


US – COOL



Country Of Origin Labelling = “COOL”

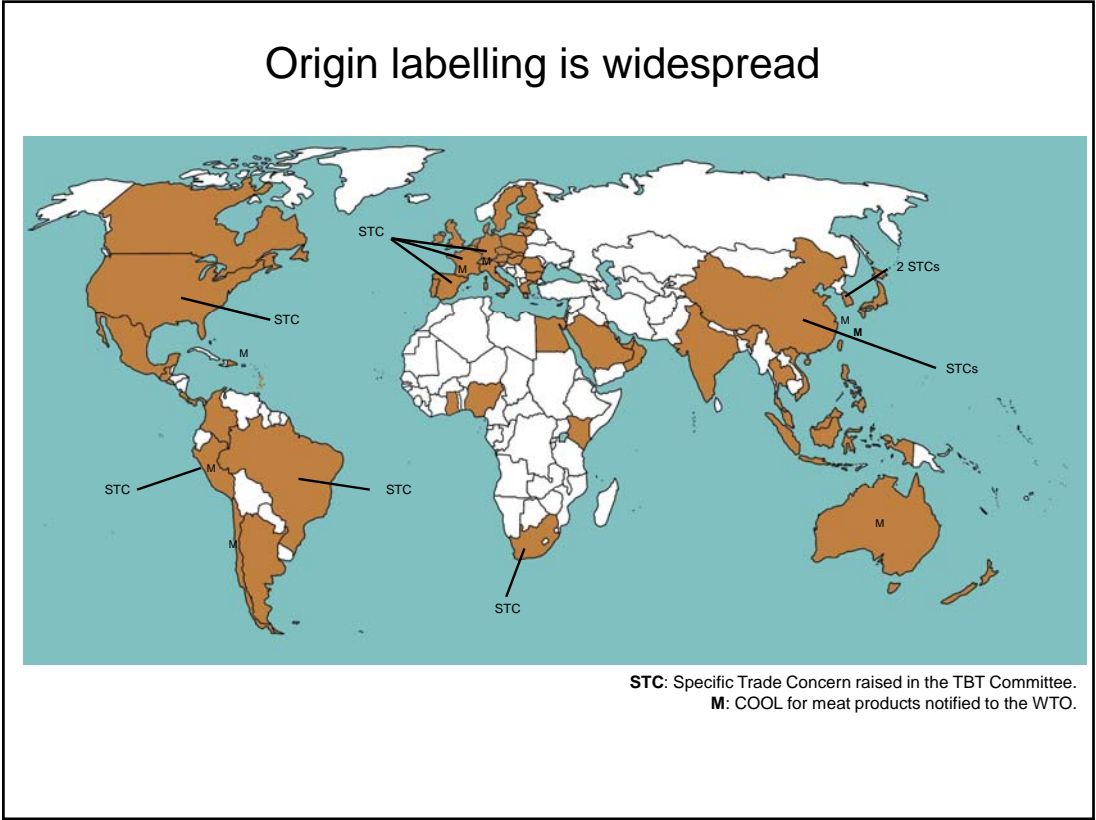
The full reports are
public and freely available at:

http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm

Facts



What type of measures is this?



Concern was expressed nine times
in the TBT Committee.

about what?

Claim by **Mexico / Canada (1)**:

...argue that the measures accord imported livestock treatment less favourable than that accorded to like domestic livestock ... this is because complying with the COOL requirements results in higher segregation costs for imported livestock, which in turn affects the competitive conditions of imported livestock in the market.

Para. 7.2 of Panel Report (Article 2.1)

Claim by **Mexico / Canada (2a)**:

