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Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling

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Summary

Since the final rule to implement country-of-origin labeling (COOL) took effect in March 2009, most retail food stores have been required to inform consumers about the country of origin of fresh fruits and vegetables, fish, shellfish, peanuts, pecans, macadamia nuts, ginseng, and ground and muscle cuts of beef, pork, lamb, chicken, and goat. The rules were required by the 2002 farm bill (P.L. 107-171) as amended by the 2008 farm bill (P.L. 110-246). COOL for beef and pork resulted in a World Trade Organization (WTO) dispute settlement case with Canada and Mexico that started in 2009 and finally concluded in 2015.

Canada and Mexico challenged U.S. COOL in the WTO, arguing that COOL had a trade-distorting impact by reducing the value and number of cattle and hogs shipped to the U.S. market, thus violating WTO trade commitments. In November 2011, the WTO dispute settlement panel found that COOL treated imported livestock less favorably than U.S. livestock, and did not meet its objective to provide complete information to consumers on the origin of meat products. In March 2012, the United States appealed the WTO ruling.

In June 2012 the WTO's Appellate Body (AB) upheld the panel's finding that COOL treated imported livestock less favorably than domestic livestock. But the AB reversed the finding that COOL did not fulfill its legitimate objective to provide consumers with information on origin. The United States welcomed the WTO's affirmation of the right to adopt labeling requirements to inform consumers on the origin of their meat. Participants in the U.S. livestock sector had mixed reactions, reflecting the ongoing heated debate on COOL.

In order to meet a compliance deadline of May 23, 2013, USDA issued a revised COOL rule requiring that labels show where each production step (born, raised, slaughtered) occurred and prohibited the commingling of muscle-cut meat from different origins. COOL's supporters applauded the revised rule for providing consumers with specific, useful information on origin.

In September 2013, a compliance panel was formed to determine if the revised COOL rule complied with WTO agreements. On October 20, 2014, the panel found that the revised COOL rule treated imported livestock less favorably than domestic livestock. The panel confirmed that COOL was a legitimate objective, but could not determine if the rule was more trade restrictive than necessary. The United States appealed the compliance panel findings in November 2014, and the AB heard the appeal in February 2015. The AB report, released in May 2015, again found that COOL violated U.S. WTO obligations.

On June 4, 2015, Canada and Mexico requested authorization to retaliate against U.S. imported products in the amount of US$3 billion. The United States objected to the requests, and on September 15-16, 2015, an arbitration panel met to determine the appropriate level of retaliation. On December 7, 2015, the arbitration panel set the retaliation levels at C$1.055 billion (US$781 million) for Canada and at US$228 million for Mexico.

On December 18, 2015, Congress repealed the COOL requirements for beef and pork and ground beef and pork in the enacted Consolidated Appropriations Act, 2016 (P.L. 114-113). After the repeal by Congress, USDA halted enforcement of COOL for beef and pork.

On December 21, 2015, the WTO authorized Canada and Mexico to retaliate against products imported from the United States. Canada and Mexico stated that they were pleased with the repeal of COOL but will retain the authority to retaliate until they are assured that cattle and hog trade is unimpeded as the repeal of COOL is implemented.

On March 2, 2016, USDA issued a final rule that amended the COOL regulations to bring them into conformity with P.L. 114-113. Congressional repeal of COOL for beef and pork and the amended regulations have brought the United States into compliance with its WTO obligations.

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Recent COOL Developments

On May 18, 2015, the World Trade Organization's (WTO) Appellate Body confirmed the findings of previous panels that U.S. country-of-origin labeling (COOL) for beef and pork violated U.S. WTO obligations by discriminating against imported livestock. In June 2015, Canada and Mexico requested permission from the WTO to impose about US$3 billion in concessions, in the form of retaliatory tariffs, against products imported from the United States. The United States objected to the request, and an arbitration panel was established to determine the appropriate level of concessions.

On July 23, 2015, Senator Hoeven introduced the Voluntary Country of Origin Labeling (COOL) and Trade Enhancement Act of 2015 (S. 1844), which, like H.R. 2393, repeals mandatory COOL for beef, pork, chicken, and their ground products. In addition, S. 1844 amends the Agricultural Marketing Act (7 U.S.C. §1621 et seq.) requiring USDA to establish a label designation that enables meat processors to voluntarily use a U.S. label for beef, pork, and chicken from livestock exclusively born, raised, and slaughtered in the United States.

Also, during debate on the vehicle for the Senate transportation reauthorization bill (H.R. 22), Senator Roberts, Chairman of the Agriculture Committee, introduced an amendment (S.Amdt. 2302) to repeal mandatory COOL for beef, pork, and chicken using language from H.R. 2393. On July 26, 2015, Senator Hoeven also introduced S. 1844 as an amendment (S.Amdt. 2371) to the transportation bill. Neither amendment was considered for inclusion in the final Senate-passed bill.

Canada and Mexico have stated that the only way to resolve the WTO case is to repeal COOL. In response to Senator Hoeven's proposed voluntary program, Canada's Agriculture Minister said such a program would "guarantee Canadian retaliation" because it would continue to discriminate against imported livestock through segregation.[1]

If a voluntary COOL program was implemented, and Canada or Mexico opposed it, the United States could request that a WTO compliance panel determine if the new program is compliant with WTO requirements. Canada and Mexico could implement retaliation even if mandatory COOL is repealed and is replaced with a voluntary program. U.S. products would face higher tariffs while the compliance panel reviews the new voluntary program.

The WTO arbitration panel met on September 15-16, 2015, to hear arguments to determine the level of concessions for Canada and Mexico. On December 7, 2015, the arbitration panel released its report, which found that Canada could request retaliation of C$1.055 billion (US$781 million) and Mexico US$228 million.

As many stakeholders expected, the enacted Consolidated Appropriations Act, 2016 (P.L. 114-113, Div. A, Sec. 759) repealed COOL for beef and pork and ground beef and pork by amending the COOL statute. After COOL was repealed by Congress, the Secretary of Agriculture said that USDA would immediately halt enforcement of COOL and rewrite the COOL regulations to reflect the repeal of beef and pork. Unlike the House COOL repeal bill (Country of Origin Labeling Amendments Act of 2015; H.R. 2393) passed in June 2015, the repeal language in P.L. 114-113 did not include chicken and ground chicken products. Also, the legislation did not include any voluntary COOL provisions similar to what Senator Hoeven introduced in the

[1] Agriculture and Agri-Food Canada, "Minister Ritz Calls for Outright Repeal of United States Country of Origin Labelling (COOL)," press release, July 30, 2015, http://news.gc.ca/web/article-en.do?nid=1011969&_ga=1.70883986.385702904.1438289226.

Voluntary Country of Origin Labeling (COOL) and Trade Enhancement Act of 2015 (S. 1844) in July 2015.

Congressional repeal of COOL for beef and pork brings the United States into compliance with its WTO obligations and effectively ends the COOL case. On December 21, 2015, Canada and Mexico took the procedural step of formally requesting authorization to retaliate, and the DSB granted the request (see "Suspension of Concessions (Retaliation)" below for more information). Canada and Mexico have stated that they are pleased with the repeal of COOL.[2] Although the threat of retaliation now has been removed, Canada and Mexico are likely to retain the authority to retaliate until USDA formally rescinds existing COOL regulations for beef and pork, and until Canada and Mexico are assured that cattle and hog trade is unimpeded as the repeal of COOL is implemented.

On March 2, 2016, USDA issued the final rule to amend COOL regulations for beef, pork, and ground beef and pork by striking all references to beef and pork.[3] The rulemaking brings COOL regulations into conformity with the repeal amendment in Section 759 of P.L. 114-113.

Overview of COOL

Since the 1930s, U.S. tariff law has required almost all imports to carry labels so that the "ultimate purchaser," usually the retail consumer, can determine their country of origin. However, certain products, including a number of agricultural commodities in their "natural" state, such as meats, fruits, and vegetables, were excluded. (See **Appendix A** for a description of this and two other food labeling laws covering the display of country of origin on imported products.) For almost as many decades, various farm and consumer groups have pressed Congress to end one or more of these exceptions, arguing that U.S. consumers have a right to know where all of their food comes from and that given a choice they would purchase the domestic version. This would strengthen demand and prices for U.S. farmers and ranchers, it was argued.

Opponents of ending these exceptions to COOL contended that there was little or no real evidence that consumers want such information and that industry compliance costs would far outweigh any potential benefits to producers or consumers. Such opponents, including some farm and food marketing groups, argued that mandatory COOL for meats, produce, or other agricultural commodities was a form of protectionism that would undermine U.S. efforts to reduce foreign barriers to trade in the global economy. COOL supporters countered that it was unfair to exempt agricultural commodities from the labeling requirements that U.S. importers of almost all other products already must meet, and that major U.S. trading partners impose their own COOL requirements for imported meats, produce, and other foods.

Authorizing Legislation

With passage of the 2002 farm bill, retail-level COOL was to become mandatory for fresh fruits and vegetables, beef, pork, lamb, seafood, and peanuts, starting September 30, 2004 (P.L. 107-171, §10816). Continuing controversy over the new requirements within the food and agricultural industry led Congress to postpone full implementation. The FY2004 Omnibus Appropriations Act (P.L. 108-199) postponed COOL—except for seafood—until September 30, 2006; the FY2006 Agriculture Appropriations Act (P.L. 109-97) further postponed it until September 30, 2008.

[2] Government of Canada, Foreign Affairs, Trade and Development Canada, "Canada-Mexico Statement on Repeal of U.S. Country of Origin Labelling," press release, December 19, 2015.

[3] 81 *Federal Register* 10755 (March 2, 2016).

During deliberations on the 2008 farm bill, the interest groups most affected by COOL reached consensus on various changes intended to ease what they viewed to be some of the more onerous provisions of the 2002 COOL law. Provisions dealing with record-keeping requirements, the factors to be considered for labeling U.S. and non-U.S. origin products, and penalties for noncompliance were modified. These amendments were incorporated into P.L. 110-246, Section 11002. The enacted 2008 farm bill required that COOL take effect on September 30, 2008, and added goat meat, chicken, macadamia nuts, pecans, and ginseng as commodities covered by mandatory COOL. (See **Appendix B** for a timeline of key COOL developments.)

