US – COOL[1]
(DS384, 386)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Canada, Mexico*	*TBT Arts. 2.1, 2.2, 2.4, 12.1 and 12.3, GATT Arts. III:4, X:3(a) and XXIII:1(b)*	Establishment of Panel	*19 November 2009*
			Circulation of Panel Report	*18 November 2011*
Respondent	*United States*		Circulation of AB Report	*29 June 2012*
			Adoption	*23 July 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States' country of origin labelling (COOL) requirements for beef and pork contained in the Agricultural Marketing Act of 1946, as amended by the Farm Bills 2002 and 2008, and implemented by the USDA through its 2009 Final Rule on Mandatory Country of Origin Labelling (instruments comprising "the COOL measure"); and the letter to "Industry Representative" from the United States Secretary of Agriculture, Thomas J. Vilsack (Vilsack letter).

- **Product at issue:** Imported cattle and hogs used in the production of beef and pork in the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **TBT Art. 2.1 (national treatment – technical regulations):** The Appellate Body upheld, albeit for modified reasons, the Panel's finding that the COOL measure was inconsistent with Art. 2.1 because it accorded less favourable treatment to imported livestock than to like domestic livestock. The Appellate Body concluded that the least costly way of complying with the COOL measure was to rely exclusively on domestic livestock, creating an incentive for US producers to use exclusively domestic livestock and thus causing a detrimental impact on the competitive opportunities of imported livestock. The Appellate Body found further that the recordkeeping and verification requirements imposed a disproportionate burden on upstream producers and processors compared to origin information conveyed to consumers. This regulatory distinction drawn by the COOL measure was therefore *not* legitimate within the meaning of Art. 2.1.

- **TBT Art. 2.2 (not more trade-restrictive than necessary):** The Appellate Body reversed the Panel's finding that the COOL measure violated Art. 2.2 because it did not fulfil the objective of providing consumer information on origin. The Appellate Body found that Art. 2.2 does not impose a minimum threshold level at which the measure must fulfil its legitimate objective; rather, it is the degree of the fulfilment that needs to be assessed against any reasonably available less trade-restrictive alternative measures. The Appellate Body was however unable to complete the Panel's analysis in order to determine whether the COOL measure was more trade restrictive than necessary to fulfil its legitimate objective.

- **TBT Art. 2.4 (international standards):** The Panel found that Mexico failed to establish that the COOL measure violated Art. 2.4. The Panel concluded that CODEX-STAN 1-1985 was an inappropriate means for the fulfilment of the pursued objective because the exact information that the United States wanted to provide to consumers, i.e. the countries in which an animal was born, raised and slaughtered, could not be conveyed through this standard.

- **GATT Art. X:3(a) (trade regulations – uniform, impartial and reasonable administration):** The Panel found that the United States failed to administer the COOL measure in a "reasonable" manner by sending the Vilsack letter, which contained additional voluntary suggestions, to the industry. The act of sending the Vilsack letter was thus found inconsistent with Art. X:3(a).

1 *United States – Certain Country of Origin Labelling (COOL) Requirements*

2 Other issues addressed: TBT Annex 1.1 (definition of technical regulation) and Arts 12.1 and 12.3 (special and differential treatment of developing country Members) (only Mexico); and GATT Arts III:4 (national treatment) and XXIII:1(b) (non-violation nullification or impairment).

US – COOL (ARTICLE 21.5 – CANADA AND MEXICO)[1]
(DS384, 386)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada, Mexico*	*TBT Arts. 2.1 and 2.2, GATT Arts. III:4, IX, XX, and XXIII:1(b)*	Referred to the Original Panel	*25 September 2013*
			Circulation of Panel Report	*20 October 2014*
Respondent	*United States*		Circulation of AB Report	*18 May 2015*
			Adoption	*29 May 2015*

1. MEASURES TAKEN TO COMPLY WITH DSB RECOMMENDATIONS AND RULINGS

- The amended COOL measure consisted of (a) the "COOL statute" (7 U.S.C. § 1638), which remained unchanged from the original dispute; and (b) the "2013 Final Rule" (78 Fed. Reg. 31367) amending certain provisions of the 2009 Final Rule (74 Fed. Reg. 2658) following the original dispute. Canada and Mexico challenged the treatment accorded to imported Canadian cattle and hogs, and imported Mexican cattle, under the United States' amended COOL measure.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **TBT Art. 2.1 (less favourable treatment and detrimental impact):** The Appellate Body found that the Panel did not err in its consideration of (a) the increased recordkeeping burden entailed by the amended COOL measure; and (b) the potential for label inaccuracy under the amended COOL measure, as being within its analysis of whether the detrimental impact of that measure on imported livestock stemmed exclusively from legitimate regulatory distinctions. The Panel considered that the exemptions prescribed by the amended COOL measure supported a conclusion that the detrimental impact of that measure on imported livestock did not stem exclusively from legitimate regulatory distinctions. The Appellate Body upheld this finding. As regards, the cross appeals of Canada and Mexico, the Appellate Body found that the Panel did not err by considering the amended COOL measure's prohibition of a trace-back system as not relevant for the analysis of whether the detrimental impact of that measure on imported livestock stemmed exclusively from legitimate regulatory distinctions.

- **TBT Art. 2.2 (not more trade-restrictive than necessary):** The Appellate Body found that Canada and Mexico did not demonstrate that, in the particular circumstances of this case, the sequence and order of analysis chosen by the Panel was outside the bounds of its latitude to tailor, to the case before it, its approach to the overall weighing and balancing required under Art. 2.2. The Appellate Body, however, found that the Panel erred in concluding that it was unable to ascertain the gravity of the consequences of non-fulfilment of the amended COOL measure's objective, and in finding that it could therefore not determine whether the first and second proposed alternative measures would make a degree of contribution to the objective pursued that was equivalent to that of the amended COOL measure. Accordingly, the Appellate Body reversed the Panel's finding that Canada and Mexico did not make a *prima facie* case that the amended COOL measure violates Art. 2.2. However, the Appellate Body could not complete the analysis as to whether the amended COOL measure was inconsistent with Art. 2.2.

- **GATT Arts. III:4, IX, and XX:** The Appellate Body concluded that the Panel did not err by not attributing contextual relevance to Art. IX in its interpretation of Art. III:4, and in finding that the amended COOL measure was inconsistent with Art. III:4. The Appellate Body also found that the Panel did not err in the way it addressed, at the interim review stage, the United States' request relating to the availability of Art. XX as an exception to Art. III:4 with respect to the amended COOL measure

- **GATT Art. XXIII:1(b) (non-violation claim):** Though the Panel exercised judicial economy with respect to the non-violation claim, nonetheless it made conditional factual findings in the event the Appellate Body were to disagree with its findings of violation or with its exercise of judicial economy. However, since the conditions upon which the appeal and cross appeals under Art. XXIII:1(b) were premised were not fulfilled, the Appellate Body made no findings in this regard.

1 *United States – Certain Country of Origin Labelling (COOL) Requirements – Recourse to Article 21.5 of the DSU by Canada and Mexico*
2 Other issues addressed: TBT Art. 2.2 (burden of proof with respect to reasonably available alternative measures).