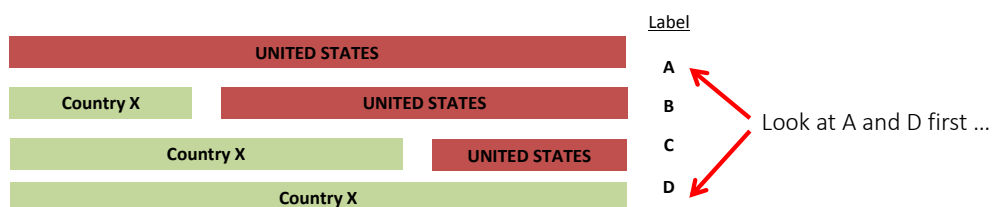
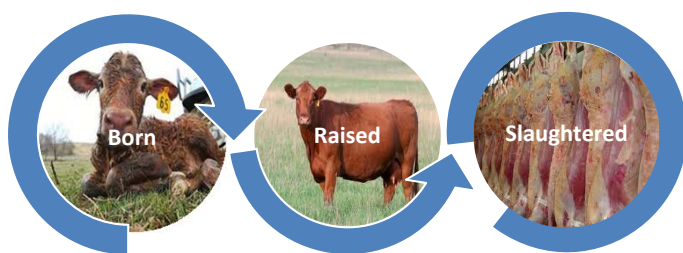
According to the complainants, the true objective of the COOL requirements is to protect domestic industry, not to provide consumer information on origin as stated by the United States, and that, in the circumstances of this dispute, the provision of consumer information is not legitimate.

Para. 7.3 of Panel Report (Article 2.2)

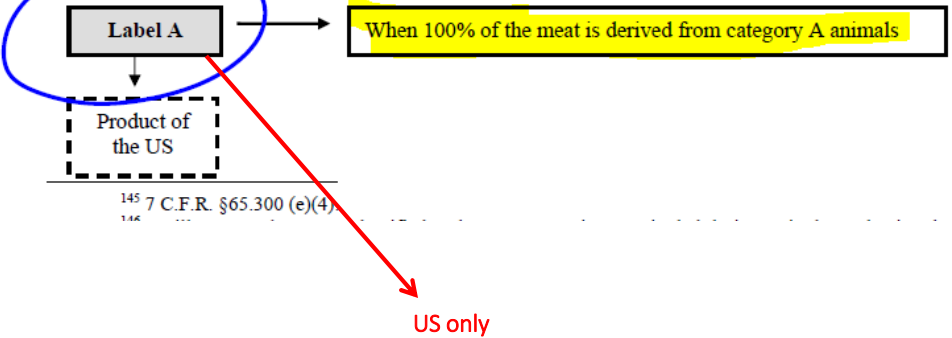
Claim by **Mexico / Canada** (2b):

... there are less trade restrictive alternatives and, in any event, the COOL requirements do not fulfil the objective of providing consumer information on origin because labels under the COOL requirements convey confusing and inaccurate information on the origin of meat products.

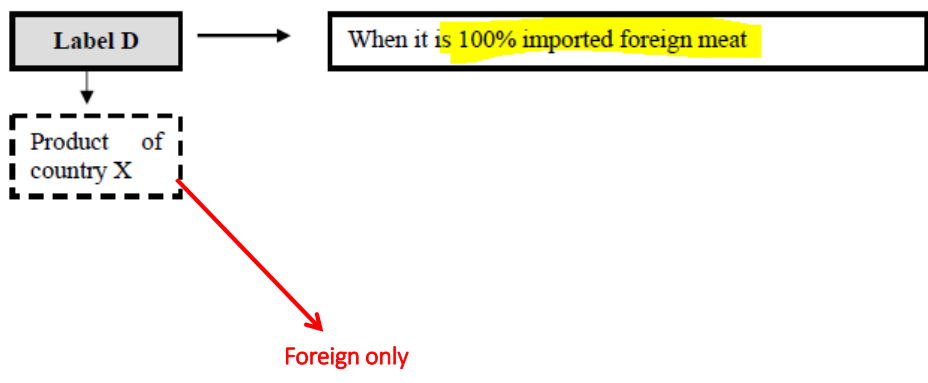
Para. 7.3 of Panel Report (Article 2.2)