USDA Regulations and Secretary's Statement to Implement COOL

The final rule to implement the COOL requirements for all covered commodities was issued by the U.S. Department of Agriculture's (USDA's) Agricultural Marketing Service (AMS) during the final days of the Bush Administration in January 2009.[4] It included changes to the interim rule published in August 2008 that some had criticized as watering down the COOL statute (see "Changes Made from Interim Rule to Final Rule"). In February 2009, Secretary of Agriculture Vilsack announced that the final rule would take effect as planned on March 16, 2009. At the same time, he also urged affected industries to voluntarily adopt additional changes that, he asserted, would provide more specific origin information to consumers and more closely adhere to the intent of the COOL law (see sections "Vilsack Letter" and "Vilsack Letter Is Not a Technical Regulation" for details).[5]

Costs and Benefits

COOL supporters argued that numerous studies show that consumers want country-of-origin labeling and would pay extra for it. Analysis accompanying USDA's interim and final rules concluded that, while benefits are difficult to quantify, it appears they will be small and will accrue mainly to consumers who desire such information. A Colorado State University economist suggested that consumers might be willing to pay a premium for "COOL meat" from the United States, but only if they perceive U.S. meat to be safer and of higher quality than foreign meat.[6] USDA earlier had estimated that purchases of (i.e., demand for) covered commodities would have to increase by 1% to 5% for benefits to cover COOL costs, but added that such increases were not anticipated. Data from several economic studies that aimed to model COOL impacts appear to fall within this range.[7]

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[4] USDA, AMS, "Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farmed-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts," 74 *Federal Register* 2658 (January 15, 2009). This final rule replaced the interim final rule for seafood (69 *Federal Register* 59708 (October 5, 2004)), and the interim final rule for all other covered commodities (73 *Federal Register* 45106 (August 1, 2008)).

[5] USDA, "Vilsack Announces Implementation of Country of Origin Labeling Law," press release, February 20, 2009. The Vilsack letter is available at http://www.usda.gov/documents/0220_IndustryLetterCOOL.pdf.

[6] Wendy J. Umberger, "Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?," *Choices*, 4th Quarter 2004.

[7] Gary W. Brewster et al., "Who Will Bear the Costs of Country-of-Origin Labeling?," *Choices*, 4th Quarter 2004; Daniel D. Hanselka et al., "Demand Shifts in Beef Associated with Country-of-Origin Labeling to Minimize Losses in Social Welfare," *Choices*, 4th Quarter 2004; and Alejandro Plastina and Konstantinos Giannakis, "Market and Welfare Effects of Mandatory Country-of-Origin Labeling in the U.S. Specialty Crops Sector," American Agricultural Economics Association Annual Meeting, Portland, Oregon, 2007.

Critics of mandatory COOL argued that large compliance costs will more than offset any consumer benefits. USDA's analysis of its final rule estimated first-year implementation costs to be approximately $2.6 billion for those affected. Of the total, each commodity producer would bear an average estimated cost of $370, intermediary firms (such as wholesalers or processors) $48,219 each, and retailers $254,685 each. The USDA analysis also included estimates of record-keeping costs and of food sector economic losses due to the rule.[8]

Key Provisions of COOL

Mandatory country-of-origin labeling (7 U.S.C. §1638 et seq.):

- *applies* to ground and muscle cuts of beef (including veal), lamb, and pork, fish and shellfish, peanuts, "perishable agricultural commodities" as defined by the Perishable Agricultural Commodities Act (i.e., fresh and frozen fruits and vegetables), goat meat, chicken, pecans, macadamia nuts, and ginseng (these are referred to as "covered commodities");
- *requires* method of production information (farm-raised or wild-caught) for fish and shellfish to be noted at the final point of sale to consumers;
- *exempts* these items if they are an ingredient in a processed food;
- *covers* only those retailers that annually purchase at least $230,000 of perishable agricultural commodities,[9] and requires them to inform consumers of origin "by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale"; and
- *exempts* from these labeling requirements such "food service establishments" as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public.

Defining and Labeling Origin for Meats

In designating country of origin, difficulties arise when products—particularly meats—are produced in multiple countries. For example, beef might be from an animal that was born and fed in Canada, but slaughtered and processed in the United States. Likewise, products from several different countries often are mixed, such as for ground beef. For covered red meats and chicken, the COOL law:

- *permits* the U.S. origin label to be used only on meats from animals that were exclusively born, raised, and slaughtered in the United States, with an exception for those animals present here before July 15, 2008;
- *permits* meats or chicken with multiple countries of origin to be labeled as being from all of the countries in which the animals may have been born, raised, or slaughtered;
- *requires* meat or chicken from animals imported for immediate U.S. slaughter to be labeled as from both the country the animal came from and the United States;

[8] 74 *Federal Register* 2658 (January 15, 2009), pp. 2682-2700.

[9] The COOL statute uses by reference this definition of "retailer" laid out in the Perishable Agricultural Commodities Act to identify those retailers required to comply with COOL requirements.

- *requires* products from animals not born, raised, or slaughtered in the United States to be labeled with their correct country(ies) of origin; and
- *requires*, for ground meat and chicken products, that the label list all countries of origin, or all "reasonably possible" countries of origin.

Because these statutory requirements are at the heart of the ongoing WTO dispute case, **Table 1** traces the progression of statutory language from the initial implementing regulations to the retail labels to be used for each of these five categories. Subsequent changes to these rules as now seen at the retail level are shown in **Table 2**.

Changes Made from Interim Rule to Final Rule

The meat labeling requirements have proven to be among the most complex and controversial areas of rulemaking, in large part because of the steps that U.S. feeding operations and packing plants must adopt to segregate, hold, and slaughter foreign-origin livestock separately from U.S. livestock. After AMS issued the interim rules in August 2008, many retailers and meat processors reportedly planned to use the "catch-all" multiple countries of origin label on as much meat as possible—even products that would qualify for the U.S.-only label, because it was both permitted and the easiest requirement to meet. COOL supporters objected that the label would be overused, undermining the intent of COOL (i.e., to distinguish between U.S. and non-U.S. meats).[10] In an effort to balance the concerns of both sides, USDA issued a statement attempting to clarify its August 2008 interim rule, stating that meats derived from both U.S.- and non-U.S.-origin animals may carry a mixed-origin claim (e.g., "Product of U.S., Canada, and Mexico"), but that the mixed-origin label cannot be used if only U.S.-origin meat was produced on a production day.[11]

The final (January 2009) rule attempted to further clarify the "multiple countries of origin" language. For example, muscle cut products of exclusively U.S. origin along with those from foreign-born animals, if commingled for slaughter on a single production day, can continue to qualify for a combined U.S. and non-U.S. label. "It was never the intent of the Agency [AMS] for the majority of product eligible to bear a U.S. origin declaration to bear a multiple origin destination. The Agency made additional modifications for clarity," AMS stated in material accompanying the rule.[12]

The clarifying changes failed to mollify some. The National Farmers Union (NFU) continued to view this portion of the rule as a "loophole that would allow meat packers to use a multiple countries, or NAFTA [North American Free Trade Agreement] label, rather than labeling U.S. products as products of the United States" and stated "[t]his is misleading to consumers."[13] Seven Senators highlighted similar concerns, stating that it would allow "meatpackers to put a multiple country of origin label on products that are exclusively U.S. products as well as those that are foreign." They characterized the final rule as defeating COOL's primary purpose to provide "clear, accurate and truthful information" to U.S. consumers, and hoped the rules will be revised "to close these loopholes."[14]

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[10] Steve Kay, "Retailers Can Use Various Label Methods," *Cattle Buyers Weekly*, August 4, 2008; Stephen Clapp, "Tester Asks USDA to Tighten COOL Meat Requirements," *Food Chemical News*, September 15, 2008.

[11] AMS, "Country of Origin Labeling (COOL) Frequently Asked Questions," September 26, 2008.

[12] USDA, AMS, January 12, 2009, fact sheet on the mandatory COOL final rule, p. 5.

[13] "NFU Statement: USDA Issues Final Rule for COOL," January 12, 2009.

[14] Letter to Secretary of Agriculture Tom Vilsack, February 3, 2009, http://web.archive.org/web/20090226012829/http://dorgan.senate.gov/newsroom/extras/020309vilsack.pdf.

Table 1. COOL for Beef and Pork: From Statute to Label

Muscle Cuts & Ground Meat Categories	COOL Statutory Definition	AMS Final Rule (January 2009)	COOL Label at Retail Level Under 2009 Rule[a]
UNITED STATES COUNTRY OF ORIGIN [Category A or Label A]	"beef [or] ... pork ... derived from an animal that was ... exclusively born, raised, and slaughtered in the United States"	For beef and pork, means: "(1) From animals *exclusively born, raised, and slaughtered in the United States*; (2) From animals born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and slaughtered in the United States; ..."	Product of the US(A)
MULTIPLE COUNTRIES OF ORIGIN [Category B or Label B]	"beef [or] ... pork ... derived from an animal that is— (i) not exclusively born, raised and slaughtered in the United States; (ii) born, raised or slaughtered in the United States; and (iii) not imported into the United States for immediate slaughter"	For muscle cuts of beef and pork "derived from animals that were *born in Country X* or (as applicable) Country Y, *raised and slaughtered in the United States*, and were *not derived from animals imported for immediate slaughter* [defined as "consignment directly from the port of entry to a recognized slaughtering establishment and slaughtered within 2 weeks from the date of entry"], the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y." For muscle cuts of beef and pork "derived from animals *born, raised, and slaughtered in the U.S.* that are *commingled during a production day* with muscle cuts [of beef and pork from animals *born outside the U.S., raised and slaughtered in the U.S., and not imported for immediate slaughter*], the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y." For muscle cuts of beef and pork "derived from animals that are *born in Country X* or Country Y, *raised and slaughtered in the United States*, that are *commingled during a production day with muscle cut*[s of beef and pork] *derived from animals that are imported into the United States for immediate slaughter* ..., the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y." "In each case, the countries may be listed in any order. In addition, the origin declaration may include more specific information related to production steps provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements."	Product of the U.S., Country X, and (as applicable) Country Y
IMPORTED FOR IMMEDIATE SLAUGHTER [Category C or Label C]	"beef [or] ... pork ... derived from an animal that is imported into the United States for immediate slaughter"	"If an animal was imported into the United States *for immediate slaughter* [defined as "consignment directly from the port of entry to a recognized slaughtering establishment and slaughtered within 2 weeks from the date of entry"], the origin of the resulting [beef and pork] derived from that animal shall be designated as Product of Country X and the United States."	Product of Country X, U.S.
FOREIGN COUNTRY OF ORIGIN [Category D or Label D]	"beef [or] ... pork ... derived from an animal ... not born, raised, or slaughtered in the United States"	"Imported [beef and pork] for which origin has already been established as defined by this law (e.g., born, raised, and slaughtered or produced) and for which *no production steps have occurred in the United States*, shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale."	Product of Country X

Muscle Cuts & Ground Meat Categories	COOL Statutory Definition	AMS Final Rule (January 2009)	COOL Label at Retail Level Under 2009 Rule[a]
GROUND BEEF OR PORK	"notice ... for ground beef, ground pork ... shall include a list of all [or] ... all reasonably possible countries of origin of such ground beef, ground pork, ..."	"The declaration for ground beef, ground pork, ... shall *list all countries of origin contained therein or that may be reasonably contained* therein. In determining what is considered reasonable, when a raw material from a specific origin is not in a processor's inventory for more than 60 days, that country shall no longer be included as a possible country of origin."	Product of U.S., Country X, (and as applicable) Country Y, Country Z, ...

