World Trade Review (2015), 14: 4, 721–732
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Case Summaries: WTO Disputes

The following summaries provide a brief factual background and describe the key findings of recent WTO panel and Appellate Body reports.

doi:10.1017/S1474745615000415

US – COOL (Article 21.5 – Canada and Mexico), DS384/DS386

Adopted	29 May 2015
Complainants	Canada; Mexico
Respondent	United States
Third Parties	Argentina; Australia; Brazil; China; Colombia; European Union; Guatemala; India; Japan; Republic of Korea; New Zealand; Peru; Chinese Taipei

Measures at Issue

These compliance proceedings under Article 21.5 of the DSU concerned measures adopted by the United States to comply with the Dispute Settlement Body (DSB) recommendations and rulings in *US – COOL*. In *US – COOL*, the DSB found that a certain US country-of-origin labelling (COOL) measure regarding muscle cuts of meat (the Original COOL Measure), and the administration of that measure, were inconsistent with certain aspects of the TBT Agreement and the GATT 1994. The United States' measure taken to comply with the recommendations and rulings of the DSB consisted of an amendment to the Original COOL Measure (the 2013 Final Rule). In these compliance proceedings, the Panel and Appellate Body referred to the 2013 Final Rule, together with the Original COOL Measure, as the Amended COOL Measure. The Amended COOL Measure was the focus of these compliance proceedings.

Main Adopted Findings of the Panel and Appellate Body

TBT Article 2.1 (National Treatment)

The compliance Panel found that the Amended COOL Measure is inconsistent with Article 2.1 of the TBT Agreement because it accords less favourable treatment to Canadian and Mexican livestock than that accorded to like US livestock. In particular, the compliance Panel found that the Amended COOL Measure, relative to the Original COOL Measure, increases segregation of meat and livestock according to origin,[1] and entails a

1 Panel Report, *US – COOL (Article 21.5 – Canada and Mexico)*, paras. 7.136–7.137.

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relevant higher recordkeeping burden.[2] The compliance Panel consequently found that the Amended COOL Measure, relative to the Original COOL Measure, increases the incentive to process domestic over imported livestock, and therefore increases the Original COOL Measure's detrimental impact on the competitive opportunities of imported livestock in the US market.[3] The compliance Panel further found that this detrimental impact does not stem exclusively from legitimate regulatory distinctions in particular because it could not be explained by the need to convey to consumers information regarding the countries where livestock were born, raised, and slaughtered.[4] All three parties appealed certain aspects of the compliance Panel's reasoning in this context. The Appellate Body rejected all such arguments; as a result the compliance Panel's finding that the Amended COOL Measure violates Article 2.1 of the TBT Agreement was upheld.[5]

TBT Article 2.2 (More Trade-Restrictive than Necessary)

The Appellate Body reversed the compliance Panel's finding that the complainants had not made a *prima facie* case that the Amended COOL Measure is more trade-restrictive than necessary within the meaning of Article 2.2 of the TBT Agreement.[6] In particular, the Appellate Body found: (1) that the compliance Panel improperly excluded two types of COOL labels from consideration when reaching its conclusion that the Amended COOL Measure makes a 'considerable but necessarily partial' contribution to its objective of providing consumer information on origin;[7] and (2) that the compliance 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.[8] Canada and Mexico requested that the Appellate Body complete the relevant legal analysis, but the Appellate Body found that it was unable to do so.[9]

GATT Article III:4 (National Treatment)

The compliance Panel found that the Amended COOL Measure is inconsistent with Article III:4 of the GATT 1994. The compliance Panel based this finding on its conclusion, reached in its analysis regarding Article 2.1 of the TBT Agreement, that the Amended COOL Measure increases the Original COOL Measure's detrimental impact on the competitive opportunities of imported livestock in comparison with like US products.[10] On appeal, the Appellate Body rejected the United States' claim that the compliance Panel erred because it did not consider Article IX of the GATT 1994 as relevant context in interpreting Article III:4 of the GATT 1994. The Appellate Body further found that the Panel did not err in its treatment of the United States' request, at the interim review stage, relating to the availability of Article XX

2 Ibid., para. 7.150.
3 Ibid., para. 7.176.
4 Ibid., paras. 7.277 and 7.282–7.283.
5 Appellate Body Report, *US – COOL (Article 21.5 – Canada and Mexico)*, paras. 5.1–5.191.
6 Ibid., para. 5.308.
7 Ibid., para. 5.247.
8 Ibid., para. 5.297.
9 Ibid., para. 5.323.
10 Panel Report, *US – COOL (Article 21.5 – Canada and Mexico)*, paras. 7.617–7.643.

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of the GATT 1994 as an exception to Article III:4 of the GATT 1994. As a result, the compliance Panel's finding that the Amended COOL Measure violates Article III:4 of the GATT 1994 was upheld.[11]

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doi:10.1017/S1474745615000427

India – Agricultural Products, DS430

Adopted	19 June 2015
Complainant	United States
Respondent	India
Third Parties	Argentina; Australia; Brazil; China; Colombia; Ecuador; European Union; Guatemala; Japan; Viet Nam

Measures at Issue

This dispute concerned India's import prohibition affecting certain agricultural products from countries reporting Notifiable Avian Influenza to the World Organisation for Animal Health (OIE). India maintains this import prohibition through certain legal instruments concerning Avian Influenza (AI) – the AI Measures.

Main Adopted Findings of the Panel and Appellate Body

SPS Articles 3.1 and 3.2 (International Standards)

The Panel found that the AI Measures neither are 'based on' nor do they 'conform to' the relevant international standard (i.e. Chapter 10.4 of the OIE Terrestrial Code) within the meaning of Articles 3.1 and 3.2 of the SPS Agreement, respectively. Thus, the AI Measures were not entitled to a presumption of consistency with the SPS Agreement.[1] On appeal, India argued that the Panel's analysis violated Article 11 of the DSU in assessing the meaning of the OIE Code, and that the Panel acted inconsistently with Article 11.2 of the SPS Agreement or Article 13.2 of the DSU in consulting the OIE regarding the OIE Code's meaning. The Appellate Body rejected all such claims, and as a result the Panel's finding with respect to Articles 3.1 and 3.2 was upheld.[2]

11 Appellate Body Report, *US – COOL (Article 21.5 – Canada and Mexico)*, paras. 5.341–5.380.
1 Panel Report, *India – Agricultural Products*, paras. 7.272–7.275.
2 Appellate Body Report, *India – Agricultural Products*, paras. 5.89 and 5.110–5.111.

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