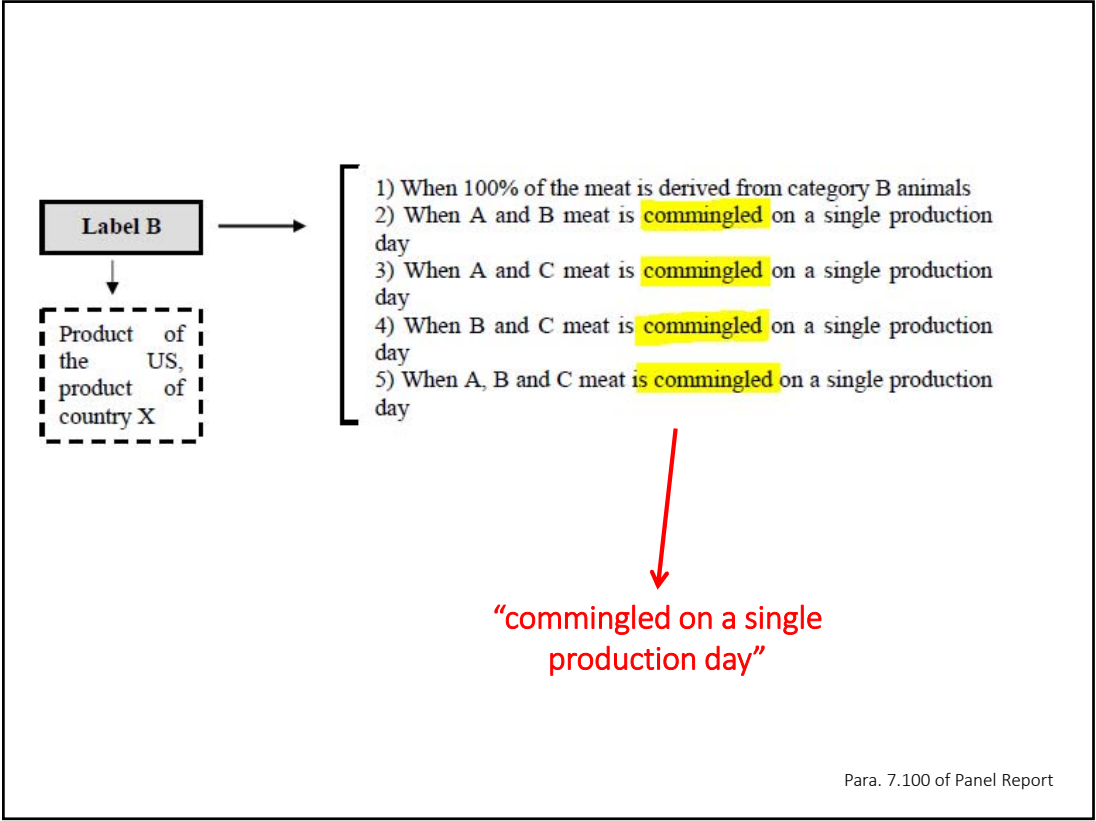
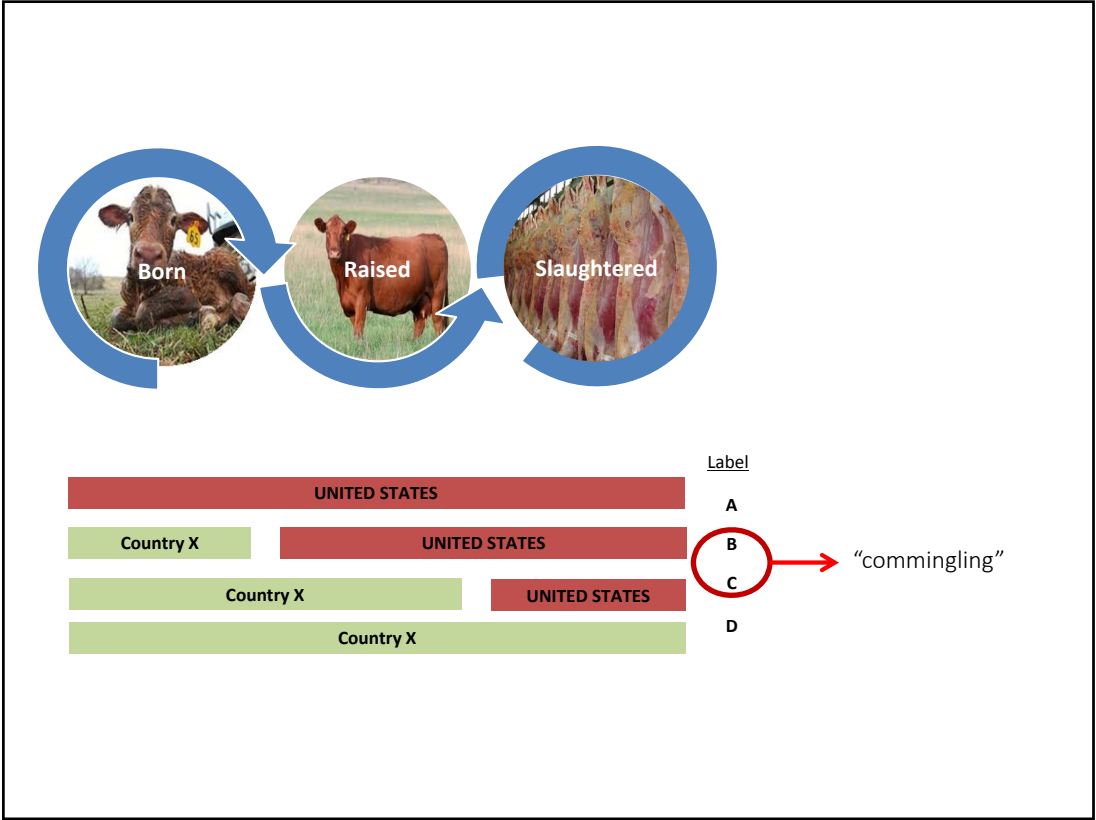
7.100 Based on the parties' submissions, we understand that the different labelling possibilities as prescribed under the 2009 Final Rule (AMS) are as follows:



Para. 7.100 of Panel Report



Para. 7.100 of Panel Report



Label C

→

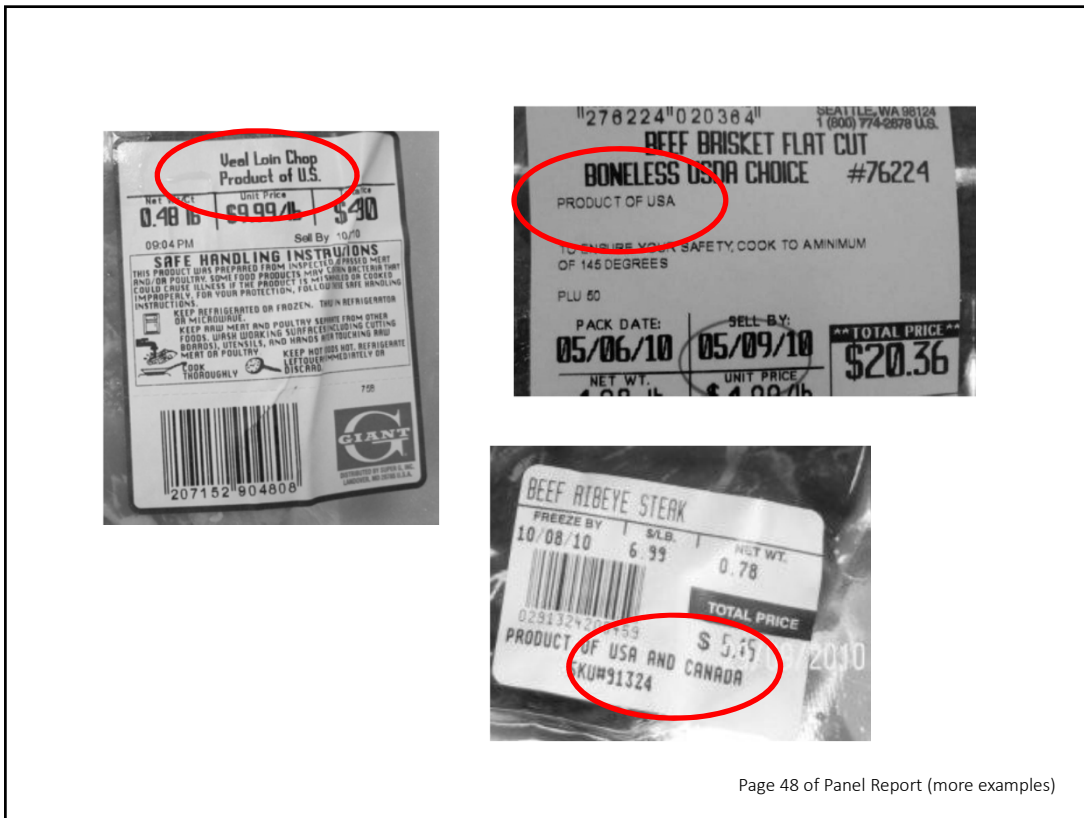
- 1) When 100% of the meat is derived from category C animals
- 2) When A and B meat is **commingled** on a single production day, meat may be labelled as C
- 3) When A and C meat is **commingled** on a single production day
- 4) When 100% of the meat is derived from category B animals, meat may be labelled as C
- 5) When B and C meat is **commingled** on a single production day
- 6) When A, B and C meat is **commingled** on a single production day

↓

“commingled on a single production day”

Para. 7.100 of Panel Report





Page 48 of Panel Report (more examples)

Exemptions?