Source: 7 U.S.C. §§1638a(a)(2)(A)-(D), Section 282 of Agricultural Marketing Act of 1946, as amended by 2008 farm bill (§10816 of P.L. 107-171); 7 C.F.R. 65.260(a)(1), 65.300(e)(1)-(4) and 65.300(h), as published in 74 *Federal Register* 2706 (January 15, 2009).

Notes: Key terms are in italics. These same designations also apply to other covered meats (lamb, chicken, and goat meat), but they were not the subject of complaints filed by Canada and Mexico in the WTO case.

a. See **Table 2** for retail-level labeling changes made by the May 2013 revised rule to comply with WTO panel findings.

Vilsack Letter

To address these views to comply with an Obama White House directive that all agencies review recent regulations issued by the outgoing Administration, Secretary of Agriculture Vilsack in a February 20, 2009, letter urged industry representatives to voluntarily adopt three suggested labeling changes in order to provide more useful information to consumers than the final rule itself might imply, and to better meet congressional intent.[15] These dealt with the labeling of meat products with multiple countries of origin, a reduction in the time allowance for labeling ground meat held in inventory, and exemptions to the rules for processed products.

On labeling for multiple countries of origin, he stated that

> processors should voluntarily include information about what production step occurred in each country when multiple countries appear on the label. For example, animals born and raised in Country X and slaughtered in Country Y might be labeled as "Born and Raised in Country X and Slaughtered in Country Y." Animals born in Country X but raised and slaughtered in Country Y might be labeled as "Born in Country X and Raised and Slaughtered in Country Y."

Vilsack's letter noted that the final rule allows a label for ground meat to bear the name of a country even if the meat from that country was not present in a processor's inventory in the preceding 60-day period. Noting that this allows for labeling this product "in a way that does not clearly indicate [its] country of origin," the Secretary asked processors to reduce this time allowance to 10 days, stating that this "would enhance the credibility of the label."

Secretary Vilsack also stated that USDA would closely monitor industry compliance to determine whether "additional rulemaking may be necessary to provide consumers with adequate information." His letter was widely viewed as an effort to address the concerns of COOL

[15] Letter from Secretary Vilsack to Industry Representatives, February 20, 2009, http://www.usda.gov/documents/0220_IndustryLetterCOOL.pdf.

adherents without reopening the rule and thereby attracting renewed criticism from the meat industry and U.S. trading partners.

Defining Origin for Other Covered Commodities

For perishable agricultural commodities, ginseng, peanuts, pecans, and macadamia nuts, retailers may only claim U.S. origin if the product was exclusively produced in the United States. However, a U.S. state, region, or locality designation is a sufficient U.S. identifier (e.g., Idaho potatoes). For farm-raised fish and shellfish, a U.S.-labeled product must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States; wild fish and shellfish must be derived exclusively from those harvested either in U.S. waters or by a U.S. flagged vessel, and processed in the United States or on a U.S. vessel. Also, labels must differentiate between wild and farm-raised fish and shellfish.

Scope of Coverage

Consumers may not find country-of-origin labels on much more of the food they buy, due to COOL's statutory and regulatory exemptions. First, as noted, all restaurants and other food service providers are exempt, as are all retail grocery stores that buy less than $230,000 a year in fresh fruits and vegetables. Second, "processed food items" derived from the covered commodities are exempt, and USDA, in its final rule, defined this term broadly (at 7 C.F.R. §65.220). Essentially, any time a covered commodity is subjected to a change that alters its basic character, it is considered to be processed. Although adding salt, water, or sugar do not, under USDA's definition, change the basic character, virtually any sort of cooking, curing, or mixing apparently does. For example, roasting a peanut or pecan, mixing peas with carrots, or breading a piece of meat or chicken all count as processing. As a result, only about 30% of the U.S. beef supply, 11% of all pork, 39% of chicken, and 40% of all fruit and vegetable supplies may be covered by COOL requirements at the retail level.[16] Whole peanuts are almost always purchased in roasted form, and will not have to be labeled. Some critics argued that AMS overstepped its authority, and congressional intent, by excepting such minimally processed commodities.

AMS countered that in fact many imported items still must carry COOL under provisions of the Tariff Act of 1930. "For example, while a bag of frozen peas and carrots is considered a processed food item under the COOL final rule, if the peas and carrots are of foreign origin, the Tariff Act requires that the country of origin be marked on the bag," AMS argued, citing similar regulatory situations for roasted nuts and for a variety of seafood items.[17]

Vilsack's letter, however, acknowledged that the "processed foods" definition in the final rule "may be too broadly drafted. Even if products are subject to curing, smoking, broiling, grilling, or steaming, voluntary labeling would be appropriate," he wrote.

Record-Keeping, Verification, and Penalties

The COOL law prohibits USDA from using a mandatory animal identification (ID) system, but the original 2002 version stated that the Secretary "may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable record-keeping audit trail that will permit the Secretary to verify compliance." Verification immediately became one of the most contentious issues, particularly for livestock producers, in part because of

[16] Percentages calculated by CRS based on USDA estimates of retail-level COOL coverage in pounds, divided by total annual supply (USDA data on domestic production plus imports).

[17] USDA, AMS, "Frequently Asked Questions," January 12, 2009.

the potential complications and costs to affected industries of tracking animals and their products from birth through retail sale. Producers of plant-based commodities, as well as food retailers and others, also expressed concern about the cost and difficulty of maintaining records for commodities that are highly fungible and often widely sourced. The 2008 law eased these requirements somewhat by stating that USDA "may conduct an audit of any person that prepares, stores, handles, or distributes a covered commodity" in order to verify compliance. Such persons must provide verification, but USDA may not ask for any additional records beyond those maintained "in the course of the normal conduct of business."

In its final rule, AMS stated that covered persons generally would have to keep records for one year that can identify both the immediate previous source and the immediate subsequent recipient of a covered commodity; certain exceptions are provided for pre-labeled products. Also, a slaughter facility can accept a producer affidavit as sufficient evidence for animal origin claims.

Also, potential fines for willful noncompliance are set for retailers and other persons at no more than $1,000 per violation. The 2002 law had set the fine at no more than $10,000 (and for retailers only), but the 2008 farm bill lowered this amount.

Administrative Enforcement and Audits

USDA's AMS oversees COOL through a retail and supplier surveillance program. AMS has cooperative agreements with all 50 states to conduct audits of retailers and suppliers that are covered under COOL. In 2014, the COOL program conducted 2,982 retail surveillance reviews and 570 follow-up reviews to ensure compliance with COOL requirements.[18] About 37,000 individual retail stores are subject to COOL regulations. In 2014, AMS found that retailer COOL compliance was at 91%, compared to 96% in both 2012 and 2013. AMS conducted audits on 113 products in the supplier chain. Compliance from supplier to retailer was 98%. In 2014, muscle cuts of meat were not audited. The AMS COOL program was funded at about $5 million in FY2014, with funding of $4.8 million expected in FY2015 and FY2016.

USDA's Office of Inspector General (OIG) audited the operations of the COOL program during 2010. Its report noted that "AMS made significant strides implementing the final rule" but found the need for improvements in its controls and processes to ensure that retailers and suppliers fully comply with COOL regulations. The OIG identified the need for AMS to strengthen its process to select retailers to be reviewed and the review process itself, and to more quickly evaluate the documentation kept by retailers and issue noncompliance letters. Auditors also pointed out that AMS needs to be more vigorous in enforcing COOL requirements, provide better oversight of the state agencies that conduct retailer reviews, and improve how it communicates with and provides program guidance to retailers. AMS agreed with all of the OIG recommendations, and by late 2012, had incorporated 11 of them into program operations.[19]

COOL Challenged by Canada and Mexico in WTO

Meat labeling proved to be the most contentious of COOL requirements, leading Canada and Mexico to challenge COOL using the World Trade Organization's (WTO's) dispute settlement process. Canada and Mexico are major suppliers of live cattle and hogs that are fed in U.S. feeding facilities and/or processed into beef and pork in U.S. meat packing plants. As the U.S.

[18] AMS, *FY2016 Budget Explanatory Notes*, Congressional Justification, February 2015, http://www.obpa.usda.gov/21ams2016notes.pdf#page=34.

[19] USDA, OIG, "Implementation of Country of Origin Labeling," August 2011, pp. 1 and 4, accessed at http://www.usda.gov/oig/webdocs/01601-04-HY.pdf.

meat processing sector geared up to implement COOL in mid-2008, Canada and Mexico expressed concern that COOL would adversely impact their livestock sectors. Indeed, U.S. cattle imports from Canada and Mexico and hog imports from Canada dropped in both 2008 and 2009 from year-earlier levels. Some analyses supported claims that COOL hampered livestock imports. Other analyses pointed out that factors such as exchange rates and inventory levels were also affecting import levels and that declines could not be entirely attributed to COOL (see **Appendix C** for background on livestock trade in North America).

Canada and Mexico requested consultations with the United States in December 2008 and June 2009 about their concerns. Not satisfied with the outcome of these consultations with U.S. officials, both countries in early October 2009 requested the establishment of a WTO dispute settlement (DS) panel to consider their case. In response, the U.S. Trade Representative (USTR) and the Secretary of Agriculture commented that they "regretted that the formal consultations" did not resolve concerns, and stated their belief that U.S. implementation of COOL provides consumers with information that is consistent with WTO commitments. They noted that countries worldwide had agreed that the principle of country-of-origin labeling was legitimate policy long before the WTO was created, and that other countries also require goods to be labeled with their origin.[20]

Both the Canadian and Mexican governments, in requesting a panel, asserted that COOL is inconsistent with U.S. obligations under certain WTO agreements—the General Agreement on Tariffs and Trade 1994, the Agreement on Technical Barriers to Trade, and the Agreement on Rules of Origin. These obligations include treating imports no less favorably than like products of domestic origin; making sure that product-related requirements are not more trade restrictive than necessary[21] to fulfill a legitimate public policy objective; ensuring that compliance with laws on marks of origin does not result in damaging imports, reducing their value, or unreasonably increasing their cost; and ensuring that laws, rules, and procedures on country of origin do not "themselves create restrictive, distorting, or disruptive" international trade, among others.

Dispute Settlement Panel Established

On November 19, 2009, the WTO's Dispute Settlement Body (DSB)[22] established a panel to consider both countries' complaints. In proceeding with this WTO case, Canadian officials stated that the COOL requirements are "so onerous" that when they were implemented, Canadian exporters of cattle and hogs were discriminated against in the U.S. market. The Canadian beef and pork industries, led by the Canadian Cattlemen's Association (CCA) and the Canadian Pork Council, actively pushed their government to initiate a WTO challenge. The CCA argued that COOL cost its producers C$92 million over the two months following the publication of the interim rule in August 2008, and could cost C$500 million per year. CCA estimated that slaughter steers and heifers were losing C$90 per head, because U.S. meat establishments did not want to assume the increased costs of complying with new labeling requirements by segregating, holding,

[20] U.S. Trade Representative, "Vilsack, Kirk Comment on Canadian Panel Request Regarding Country-of-Origin Labeling," press release, October 7, 2009.

