IX. Findings and Conclusions

496. In the appeal of the Panel Report, *United States – Certain Country of Origin Labelling (COOL) Requirements* (Complaint by Canada) (WT/DS384/R) (the "Canada Panel Report"), for the reasons set out in this Report, the Appellate Body:

(a) with respect to the Panel's findings under Article 2.1 of the *TBT Agreement*:

(i) finds that the Panel did not err, in paragraph 7.295 of the Canada Panel Report, in stating that the COOL measure treats imported livestock differently than domestic livestock;

(ii) finds that the Panel did not err, in paragraphs 7.372, 7.381, and 7.420 of the Canada Panel Report, in finding that the COOL measure modifies the conditions of competition in the US market to the detriment of imported livestock by creating an incentive in favour of processing exclusively domestic livestock and a disincentive against handling imported livestock;

(iii) finds that the Panel did not act inconsistently with its obligation under Article 11 of the DSU to make an objective assessment of the facts in its findings with respect to segregation, commingling, and the price differential between imported and domestic livestock in the US market; and

(iv) upholds, albeit for different reasons, the Panel's ultimate finding, in paragraphs 7.548 and 8.3(b) of the Canada Panel Report, that the COOL measure, particularly in regard to the muscle cut meat labels, is inconsistent with Article 2.1 of the *TBT Agreement* because it accords less favourable treatment to imported livestock than to like domestic livestock;

(b) with respect to the Panel's findings under Article 2.2 of the *TBT Agreement*:

(i) makes no finding with respect to the United States' claim that the Panel erred in finding that the COOL measure is "trade-restrictive" within the meaning of Article 2.2, because that claim of error is dependent upon the Appellate Body's reversal of the Panel's finding under Article 2.1 of the *TBT Agreement*;

(ii) finds that the Panel did not err, in paragraphs 7.617 and 7.685 of the Canada Panel Report, in finding that the objective pursued by the United States through the COOL measure is the provision of consumer information on origin[1018];

(iii) finds that, in identifying the objective pursued by the United States through the COOL measure, the Panel did not act inconsistently with its obligation under Article 11 of the DSU to make an objective assessment of the facts, and did not fail to characterize the objective of the COOL measure in sufficient detail;

(iv) finds that the Panel did not err, in paragraph 7.651 of the Canada Panel Report, in finding that the provision of consumer information on origin is a legitimate objective within the meaning of Article 2.2 of the *TBT Agreement*;

(v) finds that the Panel erred in the interpretation and application of Article 2.2 of the *TBT Agreement* in its analysis of whether the COOL measure is "more trade-restrictive than necessary to fulfil a legitimate objective", and, consequently, finds that the Panel erred, in paragraph 7.719 of the Canada Panel Report, in finding that "the COOL measure does not fulfil the identified objective within the meaning of Article 2.2 because it fails to convey meaningful origin information to consumers"; and, therefore,

(vi) reverses the Panel's ultimate finding, in paragraphs 7.720 and 8.3(c) of the Canada Panel Report, that the COOL measure is inconsistent with Article 2.2 of the *TBT Agreement*; and

(vii) finds that, in the light of the lack of sufficient undisputed facts on the Panel record or factual findings by the Panel, the Appellate Body is unable to complete the legal analysis under Article 2.2 of the *TBT Agreement* and properly assess whether the COOL measure is more trade restrictive than necessary to fulfil its legitimate objective; and

[1018]We recall in this respect that the COOL measure defines the "origin" of meat as a function of the country or countries in which the livestock from which the meat is derived were born, raised, and slaughtered.

(c) with respect to Canada's conditional appeals under Articles III:4 and XXIII:1(b) of the GATT 1994, finds that the conditions upon which these appeals are premised are not satisfied, and, consequently, makes no finding with respect to Canada's claims that the COOL measure is inconsistent with Article III:4 of the GATT 1994, or that the application of the COOL measure nullifies or impairs benefits accruing to Canada within the meaning of Article XXIII:1(b) of the GATT 1994.