Retails selling less than at a level USD 230'000 per year (butcher shop, ...), food service establishments (restaurants), food stands, lunch rooms, farmers' markets, products for exports.

Issues

Is it a technical regulation?

Is there discrimination ?

(Article 2.1)

Technical regulations (Article 2.1)

Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be **accorded treatment no less favourable** than that accorded to **like products** of national origin and to like products originating in any other country.

TBT Booklet, page. 17

7.235 As explained above, we address the complainants' claims under Article 2.1 by assessing the following three elements: (i) whether the measure at issue is a "technical regulation"; (ii) whether the imported and domestic products at issue are "like products"; and (iii) whether the imported products are accorded "less favourable" treatment than that accorded to like domestic products.

Yes

Only basis for distinction: origin.

“like products”

“less favourable treatment”

not appealed

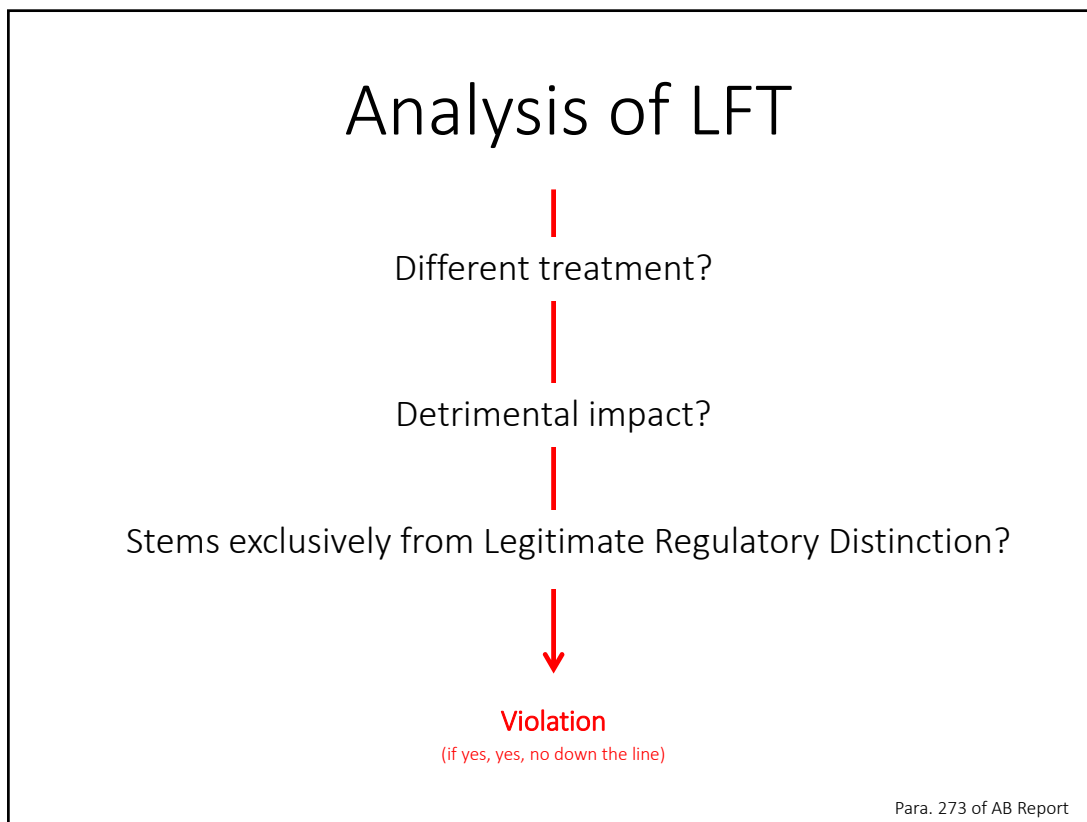
Para. 7.236, 256 of Panel Report and para. 267 of AB Report

“less favourable treatment”

7.257 The third essential element of the legal test under Article 2.1 of the TBT Agreement is "treatment no less favourable", or less favourable treatment.