[21] According to the WTO, a regulation is more restrictive than necessary when the objective pursued can be achieved through alternative measures which have less trade-restricting effects, taking account of the risks non-fulfilment of the objective would create.

[22] The Dispute Settlement Body has the sole authority to establish "panels" of experts to consider a trade dispute case filed by any WTO member country, and to accept or reject the panels' findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

and then slaughtering Canadian cattle separately from U.S. cattle. The losses included lower prices for all Canadian cattle due to decreased U.S. demand, as well as the cost of shipping those that are sold further distances to the fewer number of U.S. plants willing to take them. Canadian pork producers expressed similar concerns.[23]

USTR's request for public comment on this pending WTO case generated responses that reflected the heated debate on mandatory COOL seen earlier among key players in the livestock sector. The American Meat Institute (AMI),[24] representing U.S. meat processors and packers, stated that the U.S. law, in addition to violating WTO commitments, also violates NAFTA commitments. AMI argued that COOL discriminates against imports in favor of domestic meat.[25]

The National Cattlemen's Beef Association (NCBA) expressed concern that Canada's decision to pursue its case against U.S. COOL rules has the potential for retaliatory action to be taken against U.S. beef. It noted that "COOL has damaged critically important trading relationships [i.e., the import of Canadian and Mexican livestock, the value added as they pass through U.S. feedlots and are processed into meat, and the export of finished meat products back to Mexican and Canadian consumers], and is not putting additional money into the pockets of cattlemen."[26]

In opposition, the U.S. Cattlemen's Association (USCA) and the National Farmers Union (NFU) argued that COOL is "fully consistent" with the General Agreement on Tariffs and Trade and the Agreement on Technical Barriers to Trade (key WTO commitments). Both stated that COOL "does not discriminate between domestic and imported beef ... [and] operates neutrally in the market place," and noted that COOL does not impose any domestic content requirements (i.e., does not stipulate what share of value or quantity determines country of origin).[27] The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF), presented similar comments.[28]

Dispute Settlement Panel Ruling

On November 18, 2011, the WTO dispute settlement (DS) panel ruled that certain COOL requirements violate two articles of the WTO Agreement on Technical Barriers to Trade (TBT) and the requirement for impartial administration of regulations laid out in the General Agreement on Tariffs and Trade 1994 (GATT 1994). The panel first concluded that the COOL "measure"—the statute and the final rule—constituted a "technical regulation" under the TBT Agreement and was thus subject to TBT obligations. It then found that the COOL measure (1) treated imported livestock less favorably than "like domestic livestock," particularly in the labeling of muscle cut meats (beef and pork), in violation of the national treatment obligation in the TBT's Article 2.1; and (2) failed to meet the legitimate objective of providing information to consumers on the origin of meat products, and thus violated the TBT's Article 2.2. The panel also found that the

[23] Various trade publication reports, including *Cattle Buyers Weekly*, "MCOOL Has Cost Canadian Producers C$92M," December 8, 2008; *Agri-Pulse*, "COOL Regulations Create Heartburn for Canadians," December 3, 2008; and *Washington Trade Daily*, December 2, 2008, pp. 3-4.

[24] The AMI merged with the North American Meat Association to form the North American Meat Institute (NAMI) in January 2015. NAMI is usually referred to as the Meat Institute.

[25] AMI, "American Meat Institute Tells U.S. Trade Representative That Mandatory Country-of-Origin Labeling Violates International Trade Obligations," January 8, 2010, http://www.meatami.com/ht/display/ReleaseDetails/i/56358.

[26] NCBA, "NCBA Statement on Canadian WTO Complaint Against U.S. COOL Law," October 7, 2009.

[27] USCA, "USCA and Farmers Union Urge Vigorous COOL Defense," press release, January 12, 2010.

[28] R-CALF USA, "Canada, Mexico Have No Standing to Bring Complaint Against U.S. COOL Law," July 2, 2009.

Vilsack letter's "suggestions for voluntary action" went beyond COOL's obligations and, while not a "technical regulation," constitute unreasonable administration of COOL itself, thus violating Article X:3(a) of the GATT 1994.[29] The panel concluded that the United States has "nullified or impaired benefits" to which Canada and Mexico are entitled, and recommended that the WTO's DSB request the United States to conform these "inconsistent measures" with its obligations under the TBT Agreement and GATT 1994.[30] (See **Appendix D** for more discussion of the WTO findings.)

Reaction to the WTO DS Panel Findings

United States

With the WTO's release of the DS panel's report, USTR welcomed its affirmation of "the right of the United States to require country of origin labeling for meat products." Acknowledging that the panel disagreed with the details on how the U.S. COOL requirements were designed, it expressed the U.S. commitment to provide "consumers with accurate and relevant information [on] the origin of meat products that they buy at the retail level." USTR stated that it would consider all options going forward, including an appeal.[31]

The U.S. meat sector expressed mixed reactions. Those in favor of making changes to COOL to address the panel's conclusions include NCBA, AMI, and the National Pork Producers Council (NPPC). The NCBA advised against appealing this ruling. Instead, it urged USTR to work "to apply pressure on Congress to bring the United States into WTO compliance across the board" and to act quickly before Canada and Mexico—two important trading partners—impose "unnecessary and unfortunate tariffs" on U.S. agricultural exports. NPPC "will be working with lawmakers to craft a legislative fix so that [COOL] is WTO-compliant" to avoid risking "retaliation from and a trade war with Canada and Mexico." AMI commented that the ruling "was not surprising," stating that it had "contended for years ... that [COOL] was not just costly and cumbersome, but a violation of our country's WTO obligations."[32]

Among other groups that opposed COOL, the Food Marketing Institute (FMI) agreed with the panel's conclusion that COOL "fails to provide information in a meaningful way" and highlighted that "COOL enforcement has become more burdensome than ever ... for retailers." Its spokesman stated that COOL "will need to be repealed or rewritten for the U.S. to meet its [trade obligations]" and that FMI will work with Congress and USDA "to develop an alternative system" that informs consumers with useful information.[33]

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[29] The TBT Agreement is summarized in CRS Report R41306, *Trade Law: An Introduction to Selected International Agreements and U.S. Laws*. The GATT 1994 commitment refers to the provision that requires laws and regulations to be administered "in a uniform, impartial and reasonable manner."

[30] WTO, *United States—Certain Country of Origin Labelling (COOL) Requirements*, Reports of the Panel, WT/DS384/R, WT/DS386/R, November 18, 2011, http://www.wto.org/english/tratop_e/dispu_e/384_386r_e.pdf. Background on the COOL dispute case is available on the WTO's website at http://wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm (Canada) and http://wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm (Mexico).

[31] USTR, "Statement in Response to WTO Panel Decision on Country of Origin Labeling," November 18, 2011.

[32] NCBA, "Statement from NCBA Vice President of Government Affairs Colin Woodall Regarding WTO Ruling on US Country of Origin Labeling," November 11, 2011; *Pork Magazine*, "NPPC: What's on Tap for 2012?" January 2012; AMI, "WTO Rules in Favor of Canada in Complaint Over U.S. Country-of-Origin Labeling Law," November 18, 2011.

[33] FMI, "Food Retail Industry Applauds WTO Ruling on COOL," November 23, 2011.

Livestock groups that support COOL as now implemented include R-CALF and USCA. R-CALF responded that "the WTO is trying to usurp our nation's sovereignty," questioning "when do we allow an international tribunal to dictate to our U.S. Congress what is or is not a legitimate objective of providing information to United States' citizens?" USCA strongly disagreed with the panel's findings, but was pleased that the report "affirmed the right of the U.S. to label meat for consumers." Its president expressed support for USTR's efforts to defend U.S. rights, pledging to assist "with the appeal process" and to work "with our allies in the Administration and Congress to ensure that COOL continues."[34]

Among others supporting COOL, the NFU responded that it will work with USTR and USDA "to ensure that COOL is implemented to the fullest extent of the law and in accordance with WTO." Its statement concluded that "if these results are unsatisfactory, then NFU will push to appeal the decision and continue to fight ... to ensure COOL is allowed to continue for as long as it takes to get this done." Public Citizen commented that the WTO's ruling against COOL for meats "make[s] it increasingly clear to the public that the WTO is leading a race to the bottom in consumer protection" by its second-guessing "the U.S. Congress, courts and public by elevating the goal of maximizing trade flows over consumer and environmental protection." Food and Water Watch urged the Administration to appeal the ruling, noting that the WTO "should not get to decide what U.S. consumers get to know about their food and should not be able to undermine rules put in place by U.S. elected officials."[35]

Members of Congress also hold diverse views on COOL's future. Some did not expect the WTO panel's decision on COOL to be favorable and view more "unwinnable" WTO cases as not in the "best interest" of U.S. agricultural producers. At a regional livestock meeting, Senator Pat Roberts, then ranking Member of the Senate Agriculture Committee, stated that he does not know of any market study that "shows American consumers will buy more American products with labels in the store" and hoped "we can change people's minds."[36] By contrast, 19 Senators requested that the Obama Administration appeal the panel's ruling and "work to ensure that our COOL program both meets our international trade obligations while continuing to provide such information to consumers." Their letter expressed concern about the ruling's impact "on our ability to continue providing [COOL] information to consumers" and noted that congressional intent behind the 2008 statutory changes was for "such labeling [to] be nondiscriminatory in its treatment of imported products by requiring the labeling of both domestic as well as imported products." The letter further stated that the final COOL rule "appropriately establishes a labeling system which provides important and useful information to consumers while not placing an undue burden on the industry" and which "continues to provide the same opportunity for imported livestock to compete in the domestic marketplace as was the case prior to USDA's implementation of COOL."[37]

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[34] R-CALF, "U.S. Sovereignty Usurped by WTO's COOL Decision," November 18, 2011; USCA, "WTO Dispute Panel Issues Final COOL Report," November 21, 2011.

[35] NFU, "NFU Will Work with Administration to Ensure COOL Compliance with WTO Rules," November 18, 2011; Public Citizen, "WTO Rules Against Country-of-Origin Meat Labeling Law: Third Ruling Against U.S. Consumer Safeguards in 2011," November 18, 2011; Food and Water Watch, "WTO Decision on COOL Attacks Consumers' Right to Know," November 18, 2011.

[36] "TCFA Members Face Scary Issues from Washington," *High Plains/Midwest Ag Journal*, November 14, 2011.

[37] Office of Senator Tim Johnson, "Johnson, Enzi to Administration: Keep COOL Strong," press release, December 15, 2011.

