VIII. FINDINGS AND RECOMMENDATIONS

8.1 We recall the United States' request that we issue our findings in the form of a single document containing two separate reports with separate findings and recommendations for each complainant. We also recall that Canada agreed, and Mexico did not object, to the United States' request.[1134] Accordingly, we provide two separate sets of findings and recommendations, with separate numbers/symbols for each complainant (WT/DS384 for Canada and WT/DS386 for Mexico).

[1134] See para. 2.11 above.

A. COMPLAINT BY CANADA (DS384): FINDINGS AND RECOMMENDATION

8.2 Canada has made claims with regard to the COOL measure and the Vilsack letter under Articles 2.1 and 2.2 of the TBT Agreement and Articles III:4, X:3(a) and XXIII:1(b) of the GATT 1994.

8.3 With respect to Canada's claims under the TBT Agreement, we conclude that:

(a) the COOL measure is a "technical regulation" within the meaning of Annex 1.1 to the TBT Agreement, whereas the Vilsack letter is not;

(b) the COOL measure, particularly in regard to the muscle cut meat labels, violates Article 2.1 because it affords imported livestock treatment less favourable than that accorded to like domestic livestock; and

(c) the COOL measure violates Article 2.2 because it does not fulfil the objective of providing consumer information on origin with respect to meat products.

8.4 With respect to Canada's claims under the GATT 1994, we conclude that:

(a) we need not make a finding on the COOL measure under Article III:4 in light of our finding that the same measure violated the national treatment obligation under Article 2.1 of the TBT Agreement;

(b) the Vilsack letter violates Article X:3(a) because it does not constitute a reasonable administration of the COOL measure; and

(c) having found that the Vilsack letter falls within the scope of Article X:3(a), we refrain from examining whether it is inconsistent with Article III:4.

8.5 Finally, in light of the above findings of violation, we have refrained from examining Canada's non-violation claim under Article XXIII:1(b) of the GATT 1994.

8.6 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, we conclude that to the extent that the United States has acted inconsistently with Articles 2.1 and 2.2 of the TBT Agreement and Article X:3(a) of the GATT 1994, it has nullified or impaired benefits accruing to Canada under these agreements.

8.7 Pursuant to Article 19.1 of the DSU, having found that the United States has acted inconsistently with Articles 2.1 and 2.2 of the TBT Agreement and Article X:3(a) of the GATT 1994, we recommend that the Dispute Settlement Body request the United States to bring the inconsistent measures into conformity with its obligations under the TBT Agreement and the GATT 1994.

A. COMPLAINT BY MEXICO (DS386): FINDINGS AND RECOMMENDATION

8.2 Mexico has made claims with regard to the COOL measure and the Vilsack letter under Articles 2.1, 2.2, 2.4, 12.1 and 12.3 of the TBT Agreement and Articles III:4, X:3(a) and XXIII:1(b) of the GATT 1994.

8.3 With respect to Mexico's claims under the TBT Agreement, we conclude that:

(a) the COOL measure is a "technical regulation" within the meaning of Annex 1.1 to the TBT Agreement, whereas the Vilsack letter is not;

(b) the COOL measure, in particular in regard to the muscle cut meat labels, violates Article 2.1 because it affords imported livestock treatment less favourable than that accorded to like domestic livestock;

(c) the COOL measure violates Article 2.2 because it does not fulfil the objective of providing consumer information on origin with respect to meat products;

(d) Mexico has not established that the COOL measure violates Article 2.4;

(e) Mexico has not established that the United States acted inconsistently with Article 12.3; and

(f) in light of our finding on Mexico's claim under Article 12.3, Mexico has not established its claim under Article 12.1.

8.4 With respect to Mexico's claims under the GATT 1994, we conclude that:

(a) we need not make a finding on the COOL measure under Article III:4 in light of our finding of violation by the same measure of the more specific national treatment obligation under Article 2.1 of the TBT Agreement;

(b) the Vilsack letter violates Article X:3(a) because it does not constitute a reasonable administration of the COOL measure;

(c) Mexico has not established that the United States administered the COOL measure in a non-uniform and partial manner inconsistently with Article X:3(a) through the shifts in the guidance by USDA on the COOL measure; and

(d) having found that the Vilsack letter falls within the scope of Article X:3(a), we refrain from examining whether it is inconsistent with Article III:4.

8.5 Finally, in light of the above findings of violation, we have refrained from examining Mexico's non-violation claim under Article XXIII:1(b) of the GATT 1994.

8.6 Under Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, we conclude that to the extent that the United States has acted inconsistently with Articles 2.1 and 2.2 of the TBT Agreement and Article X:3(a) of the GATT 1994, it has nullified or impaired benefits accruing to Mexico under these agreements.

8.7 Pursuant to Article 19.1 of the DSU, having found that the United States has acted inconsistently with Articles 2.1 and 2.2 of the TBT Agreement and Article X:3(a) of the GATT 1994, we recommend that the Dispute Settlement Body request the United States to bring the inconsistent measures into conformity with its obligations under the TBT Agreement and the GATT 1994.