= “LFT”

Para. 7.236 - 257 of Panel Report



Discussion: is different treatment allowed?

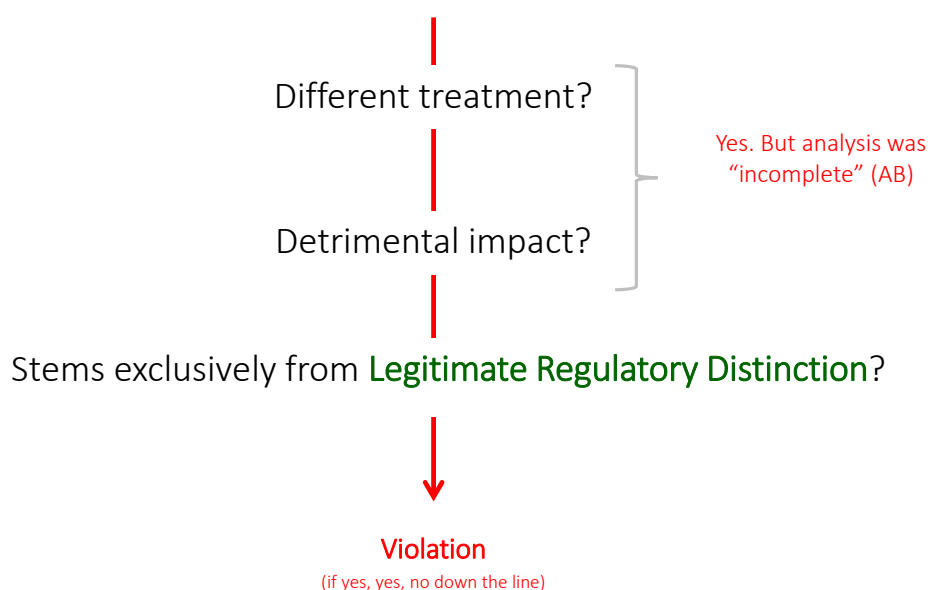
AB Report

So when a measure adversely affects imports **more** (e.g., compliance costs are higher) than domestic producers ...

⇒ violation?

Not necessarily, one more step needed ...