Canada

The Canadian government welcomed the panel's ruling as a "clear victory for Canada's livestock industry." Its Minister of Agriculture stated that the WTO decision "recognizes the integrated nature of the North American supply chain in this vitally important industry" and that "[r]emoving onerous labelling measures and unfair, unnecessary costs will improve competitiveness, boost growth and help strengthen the prosperity of Canadian and American producers alike." He expressed the hope this ruling "will open the door to a negotiated settlement of the dispute" and stressed Canada's commitment to work with the United States to "create a stronger more profitable livestock industry on both sides of the 49th parallel."[38]

The Canadian Pork Council (CPC) stated that the panel's report "vindicates [the] objections" the pork industry had to COOL legislation, which it believes restricts market access (i.e., the movement of live swine to the U.S. market) and constitutes a technical barrier. The CPC plans to work "with like-minded groups in the U.S. to find a meaningful solution without further litigation" (referring to a possible U.S. appeal and the process that would follow). The Canadian Cattlemen's Association (CCA) stated the ruling confirms Canada's position that COOL discriminates against live cattle shipped to the United States to the detriment of Canadian cattle producers. In particular, it noted that since taking effect, COOL "has increased costs for U.S. companies that import live Canadian cattle," which has reduced "the competiveness of those Canadian cattle in the U.S. market." The CCA plans to continue working with the U.S. industry "not ... for the outright repeal of COOL but [to] seek only those regulatory and statutory changes necessary to eliminate the discrimination that COOL has imposed to the comparative disadvantage of livestock imported into the U.S. vis-a-vis U.S. livestock."[39]

U.S. Appeal of the WTO Panel Ruling

Under WTO rules, the United States had various options available to respond to the dispute panel's adverse ruling on certain aspects of U.S. COOL. One was to accept the decision and make changes to the COOL statute and/or regulations to comply with the WTO findings. Another was to appeal the panel report on legal issues.

On March 23, 2012, the United States appealed two findings of the DS panel's report to the WTO Appellate Body (AB).[40] A USTR spokeswoman restated its position that the report had confirmed the U.S. right to adopt rules to inform consumers of the country of origin in their purchasing decisions, but expressed disappointment that the panel "disagreed with the way that the United States designed its COOL requirements" for beef and pork. USTR's chief counsel stated that the U.S. appeal is "a signal of our commitment" to ensure that consumers "are provided with accurate and relevant information" on the origin of beef and pork, and "to fight for the interests of U.S. consumers at the WTO."[41]

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[38] Foreign Affairs and International Trade Canada, "Canada Wins World Trade Organization Case on U.S. Country-of-Origin Labelling," November 18, 2011, http://www.international.gc.ca/media_commerce/comm/news-communiques/2011/349.aspx?lang=eng&view=d; Farmscape, "Canada Hopes for Negotiated Resolution of M-COOL Dispute," November 22, 2011.

[39] CPC, "Canadian Pork Producers Welcome the WTO Panel Decision on COOL," press release, November 18, 2011; CCA, "WTO Rules Strongly in Favor of Canada in COOL Case," press release, November 18, 2011.

[40] The Appellate Body is a seven-person standing body that hears WTO Member appeals of dispute settlement reports. For more information, see http://wto.org/english/tratop_e/dispu_e/appellate_body_e.htm.

[41] "U.S. to Appeal WTO Ruling Against Meat Labels," Reuters, March 23, 2012; "USTR Will Appeal WTO Ruling on COOL," Agri-Pulse.com, March 23, 2012. USTR's appeal submission to the WTO is available at http://www.ustr.gov/sites/default/files/US.AppellantSub.fin_.pdf.

Interest groups that had urged the Obama Administration to appeal the WTO report (R-CALF, USCA, NFU, Food and Water Watch, Public Citizen) supported this decision. Those that advocated resolving this dispute (NCBA, NPPC, AMI) expressed disappointment, and noted that the appeal jeopardizes strong trading relationships with Canada and Mexico and invites the prospect of retaliation by these two countries against U.S. meat exports.

Canada's Agriculture Minister expressed disappointment that the United States appealed, stating his confidence that the WTO findings "will be upheld so that trade can move more freely, benefiting producers and processors on both sides of the border." Mexico's Economic Ministry declared that it would defend Mexico's interests in the appeal process, and that it plans to file its own notice of appeal seeking a review of some issues in the panel's report that it says reflect inadequate legal analysis.

Appellate Body Report Determinations

On June 29, 2012, the WTO's AB upheld the DS panel's finding that the COOL measure treats imported Canadian cattle and hogs, and imported Mexican cattle, less favorably than like domestic livestock, due to its record-keeping and verification requirements. The AB, however, reversed the DS panel's finding that COOL does not fulfill its legitimate objective to provide consumers with information on origin. The AB found that the DS panel's interpretation of TBT Article 2.2 was too narrow, and that the U.S. COOL measure partially met its legitimate objective to provide country of origin information. However, the AB did not determine if COOL was more trade restrictive than necessary. (See **Appendix D** for more discussion of the WTO findings.)

WTO Adoption of Dispute Settlement Reports

On July 23, 2012, the Dispute Settlement Body (DSB) adopted the AB's report and the DS panel's report, as modified by the AB, under the reverse consensus rule. Under this rule, both reports are adopted unless all WTO member countries present at the meeting vote not to do so. This rule makes adoption virtually automatic.[42] In turn, the United States, Canada, and Mexico were required to unconditionally accept the AB's decision. The DSB, as is the practice, did not specify what the United States must do to comply with these reports' findings.

Bringing COOL into Compliance

The WTO's Dispute Settlement Understanding (DSU) lays out a multi-step process for a country to comply with the adopted WTO findings.[43] Once WTO findings are adopted by the DSB, a compliance deadline is established. If a party or parties to a dispute believe compliance measures fail to meet WTO obligations, the process may move into a compliance panel phase. If that does not resolve disagreements among parties, the dispute could move into a retaliation phase. A resolution to a WTO case may be delayed for months as the parties work through the compliance and/or retaliation processes.

After the adoption of the dispute settlement reports, the United States had up to 30 days to inform the DSB of its plans to implement the WTO findings. If a country is unable to comply immediately, the DSU allows for a "reasonable period of time" for this to occur. Often, WTO

[42] For details, see "Adoption of Panel Reports/Appellate Review (Articles 16, 17, 20)" in CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

[43] The DSU is one of the multilateral agreements resulting from the Uruguay Round that provides the primary means for WTO members to settle disputes arising under WTO agreements.

members are given approximately one year from the date of adoption of the panel report to comply. If the disputing countries fail to agree on a compliance deadline, as occurred in this case, an arbitrator may determine the deadline.

Because the United States, Canada, and Mexico could not agree on a timetable or an arbitrator, the WTO Director-General appointed one. In the arbitration hearing, the United States argued that 18 months were needed to pursue the steps required to adopt a regulatory response. Canada argued that six months would be sufficient. Mexico argued for an eight-month compliance period, but would welcome six. On December 4, 2012, the arbitrator determined that 10 months from the reports' adoption (July 23, 2012) was a reasonable period of time for the United States to comply. The United States was given until May 23, 2013 to bring COOL into WTO compliance.

Facing the deadline of May 23, 2013, the United States began the process of deciding how to modify those features of COOL targeted by the WTO panels' findings to bring them into compliance. This continued USTR's reported engagement in late 2012 and early 2013 with Congress and interest groups on how to proceed. (See **Appendix E** for discussion of options for bring COOL into compliance.)

On March 12, 2013, USDA released a proposed rule to amend COOL regulations. According to USDA, the proposed rule would improve the operation of the COOL program and bring it into compliance with WTO trade obligations.[44] There was a 30-day public comment period. The department issued the revised final rule on May 23, 2013, and published it in the *Federal Register* on May 24, 2013.[45] The revised final rule was not significantly different from the proposed rule issued in March. On May 24, 2013, the United States notified the WTO Dispute Settlement Body (DSB) that it had complied with the WTO findings on COOL.

USDA's Revised COOL Rule

USDA's revised COOL rule for covered meat products was intended to address the WTO's finding that COOL regulations are not enforced in an evenhanded manner. The WTO found that COOL requirements result in much more information being collected upstream than is passed on to consumers on labels, and that the information on labels may be confusing and incomplete.

Under the revised COOL rule, the retail labeling of covered meat commodities must include the country of origin of each production step. That is, meat labels have to include where the animals were born, where raised, and where slaughtered. The rule also prohibits the practice of commingling muscle meat produced during a single production day and the use of multi-country labels for muscle meat.

Under the revised COOL rule, meat from animals that are exclusively born, raised, and slaughtered in the United States has to be labeled "Born, Raised, and Slaughtered in the United States." Under the previous rule, meat exclusively from U.S. animals was labeled as "Product of the United States." (See **Table 2** for comparison of the initial labels and revised labels at the retail level.)

[44] USDA, AMS, "Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts," 78 *Federal Register* 15645 (March 12, 2013).

[45] USDA, AMS, "Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts," 78 *Federal Register* 31367 (May 24, 2013). The rule amends 7 C.F.R. 60.124, 65.240, and 65.300. It is called the revised COOL rule to distinguish it from the original 2009 COOL rule.

Table 2. COOL Retail Labels for Muscle Cuts of Meat: Original Rule Compared with Revised Rule

Animal Origin of Muscle Cuts	Original COOL Label (January 2009)	Revised COOL Label (May 2013)
Muscle cuts from animals exclusively born, raised, and slaughtered in the U.S.; and animals born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the U.S. and slaughtered in the U.S.	Product of the U.S.	Born, Raised, and Slaughtered in the U.S.
(1) Muscle cuts from animals *born* in Country X and (as applicable) Country Y, and raised and slaughtered in the U.S., excluding animals imported for immediate slaughter.	(1) Product of the U.S., Country X and (as applicable) Country Y	(1) Born in Country X, Raised and Slaughtered in the U.S.
(2) Muscle cuts from animals born, raised, and slaughtered in the U.S. that are commingled during a production day with muscle cuts from animals born outside the U.S., raised and slaughtered in the U.S., and not imported for immediate slaughter.	(2) Product of the U.S., Country X and (as applicable) Country Y	(2) Not applicable because commingling is no longer allowed
(3) Muscle cuts from animals born in Country X, and (as applicable) Country Y, raised and slaughtered in the U.S., that are commingled during a production day with muscle cut derived from animals that are imported into the U.S. for immediate slaughter.	(3) Product of the U.S., Country X and (as applicable) Country Y	(3) Not applicable because commingling is no longer allowed
Muscle cuts from animals imported into the United States for immediate slaughter.	Product of Country X, U.S.	Born and Raised in Country X, Slaughtered in the U.S.
Imported muscle cuts for which no production steps occurred in the United States.	Product of Country X	Unchanged

Source: Data compiled in Table 1; USDA, AMS, final rule published in *Federal Register*, May 24, 2013 (see footnote 45), and codified in a revision to 7 C.F.R. 65.300(d)-(f).

The revised rule also eliminates the previous use of mixed origin labels, such as "Product of the United States, and Country X, and/or Country Y" and "Product of Country X, and/or Country Y and the United States." Under the rule, each production stage must be included on the label. For example, beef from cattle that were originally imported into the United States as feeder cattle require a label stating "Born in Country X, Raised and Slaughtered in the United States." For cattle that were imported for immediate slaughter, the label is required to read "Born and Raised in Country X, Slaughtered in the United States." Previously the label would have read "Product of Country X and the United States."

