

8 CONCLUSIONS AND RECOMMENDATIONS

8.1. We recall that at the substantive meeting of 18 and 19 February 2014, the parties did not object to including the Panel Reports in a single document, with the understanding that, following the same approach as in the original dispute, the final sections on Conclusions and Recommendations would be printed on separate pages with the relevant DS symbol. 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).

8.2. In making these findings, we recall our above observations in respect of potential WTO-consistent solutions for achieving the amended COOL measure's legitimate objective.¹⁵¹¹

¹⁵¹¹ See paras. 7.614-7.616 above.

8.1 Complaint by Canada (DS384): Conclusions and recommendations

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

- a. the amended COOL measure is a "technical regulation" within the meaning of Annex 1.1 to the TBT Agreement;
- b. the amended COOL measure violates Article 2.1 because it accords imported Canadian livestock treatment less favourable than that accorded to like domestic livestock, in particular because the amended COOL measure increases the original COOL measure's detrimental impact on the competitive opportunities of imported Canadian livestock, and this detrimental impact does not stem exclusively from legitimate regulatory distinctions; and
- c. Canada has not made a *prima facie* case that the amended COOL measure is more trade restrictive than necessary within the meaning of Article 2.2.

8.4. With respect to Canada's claims under the GATT 1994, we conclude that the amended COOL measure violates Article III:4, as it has a detrimental impact on the competitive opportunities of imported Canadian livestock, and thus accords less favourable treatment within the meaning of Article III:4 of the GATT 1994. In light of the above findings of violation, in particular under Article III:4 of the GATT 1994, we have exercised judicial economy with regard to Canada's non-violation claim under Article XXIII:1(b) of the GATT 1994; at the same time, we have set out conditional, factual conclusions and legal interpretations in the event that our supporting findings or determinations are overturned on appeal.

8.5. 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 Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994, it has nullified or impaired benefits accruing to Canada under these agreements.

8.6. Pursuant to Article 19.1 of the DSU, having found that the United States has acted inconsistently with Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994, we recommend that the Dispute Settlement Body request the United States to bring the inconsistent measure into conformity with its obligations under the TBT Agreement and the GATT 1994.

8.2 Complaint by Mexico (DS386): Conclusions and recommendations

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

- a. the amended COOL measure is a "technical regulation" within the meaning of Annex 1.1 to the TBT Agreement;
- b. the amended COOL measure violates Article 2.1 because it accords imported Mexican livestock treatment less favourable than that accorded to like domestic livestock, in particular because the amended COOL measure increases the original COOL measure's detrimental impact on the competitive opportunities of imported Mexican livestock, and this detrimental impact does not stem exclusively from legitimate regulatory distinctions; and
- c. Mexico has not made a *prima facie* case that the amended COOL measure is more trade restrictive than necessary within the meaning of Article 2.2.

8.4. With respect to Mexico's claims under the GATT 1994, we conclude that the amended COOL measure violates Article III:4, as it has a detrimental impact on the competitive opportunities of imported Mexican livestock, and thus accords less favourable treatment within the meaning of Article III:4 of the GATT 1994. In light of the above findings of violation, in particular under Article III:4 of the GATT 1994, we have exercised judicial economy with regard to Mexico's non-violation claim under Article XXIII:1(b) of the GATT 1994; at the same time, we have set out conditional, factual conclusions and legal interpretations in the event that our supporting findings or determinations are overturned on appeal.

8.5. 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 Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994, it has nullified or impaired benefits accruing to Mexico under these agreements.

8.6. Pursuant to Article 19.1 of the DSU, having found that the United States has acted inconsistently with Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994, we recommend that the Dispute Settlement Body request the United States to bring the inconsistent measure into conformity with its obligations under the TBT Agreement and the GATT 1994.
