445110 (supermarkets and other grocery) (126,824); 445120 (convenience stores) (62,912); and 445210 (meat markets) (9,135); and NAICS code 452910 (warehouse clubs and supercenters) (1,963), available at http://www.naics.com/six-digit-naics/?code=4445. This total figure is a correction of the figure stated during the closing statement at hearing.

under GATT Article XX insofar as they relate to the meaning of the term "necessity." Clearly, the Amended COOL Measure is more trade restrictive than necessary, taking into account the risks of non-fulfillment would create.

11. If there ever was a measure that deserved to be found unnecessary under the first part of the necessity test, it is the Amended COOL Measure. The weighing and balancing of all relevant factors support such a conclusion.

12. In any event, Mexico and Canada have presented several alternatives that are less trade restrictive, reasonably available, and provide an equivalent contribution to the objective, in light of the risks non-fulfillment would create.

13. With respect to Mexico's first alternative – mandatory labelling based on substantial transformation plus voluntary more detailed labelling – Mexico clarifies that this alternative measure would apply only to muscle cuts and not ground beef. Mexico is not challenging the application of the Amended COOL Measure to ground beef and does not seek a change in the ground beef rules. Restricting the scope of this alternative in this manner will be sufficient to eliminate the detrimental impact.

14. With respect to the trace-back alternative, and the fourth alternative presented by Canada, Mexico and Canada together have presented a prima facie case. We have provided information on how the trace-back system could work, including information on a model system adopted by Uruguay in MEX-43. Canada has presented objective and positive evidence on the cost of implementing a trace-back program and on the impact of these costs on the trade restrictiveness of the alternative measure. The United States has presented no rebuttal evidence. It has stated without any support that the cost of trace-back would be unreasonable. This argument is clearly contradicted by Canada's objective and positive evidence. As Mexico has also explained, Mexico's current sanitary requirements to export cattle would allow traceability of the animals inside U.S. territory.

15. Therefore, Mexico and Canada have presented a prima facie case that the Amended COOL Measure violates Article 2.2.

IV. NON-VIOLATION NULLIFICATION AND IMPAIRMENT

16. Mexico has presented detailed submissions on its non-violation claim. Mexico agrees with India that this type of claim can be addressed in an Article 21.5 proceeding. It seems that the only outstanding issue is whether Mexico could have reasonably anticipated the adverse impact of the Amended COOL Measure on the U.S. tariff bindings. As stated by the Panel in *Japan-Film*, where a measure has been introduced after the tariff bindings have been negotiated, there is a presumption that it could not have been reasonably anticipated. No WTO Member could have anticipated the severe adverse effects of the Amended COOL Measure.

17. With this, we would like to thank the Panel for your attention in this meeting, the Secretariat staff for your support, and also the interpreters for your patience and help.