In addition, the revised COOL rule no longer allows meat that is processed during a single production day from animals of different origins to be commingled and labeled with a mixed label such as "Product of the United States, and Country X, and/or Country Y." Meat labels, as

noted above, now must include each production step (born, raised, and slaughtered) for the processed animals. The labeling requirement for imported muscle cuts of meat is unchanged; however, the labels may include the production steps if there is supporting documentation for them.

Last, the revised rule also amends the definition of retailer to extend it to any person that meets the definition of retailer in the Perishable Agricultural Commodities Act of 1930 (PACA; 7 U.S.C. §499a et seq.), whether or not the retailer has a PACA license. This provision clarifies who is subject to COOL regulations.

Implementation of the COOL Rule

The revised COOL rule went into effect on May 23, 2013, and did not apply to muscle cuts produced or packaged before that date. USDA recognized that meat processors would not be able to implement new labeling requirements immediately. During the first six months after the rule was published, USDA planned to conduct industry education and outreach activities. The six-month period also provided time for existing stocks of muscle meat labeled under old regulations to clear the pipeline. USDA also allowed meat processors to use their existing stock of old labels until they were completely used. However, under this allowance, retailers had to provide in-store signs or placards that notify country of origin according to the revised rule.

Costs and Benefits of the Revised Rule

In the proposed rule, USDA estimated the cost for implementing new labeling at $32.8 million (range of $17.0 million to $47.3 million), and estimated that 33,350 establishments owned by 7,181 firms would need to rework labels.[46] However, the proposed rule did not calculate costs from prohibiting commingling. The final rule estimated the cost of losing commingling flexibility at $90.5 million, with a range of $36.1 million to $144.8 million. When labeling costs are added to the cost of lost commingling flexibility, total implementation costs range from $53.1 million to $192.1 million.[47] USDA noted that it is not possible to specify how often packers use commingling flexibility, and therefore difficult to estimate. But USDA believed the cost of losing commingling flexibility would fall towards the lower end of the range, resulting in a likely total cost of $53.1 million to $137.8 million.[48]

Most of the labeling costs are expected to be borne by packing and processing facilities as they add new production steps to labels. USDA noted that it does not believe additional recordkeeping will be necessary under the new rule. As for the economic benefits of this change, USDA says it was unable to quantify benefits from adding production steps to labels, but noted they were likely "comparatively small" relative to benefits discussed in the final 2009 COOL rule.[49] In previous analysis of COOL, USDA found the economic benefits to be positive but difficult to quantify.

[46] 78 *Federal Register* 15645 (March 12, 2013), pp. 15647-15652. USDA's cost estimate analysis is summarized in Table 1 on p. 15650.

[47] 78 *Federal Register* 31367 (May 24, 2013), pp. 31377-31382. Adjustment costs are summarized in Table 4 on p. 31381.

[48] Ibid., p. 31368.

[49] For analysis of COOL benefits in 2009, see 74 *Federal Register* 2658 (January 15, 2009), pp. 2682-2700.

Mixed Views from Livestock Industry Stakeholders

U.S. farm and ranch groups that have been long-time supporters of COOL responded positively to USDA's revised rule. The NFU said, "We are very pleased that the USDA has decided to stand strong and keep COOL. The decision to bring the law into compliance with the WTO's ruling is a win-win situation for all interested parties. We further applaud the administration for deciding to take a proactive approach in bringing COOL into compliance by providing more information on the origins of our food, instead of simply watering down the process."[50] USCA also commended USDA for finalizing the COOL rule, which "will not only strengthen the overall program, but will also bring the U.S. into compliance with our international trade obligations. Consumers will have even more information on labels with which they can make informed purchasing decisions."[51] When the proposed rule was issued, USCA, as well as NFU, noted that the rule was similar to the proposals presented in the legal analysis commissioned by USCA and NFU.[52]

R-CALF also supported USDA's revised rule because it would provide accurate information to consumers about the origin of their meat. R-CALF noted that, "Without COOL it is the meatpacker and not the consumer that decides from what country cattle will be sourced to satisfy consumer demand for beef. Only with COOL can consumers trigger a demand signal for cattle sourced from U.S. farmers and ranchers, which they can do simply by consistently choosing to purchase a USA product."[53]

U.S. livestock groups that have opposed mandatory COOL requirements also weighed in on the revised rule. AMI said, "It is incomprehensible that USDA would finalize a controversial rule that stands to harm American agriculture, when comments on the proposal made clear how deeply and negatively it will impact U.S. meat companies and livestock producers."[54] NCBA called the rule shortsighted, and said it would increase discrimination against imported product, and increase recordkeeping burdens. NCBA noted that "any retaliation against U.S. beef would be devastating for our producers."[55] In July 2013, the meat industry challenged USDA and the COOL rule in U.S. District Court. (See **Appendix F** for a discussion on the meat industry lawsuit.)

In October 2013, Tyson Foods, Inc. announced that it would stop buying direct-to-slaughter cattle from Canada. According to the company, the COOL rule raised costs due to the need for additional product codes and product segregation. Tyson Foods will continue to purchase Canadian-born cattle that are fed in U.S. feedlots.[56]

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[50] NFU, "USDA Keeps COOL; Complies with WTO Ruling," press release, May 23, 2013.

[51] USCA, "USDA Finalizes COOL Rule," press release, May, 23, 2013, http://www.uscattlemen.org/Templates/Press_Room/2013_Press_Room/5-23Final-COOL-Rule.html.

[52] NFU, "NFU Releases Analysis on COOL Compliance," press release, February 12, 2013. Analysis available at http://cdn.e2ma.net/userdata/5030/assets/docs/SS_COOL_Compliance_Memo_New_Final_Four_Groups.pdf.

[53] R-CALF, "R-CALF USA Pleased with Final COOL Rule Released Today," press release, May 23, 2013.

[54] AMI, "Burdensome Country-of-Origin Labeling Rule Will Not Satisfy WTO or Trading Partners, But Will Harm U.S. Agriculture," press release, May 23, 2013, http://www.meatami.com/ht/display/ReleaseDetails/i/90194.

[55] NCBA, "NCBA Statement on USDA Issuing a Final Rule on Mandatory Country of Origin Labeling," press release, May 23, 2013, http://www.beefusa.org/newsreleases1.aspx?NewsID=2934.

[56] Brett Wessler, "COOL Rules Lead Tyson to Close Door on Canadian Cattle," *Drovers CattleNetwork*, October 24, 2013.

Response from Canada and Mexico

Canadian cattle and hog industry representatives stated their belief that the revised COOL rule would not bring the United States into compliance, with both groups noting that it would increase discrimination. The Canadian Cattlemen's Association (CCA) said the new rule will increase the impact of COOL on Canadian cattle because it "will require additional segregation by eliminating the ability to commingle cattle of different origins."[57] The Canadian Pork Council (CPC) also issued a similar statement: "The new rule does nothing to reduce discrimination against Canadian feeder pigs and slaughter hogs.... The new rule will strip away any flexibility to commingle Canadian and US live swine at processing plants. This will make a very bad situation of the last four years much worse."[58] Both the CCA and CPC are plaintiffs on the meat industry lawsuit to halt the implementation of the COOL rule.

The governments of both Canada and Mexico rejected the USDA revised rule as a solution to the WTO dispute. Canada's Minister of International Trade and Minister of Agriculture stated: "Canada is extremely disappointed with the regulatory changes put forward by the United States today with respect to COOL. These changes will not bring the United States into compliance with its WTO obligations. These changes will increase discrimination against Canadian cattle and hogs and increase damages to industry on both sides of the border. Canada will consider all options at its disposal, including, if necessary, the use of retaliatory measures."[59] Mexico also stated that USDA's "new rule does not meet the requirements of the WTO and will further damage Mexican cattle exports. The U.S. COOL program has created severe trade distortions as it has unnecessarily increased costs for the cattle industry."[60]

Canada's Preliminary Retaliation List

On June 7, 2013, Canada's Minister of International Trade and Minister of Agriculture issued a press release stating that the revised COOL rule did not meet the WTO requirements.[61] At the same time, Canada released a list of products imported from the United States that could be targeted for retaliation. The list includes 38 harmonized tariff codes that cover a range of food and agricultural commodities and products, as well as a few manufactured products (see **Appendix G**). The list was officially published in the *Canada Gazette* (Canada's *Federal Register*) for public comment.[62] The press release states that Canada expects to consult with stakeholders to

[57] CCA, "U.S. Continues to Discriminate Against Cattle Imports," press release, May 23, 2013, http://www.cattle.ca/assets/NewsArticle-2013/1328-CCA-News-Release-23-05-2013-U-S-continues-to-discriminate-against-cattle-imports.pdf.

[58] CPC, "US Flouting of WTO Ruling on COOL Shocking and Appalling," press release, May 23, 2013, http://www.cpc-ccp.com/news_article.php?id=88.

[59] Foreign Affairs and International Trade Canada, "Statement by Ministers Fast and Ritz on U.S. Country of Origin Labelling," press release, May 23, 2013, http://www.international.gc.ca/media_commerce/comm/news-communiques/2013/05/23a.aspx?lang=eng.

[60] Secretary of Foreign Affairs, Embassy of Mexico, "Mexico Opposes the New US Rule on Mandatory Country of Origin Labeling," press release, May 28, 2013, http://embamex.sre.gob.mx/eua/index.php/en/comunicados2013/631-comunicado-de-prensa-mexico-se-opone-a-la-nueva-regla-de-estados-unidos-sobre-etiquetado-de-pais-de-origen-cool.

[61] Foreign Affairs and International Trade Canada, "Statement by Ministers Fast and Ritz on U.S. Country of Origin Labelling," press release, June 7, 2013, http://www.international.gc.ca/media_commerce/comm/news-communiques/2013/06/07a.aspx. The retaliation list is included in the press release.

[62] Department of Finance, "Notice Seeking Comments on Possible Trade Retaliation Action Against the United States in Response to That Country's Failure to Comply with the World Trade Organization Ruling on Certain Country of Origin Labelling Requirements," *Canada Gazette*, Vol. 147, No. 24, June 15, 2013, http://gazette.gc.ca/rp-pr/p1/2013/2013-06-15/html/notice-avis-eng.html#d115.

resolve the COOL dispute over the next 18 to 24 months, and that the Canadian government will abide by its WTO obligations and not take retaliatory measures until the WTO provides authorization. Mexico has not released a list of products that could be subject to retaliation, although it points to its list of products targeted during the U.S.-Mexico trucking dispute during 2009 to 2011 as an example of the types of products likely to be targeted for COOL.[63]

Damage Estimates

Initial estimates of damage claims could fall between $1 billion and $2 billion based on studies conducted in 2012 and 2013. According to a CPC study, COOL harms the Canadian hog industry by $500 million per year.[64] For the Canadian cattle industry, annual losses from COOL have been estimated at $639 million.[65] Mexico's claim on damages to its cattle sector could also be substantial. In the last three years, U.S. imports from Mexico have topped more than 1 million head, and per-head discounts on imported Mexican cattle due to COOL reportedly have been estimated by some analysts at as much as $60 per head.[66] In addition, Mexico's cattle industry would likely argue that COOL has led to economic losses throughout the Mexican cattle sector beyond the discounted prices on cattle shipped to the United States. If the COOL dispute moves into the retaliation phase, the WTO would have to approve the level of retaliation, and the United States would be able to contest it.