497. The Appellate Body recommends that the DSB request the United States to bring its measures, found in this Report, and in the Canada 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 15th day of June 2012 by:

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Ujal Singh Bhatia
Presiding Member

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Ricardo Ramírez-Hernández
Member

Peter Van den Bossche
Member

IX. Findings and Conclusions

496. In the appeal of the Panel Report, *United States – Certain Country of Origin Labelling (COOL) Requirements* (Complaint by Mexico) (WT/DS386/R) (the "Mexico Panel Report"), for the reasons set out in this Report, the Appellate Body:

(a) with respect to the Panel's findings under Article 2.1 of the *TBT Agreement*:

(i) finds that the Panel did not err, in paragraph 7.295 of the Mexico Panel Report, in stating that the COOL measure treats imported livestock differently than domestic livestock;

(ii) finds that the Panel did not err, in paragraphs 7.372, 7.381, and 7.420 of the Mexico Panel Report, in finding that the COOL measure modifies the conditions of competition in the US market to the detriment of imported livestock by creating an incentive in favour of processing exclusively domestic livestock and a disincentive against handling imported livestock;

(iii) finds that the Panel did not act inconsistently with its obligation under Article 11 of the DSU to make an objective assessment of the facts in its findings with respect to segregation, commingling, and the price differential between imported and domestic livestock in the US market; and

(iv) upholds, albeit for different reasons, the Panel's ultimate finding, in paragraphs 7.548 and 8.3(b) of the Mexico Panel Report, that the COOL measure, in particular in regard to the muscle cut meat labels, is inconsistent with Article 2.1 of the *TBT Agreement* because it accords less favourable treatment to imported livestock than to like domestic livestock;

(b) with respect to the Panel's findings under Article 2.2 of the *TBT Agreement*:

(i) makes no finding with respect to the United States' claim that the Panel erred in finding that the COOL measure is "trade-restrictive" within the meaning of Article 2.2, because that claim of error is dependent upon the Appellate Body's reversal of the Panel's finding under Article 2.1 of the *TBT Agreement*;

(ii) finds that the Panel did not err, in paragraphs 7.617 and 7.685 of the Mexico Panel Report, in finding that the objective pursued by the United States through the COOL measure is the provision of consumer information on origin[1018];

(iii) finds that, in identifying the objective pursued by the United States through the COOL measure, the Panel did not act inconsistently with its obligation under Article 11 of the DSU to make an objective assessment of the facts;

(iv) finds that the Panel erred in the interpretation and application of Article 2.2 of the *TBT Agreement* in its analysis of whether the COOL measure is "more trade-restrictive than necessary to fulfil a legitimate objective", and, consequently, finds that the Panel erred, in paragraph 7.719 of the Mexico Panel Report, in finding that "the COOL measure does not fulfil the identified objective within the meaning of Article 2.2 because it fails to convey meaningful origin information to consumers"; and, therefore,

(v) reverses the Panel's ultimate finding, in paragraphs 7.720 and 8.3(c) of the Mexico Panel Report, that the COOL measure is inconsistent with Article 2.2 of the *TBT Agreement*; and

(vi) finds that, in the light of the lack of sufficient undisputed facts on the Panel record or factual findings by the Panel, the Appellate Body is unable to complete the legal analysis under Article 2.2 of the *TBT Agreement* and properly assess whether the COOL measure is more trade restrictive than necessary to fulfil its legitimate objective; and

(c) with respect to Mexico's conditional appeals under Articles III:4 and XXIII:1(b) of the GATT 1994, finds that the conditions upon which these appeals are premised are not satisfied, and, consequently, makes no finding with respect to Mexico's claims that the COOL measure is inconsistent with Article III:4 of the GATT 1994, or that the application of the COOL measure nullifies or impairs benefits accruing to Mexico within the meaning of Article XXIII:1(b) of the GATT 1994.

[1018]We recall in this respect that the COOL measure defines the "origin" of meat as a function of the country or countries in which the livestock from which the meat is derived were born, raised, and slaughtered.

497. 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 15th day of June 2012 by:

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Ujal Singh Bhatia
Presiding Member

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Ricardo Ramírez-Hernández
Member

Peter Van den Bossche
Member