Analysis of LFT



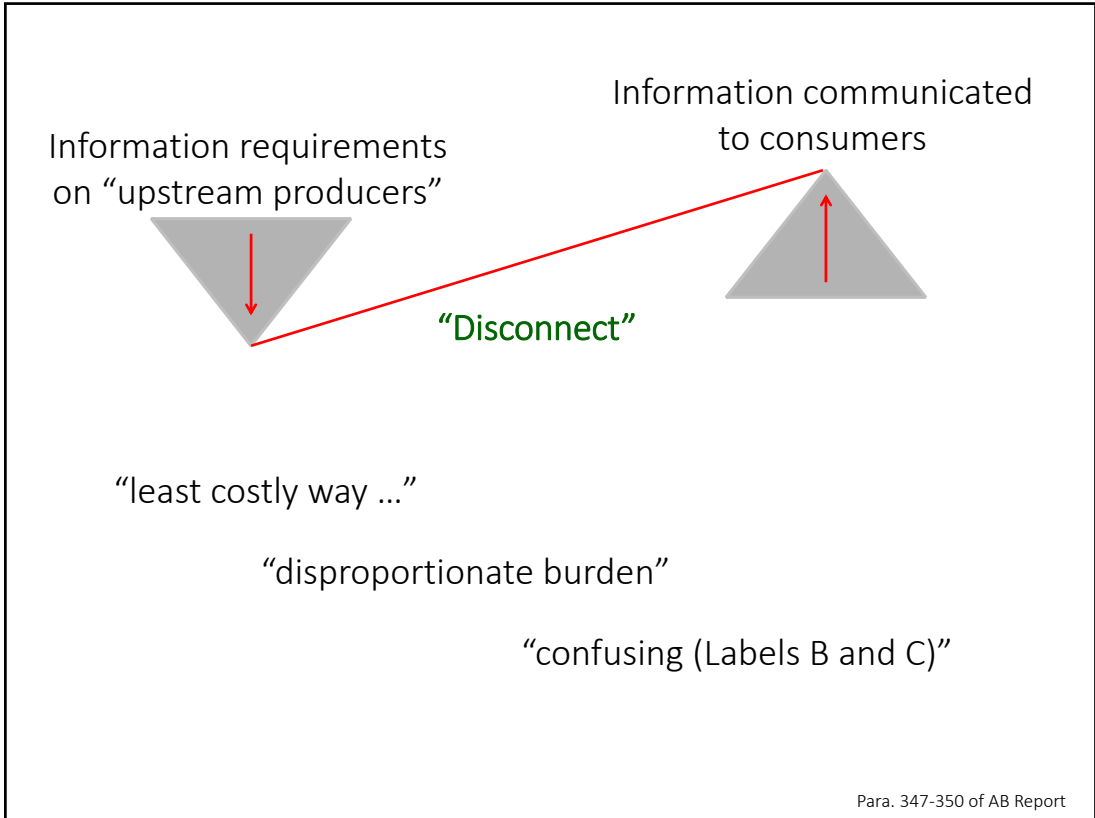
Para. 273, 293 of AB Report

“Legitimate Regulatory Distinction”

discrimination—that distinction cannot be considered legitimate and, thus, the detrimental impact will reflect discrimination prohibited under Article 2.1. **Therefore, we consider it appropriate to review the Panel's findings as they relate to the design, architecture, revealing structure, operation, and application of the COOL measure in order to determine whether we can reach a conclusion in this respect.**

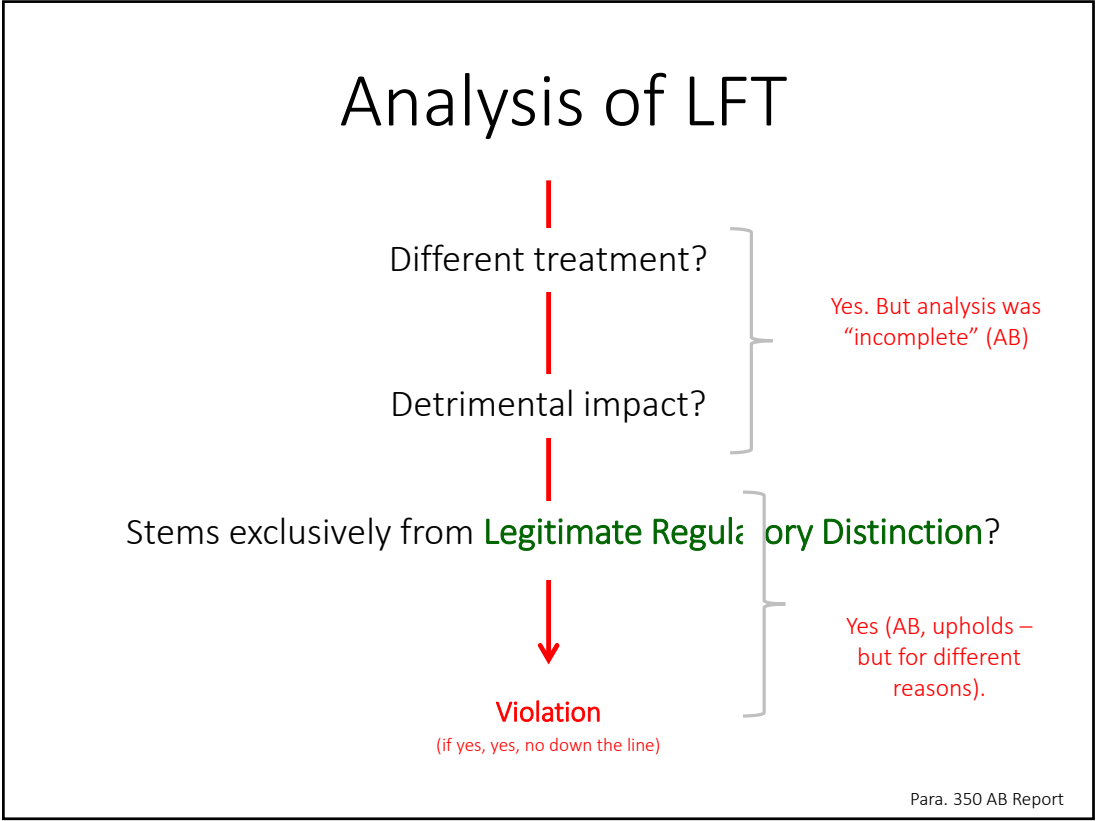
... the design, architecture, revealing structure, operation, and application of the COOL measure ...