Compliance Panel

Canada and Mexico have the right under WTO rules to confirm whether or not they accept the substance of compliance taken by the United States. If either or both countries assert that the United States had not complied or had only partially complied with the WTO's findings, Canada and Mexico could request that a compliance panel investigate whether the United States had in fact adopted a compliance measure or whether any measure that it had adopted was consistent with the WTO decision.

Both Canada and Mexico argued that USDA's May 23, 2013 revised COOL rule fails to bring the United States into compliance with its WTO obligations.[67] On June 10, 2013, the United States, Canada, and Mexico communicated to the DSB that they had agreed to procedures for proceeding under WTO rules to establish a compliance panel and to address compensation or suspension of concessions.[68] It was agreed that Canada and Mexico could request a compliance panel at any time, and consultations with the United States were not necessary prior to the request.

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[63] For information on the U.S.-Mexico trucking dispute, see CRS Report RL32934, *U.S.-Mexico Economic Relations: Trends, Issues, and Implications*.

[64] CPC, "CPC Releases Report on COOL Damages to Canada's Pork Industry," press release, January 14, 2013, http://www.cpc-ccp.com/documents/news-releases/2013%20ESTIMATES%20OF%20MCOOL%20IMPACT%20ON%20CANADA%20final.pdf.

[65] Dan Sumner, *Canadian Losses from U.S. COOL Implementation*, prepared for the Canadian Cattlemen's Association, September 27, 2012.

[66] Letter from Ross Wilson, president and CEO, Texas Cattle Feeders Association, to USDA, April 11, 2013.

[67] Foreign Affairs, Trade and Development Canada, "Statement by Ministers Fast and Ritz on U.S. Country of Origin Labelling," press release, June 7, 2013, http://www.international.gc.ca/media_commerce/comm/news-communiques/2013/06/07a.aspx?lang=eng, and Embassy of Mexico in the United States, Ministry of Economy, "Mexico Will Continue Challenging the Country of Origin Labeling (COOL) Requirements Before the WTO," press release, June 10, 2013, http://embamex.sre.gob.mx/eua/index.php/en/comunicados2013/641-comunicado-de-la-secretaria-de-economia-mexico-continuara-impugnando-la-regla-de-etiquetado-de-pais-de-origen-en-la-omc.

[68] WTO, Understanding Between the United States and Canada Regarding Procedures Under Articles 21 and 22 of the

On August 19, 2013, Canada and Mexico informed the DSB that they would request the establishment of a compliance panel.[69] The United States objected to Canada's and Mexico's first request at the August 30, 2013, DSB meeting. At the September 25, 2013, DSB meeting, Canada and Mexico again requested the establishment of a compliance panel and the DSB accepted the request and referred the dispute to the original COOL dispute settlement panel.[70] The compliance panel heard the COOL dispute February 18-19, 2014.

The compliance panel issued its report on October 20, 2014.[71] Although the panel found that COOL is a legitimate objective, it found that the manner in which COOL is implemented treats imported livestock unfavorably. The panel could not determine if the COOL rule was more trade restrictive than necessary. (See **Appendix D** for more discussion of the WTO findings.)

Appeal of the Compliance Report

Based on an agreement among the parties of the dispute, once the compliance report was released, the WTO DSB had 20 to 60 days to adopt it.[72] The DSB granted a request by Canada and Mexico for a special meeting on November 28, 2014, to adopt the compliance panel report, and the United States appealed at that time. The United States asked the Appellate Body to review the finding that COOL discriminates against imported livestock. In addition, Canada and Mexico asked the Appellate Body to review the finding on whether COOL regulations were more trade restrictive than necessary.

According to agreed-upon procedures, the Appellate Body report was to be released within 90 days of appeal. However, due to a heavy workload, the Appellate Body heard the appeal on February 16 and 17, 2015, and announced that its report would be released no later than May 18, 2015. The Appellate Body released its report on May 18 and upheld the findings of the compliance panel that COOL regulations violated U.S. WTO obligations.[73] After the release of the appellate report, any party may request that the DSB adopt the compliance report and any Appellate Body modifications at a DSB meeting within 30 days of the report's circulation. The vote on adoption is conducted by "reverse consensus," requiring all members to vote against the reports in order for adoption to fail.

DSU, WT/DS/384/25, June 13, 2013, and Understanding Between the United States and Mexico Regarding Procedures Under Articles 21 and 22 of the DSU, WT/DS/384/24, June 13, 2013. Because WTO dispute settlement rules provide conflicting timetables in the event that a party requests both authorization to retaliate and a compliance panel, disputing parties often enter into so-called "sequencing" agreements that accommodate both procedures. For details, see "Compliance Issues, Sequencing" in CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

[69] WTO, *Recourse to Article 21.5 of the DSU by Canada, WT/DS/384/26,* August 20, 2013, and *Recourse to Article 21.5 of the DSU by Mexico, WT/DS/384/25,* August 20, 2013.

[70] Under WTO rules, the United States could not object to the second panel request.

[71] WTO, 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, WT/DS384/RW and WT/DS386/RW, October 20, 2014, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm.

[72] WTO, Understanding Between the United States and Canada [Mexico] Regarding Procedures Under Articles 21 and 22 of the DSU, WT/DS/384/25, June 13, 2013. For details on Articles 21 and 22, see CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

[73] WTO, *United States–Certain Country of Origin Labelling (COOL) Requirements, Recourse to Article 21.5 of the DSU by Canada and Mexico, Reports of the Appellate Body, WT/DS384/AB/RW and WT/DS386/AB/RW,* May 18, 2015.

At the request of Canada and Mexico, the DSB met on May 29, 2015, and adopted the reports. After the DSB adopted the reports, Canada and Mexico may request WTO authorization to suspend concessions with the United States, that is, retaliate.

Reactions to the Compliance Panel Report

The reaction of supporters and opponents of COOL to the compliance panel findings are similar to those expressed about the dispute panel and Appellate Body findings. Supporters view the compliance panel findings as a win because the WTO again confirmed that it is a legitimate objective for a government to provide origin information about beef and pork to consumers. COOL supporters, such as NFU and USCA, have called on the United States to appeal the compliance panel ruling, and have strongly objected to calls for repeal of the COOL law.[74] Supporters believe that the WTO process should proceed, and that the deficiencies the WTO found in the COOL rule could be corrected through revised regulations. On January 22, 2015, the National Farmers Union issued a new study that counters claims that COOL caused the decline in cattle exports to the United States.[75]

Opponents of COOL continue to believe that revised regulations will not successfully allow the United States to comply with the WTO findings and that the COOL law must be repealed. The COOL Reform Coalition, a group of more than 100 business and agribusiness organizations concerned about the potential effects of Canada and Mexico retaliation, have urged Congress to direct USDA to immediately rescind parts of COOL that violate WTO obligations.[76] This would act as an interim step to provide Congress the time to repeal the COOL law.

However, congressional views on COOL are mixed. In July 2014, 112 House members signed a letter to USDA recommending that the Secretary rescind the revised COOL rule if the WTO found against the United States.[77] But on October 6, 2014, 32 Senators sent a letter to the Senate Appropriations Committee, asking that no appropriations action be taken on COOL until the WTO process was completed.[78]

Canada and Mexico issued a joint statement calling for the reintegration of the North American cattle and hog market through the repeal of the COOL law. They reiterated that both countries would seek authorization to retaliate against U.S. agricultural and nonagricultural products if the COOL case was not satisfactorily resolved.[79]

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[74] Spencer Chase, "Farmers Union, Others Urge Appeal of WTO COOL Ruling," *AgriPulse*, October 23, 2014.

[75] Press release, "New Study: Economic Downturn and Other Factors, Not COOL, Caused Decline in Live Cattle Imports to the U.S.; Canadian Claims of Economic Damage Without Merit," NFU, January 22, 2014. Study available at http://www.nfu.org/images/COOLReport1132015Final.pdf.

[76] Letter from COOL Reform Coalition to Members of Congress, October 30, 2014, http://www.coolreform.com/uploads/sites/476/COOL%20Letter%20to%20Congress%2010-30-14.pdf.

[77] Letter from 112 House Members of Congress to Vilsack, Secretary of Agriculture, July 30, 2014, http://crawford.house.gov/uploadedfiles/coolletter.pdf.

[78] Letter from 32 Senators to Chairwoman Mikulski and Ranking Member Shelby, Senate Appropriations Committee, October 6, 2014, http://www.scribd.com/doc/242079437/Tester-letter-to-Senators-Mikulski-and-Shelby-on-COOL.

[79] Canada and Mexico, "Statement by Canada and Mexico on U.S. Country of Origin Labelling," press release, October 20, 2014, http://www.international.gc.ca/media/comm/news-communiques/2014/10/20b.aspx?lang=eng.

Suspension of Concessions (Retaliation)

On June 4, 2015, Canada requested that the DSB authorize the suspension of concessions in the amount of C$3.068 billion (US$2.4 billion)[80] and Mexico requested authorization of US$653.5 million. Mexico subsequently revised its request to $713 million at the June 17, 2015, DSB meeting. The United States objected to the requests, and Canada and Mexico's requests were referred to an arbitration panel.

On July 30, 2015, USTR released a public version of its WTO submission to the arbitration panel refuting the value of damages claimed by Canada and Mexico.[81] In total, USTR estimated damages from COOL at about $91 million, $43.2 million for Canada and $47.6 for Mexico. The arbitration panel heard the case for the suspension of concessions on September 15 and 16, 2015.

Retaliation would be in the form of raising tariffs on U.S. products that Canada and Mexico import. Retaliation must not exceed the value of impairment, or losses, suffered by Canada and Mexico due to COOL. (See **Appendix G** for a list of commodities, both agricultural and non-agricultural, that could be targeted for tariff increases.) The arbitrator's (or arbitration panel's) role is to determine that the retaliation request is equivalent to the losses by Canada and Mexico. Once arbitration is requested, the WTO arbitrator has 60 days to issue a decision, although previous cases that went to arbitration took about six months before a decision was released.[82] Once the decision is released, it is final.

The WTO DSU provides that a country cannot suspend WTO concessions or other obligations as retaliatory measures in a dispute unless authorized by the WTO DSB. Canada and Mexico will formally request authorization from the DSB, and they may then implement the decision. Retaliation is terminated once the United States brings COOL into compliance or the parties reach an agreement that resolves the case. If unauthorized retaliation were to occur, the United States could challenge such retaliation in a separate WTO dispute settlement proceeding.