Para. 293 of AB Report



Para. 347-350 of AB Report

“incentive”



Unnecessary obstacle to trade

(Article 2.2)

the provision of consumer information

Legitimacy of objective is accepted by
both the Panel and AB

(Nearly 70 other Members maintain some form of
mandatory country of origin labelling ...)

Panel Report, para. 7.651; AB Report, para. 438, 451

Issue was: fulfilment



A matter of degree.
“Degree of contribution”
(of legitimate objective)

AB Report, para 426

Overall, there is “some contribution” (AB), but to **what degree?**



The COOL measure does contribute, at
least to some degree, to providing
consumers with information on origin.

(Label A in particular; albeit, with respect to B and C,
unclear, imperfect, or inaccurate)

AB Report, para 468, 473, 475, 479


... due to absence of factual findings, ...facts,
 ... **unable to complete** the legal analysis under
 Article 2.2 ... and determine whether the
 COOL measure is more trade restrictive than
 necessary to fulfil its legitimate objective.

(= no finding of violation on 2.2, so Panel's finding is
 reversed)

AB Report, para 491

Key facts [back to top](#)

Short title:	US – COOL
Complainant:	Canada
Respondent:	United States
Third Parties:	Argentina; Australia; Brazil; China; Colombia; European Union; Guatemala; India; Japan; Korea, Republic of; Mexico; New Zealand; Peru; Chinese Taipei
Agreements cited: (as cited in request for consultations)	GATT 1994: Art. III:4, IX, IX:2, X:3, 21.5 back to overview Rules of Origin: Art. 2, 2(b), 2(c), 2(e), 2(i) Sanitary and Phytosanitary Measures (SPS): Art. 2, 5, 7 Technical Barriers to Trade (TBT): Art. 2, 2.1, 2.2, 2.4
Request for Consultations received:	1 December 2008
Panel Report circulated:	18 November 2011
Appellate Body Report circulated:	29 June 2012
Article 21.3(c) Arbitration Report circulated:	4 December 2012
Article 21.5 Panel Report circulated:	20 October 2014

Latest development... 



WORLD TRADE ORGANIZATION

(14-5927)

**WT/DS384/RW
WT/DS386/RW**

20 October 2014

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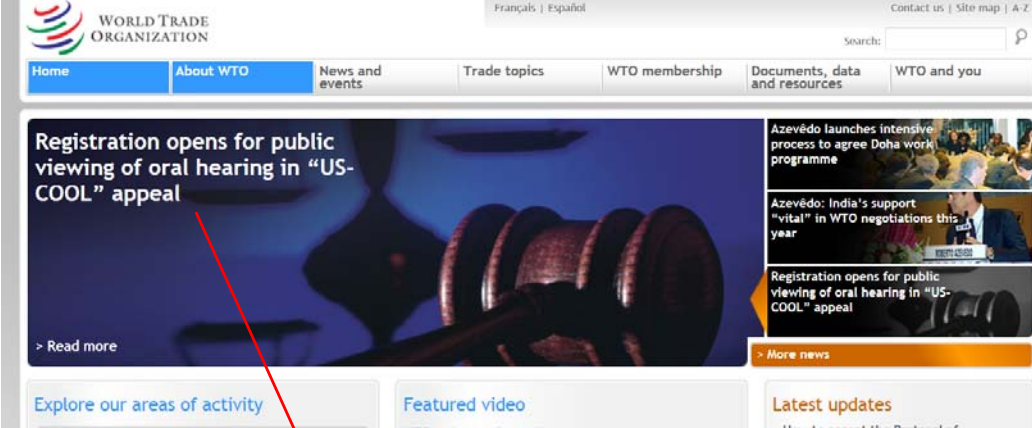
Original: English

UNITED STATES – CERTAIN COUNTRY OF ORIGIN LABELLING (COOL) REQUIREMENTS

RECOURSE TO ARTICLE 21.5 OF THE DSU BY CANADA AND MEXICO

REPORTS OF THE PANEL

Appealed by the US on 28 November 2014



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Oral hearing on 17 February 2015 (ongoing process)