Arbitration Panel Decision on Retaliation

On December 7, 2015, the arbitration panel released its report, which valued Canada's annual trade losses due to COOL at C$1.055 billion (US$781 million)[83] and Mexico's losses at $228 million.[84] The total amount of approved retaliation was slightly more than $1 billion, about one-third of the amount requested by Canada and Mexico. The arbitration panel based the level of retaliation on direct export losses for Canada and Mexico caused by COOL. The panel did not consider indirect losses. These were losses included in the retaliation requests that accounted for reduced prices received by Canadian and Mexican domestic livestock sectors due to the negative effects of COOL on exports.

On December 21, 2015, the DSB granted concessions to Canada and Mexico, authorizing them to retaliate against imports of products from the United States. Although COOL for beef and pork

[80] The Canadian request to the WTO of C$3.068 is calculated at US$1.00=CDN$1.27.

[81] USTR, *United States-Certain Country of Origin Labelling (COOL) Requirements: Recourse by the United States to Article 22.6 of the DSU (Canada)*, Written Submission (Public Version), July 30, 2015, https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/DS/Pending/US.Sub1.%28DS384%29.Public.pdf.

[82] There have been 11 different arbitration decisions on retaliation since 1995. On average the decisions were issued in six months.

[83] Based on the USD/CAD exchange rate ($1.3499) published in the Wall Street Journal on December 8, 2015.

[84] WTO, *United States-Certain Country of Origin Labelling (COOL) Requirements: Recourse to Article 22.6 of the DSU by the United States*, Decisions by the Arbitrator, WT/DS384/ARB, WT/DS386/ARB, December 7, 2015.

was repealed on December 18, 2015, Canada and Mexico's formal request for authorization completed one of the last procedural steps of the dispute settlement process.

Congressional Action on COOL

As the WTO COOL case winds its way to conclusion, there have been increased calls for Congress to act on COOL. Some lawmakers agree with criticisms of COOL and could offer legislation to limit its scope and impacts, or outright repeal. Others remain strongly supportive of COOL as enacted and oppose any rollback. Efforts to modify COOL were also part of the 2014 farm bill debate but ultimately not included in the enacted law.

In November 2014, Secretary of Agriculture Vilsack said that USDA analysis shows that there is no regulatory fix that would allow COOL regulations to be consistent with the COOL law and also satisfy the WTO rulings. Vilsack said that Canada and Mexico would need to specifically say what measures would be acceptable, or Congress would have to provide, in the law, "different directions" to USDA to allow for WTO compliance.[85]

On May 1, 2015, USDA delivered to Congress the economic study of COOL as required by Section 12104 of the 2014 farm bill (see "Farm Bill" below).[86] Results of the study were similar to earlier studies of COOL and USDA's Regulatory Impact Analysis performed during the rulemaking process. USDA found that COOL information may be of some benefit to consumers that want the information, but there is insufficient evidence to conclude that demand for beef and pork will increase from the benefit. The study concluded that without an increase in demand for beef and pork, the costs of implementing COOL results in losses for producers (livestock producers, packers, processors, and retailers) along the supply chain.

The FY2015 appropriations act (P.L. 113-235) directed USDA to submit a report with recommendations for addressing COOL. As directed, on May 1, 2015, USDA Secretary Vilsack sent letters to the leadership of the House and Senate Agriculture Committees and the House and Senate Appropriations Subcommittees on Agriculture suggesting that the COOL statute be repealed or a generic label be established that might satisfy U.S. WTO obligations.

Congress Repeals COOL for Beef and Pork

On December 18, 2015, in response to the WTO arbitration panel's decision to allow Canada and Mexico to retaliate against imported products from the United States, Congress used the annual appropriations process to permanently repeal COOL for beef and pork and their ground products. Section 759 of the enacted Consolidated Appropriations Act, 2016 (P.L. 114-113, Division A) removed references to muscle cuts of beef and pork and ground beef and pork from the COOL statute (7 U.S.C. §1638 et seq.). On the same day, Secretary Vilsack stated that USDA would immediately halt the enforcement of COOL requirements for beef and pork and amend the COOL regulations as soon as possible to reflect the change in COOL law.[87]

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[85] T. Johnston, "No 'Regulatory Fix' for COOL: Vilsack," *Meatingplace*, November 19, 2014. Audio recording (at 10:21) of Secretary Vilsack's press conference at the National Association of Farm Broadcasting convention is available at *AgWired*, http://agwired.com/2014/11/16/secretary-vilsack-praises-farm-broadcasters/.

[86] Office of Chief Economist, *Economic Analysis of Country of Origin Labeling (COOL)*, USDA, report to Congress, April 2015.

[87] USDA, "Statement from Agriculture Secretary Tom Vilsack on the Country of Origin Labeling Requirements for Beef and Pork," press release, December 18, 2015, http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2015/12/0345.xml&printable=true&contentidonly=true.

The repeal provision differed from the House repeal bill (see "House Repeals COOL for Beef, Pork, and Chicken" below) in that chicken and ground chicken were not included in the repeal. Also, some stakeholders had hoped that Congress would have considered repealing mandatory COOL for beef and pork and enacting a voluntary COOL provision at the same time (see "Senate Introduces Repeal and a Voluntary COOL" below). The continued threat of retaliation by Canada and Mexico over a voluntary program likely made this scenario unfeasible under the tight timeline that the United States faced on retaliation.

House Repeals COOL for Beef, Pork, and Chicken

On May 18, 2015, House Agriculture Committee Chairman Conaway introduced the *Country of Origin Labeling Amendments Act of 2015* (H.R. 2393) that would repeal beef, pork, and chicken from the COOL statute. COOL for other covered commodities would remain in place. On May 20, 2015, the House Agriculture Committee marked up H.R. 2393 and, by a vote of 38-6, favorably reported it to the full House. On June 10, 2015, the House passed H.R. 2393 by a vote of 300 to 131.

During the House Committee on Rules hearing on H.R. 2393, Representative Massie (KY) submitted an amendment that would have established a voluntary country-of-origin labeling law to replace a repealed mandatory law for beef, pork, and chicken.[88] The amendment would have allowed meat to be labeled "Product of US" if the livestock from which it is processed is exclusively born, raised, and slaughtered in the United States. The amendment was not considered by the Rules Committee.

Senate Introduces Repeal and a Voluntary COOL

Support for COOL repeal has been less certain in the Senate. Senator Roberts, Chairman of the Senate Agriculture Committee, has noted that the views of Agriculture Committee members vary on COOL and that they are considering alternatives that would enable the United States to meet its WTO obligations.[89]

On July 23, 2015, Senator Hoeven introduced the *Voluntary Country of Origin Labeling (COOL) and Trade Enhancement Act of 2015* (S. 1844), which also repeals mandatory COOL for beef, pork, chicken, and their ground products. In addition, S. 1844 amends the Agricultural Marketing Act (7 U.S.C. §1621 et seq.) requiring USDA to establish a label designation that enables meat processors to voluntarily use a U.S. label for beef, pork, and chicken from livestock exclusively born, raised, and slaughtered in the United States.

Also, during debate on the vehicle for the Senate surface transportation reauthorization bill (H.R. 22), Senator Roberts introduced an amendment (S.Amdt. 2302) to repeal mandatory COOL for beef, pork, and chicken using language from H.R. 2393. On July 26, 2015, Senator Hoeven also introduced S. 1844 as an amendment (S.Amdt. 2371) to the transportation bill. Neither amendment was considered for inclusion in the final Senate-passed bill. The Senate is expected to take up COOL repeal legislation after the August recess.

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[88] Text of the amendment is available at http://amendments-rules.house.gov/amendments/MASSIE_028_xml69151736343634.pdf.

[89] Kellie Mejdrich and Ellen Ferguson, "House Panel Advances Meat-Labeling Repeal," *Congressional Quarterly*, May 20, 2015, http://www.cq.com/doc/committees-2015052000326538?1&search=houHotdn; and Senator Roberts, "Chairman Roberts Applauds House Passage of COOL Repeal," press release, June 10, 2015, http://www.ag.senate.gov/newsroom/press/release/chairman-roberts-applauds-house-passage-of-cool-repeal.

Supporters of S. 1844 believe that a voluntary program would successfully address the WTO case by fully repealing mandatory COOL, provide integrity to the U.S. label for meat, and enable consumers to know about the origin of some of their meat purchases. Supporters also note that Canada already has a similar program in place for meat.[90]

Canada and Mexico have stated that the only way to resolve the WTO case is to repeal COOL. In response to Senator Hoeven's proposed voluntary program, Canada's Agriculture Minister said such a program would "guarantee Canadian retaliation" because it would continue to discriminate against imported livestock through segregation.[91]

If a voluntary COOL program was implemented, and Canada or Mexico opposed it, the United States could request that a WTO compliance panel determine if the new program is compliant with WTO requirements. However, once the arbitration panel determines the amount applicable in the ongoing case, Canada and Mexico could implement retaliation even if mandatory COOL is repealed and is replaced with a voluntary program. U.S. products would face higher tariffs while the compliance panel reviews the new voluntary program.

Appropriations

COOL was addressed in the explanatory statement accompanying the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235, Division A, December 16, 2014). In the statement, Congress directed USDA, in consultation with the U.S. Trade Representative, to submit to the House and Senate Appropriations Committees a report with recommendations on how to change the COOL law to make certain it "does not conflict with or is in any manner inconsistent with" U.S. WTO obligations. The report is due to the committees within 15 days of final resolution (assumed to mean when the WTO issues an appellate ruling on the COOL compliance report) or May 1, 2015, whichever comes first. Secretary Vilsack has repeated his comments from November stating that there is no "regulatory fix" for COOL and maintains that Congress has to "fix" the law.

For FY2014, in the explanatory statement for the Consolidated Appropriations Act, 2014 (P.L. 113-76) the House Committee on Appropriations expressed disapproval of USDA's May 2013 COOL rule, pointing to its high costs to the livestock industry and the potential of retaliation in the WTO case. The committee recommended that USDA delay implementing the COOL rule until the WTO case is completed.[92] On January 23, 2014, Representative DeLauro, a member of the House Committee on Appropriations, sent a letter to Secretary Vilsack urging that USDA continue to implement and enforce COOL regulations.[93]

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[90] This is the voluntary "Product of Canada" label. According to the Canadian Food Inspection Agency's guidance documents on origin claims, the "Product of Canada" claim can be applied to meat from Canadian animals that are slaughtered in Canada. Animals are considered Canadian if they are born or hatched, raised, and slaughtered in Canada or, in the case of feeder cattle, if they have spent a period of at least 60 days in Canada prior to slaughter in Canada. See http://www.inspection.gc.ca/food/labelling/food-labelling-for-industry/origin/eng/1393622222140/1393622515592?chap=5#s1c5.

[91] Agriculture and Agri-Food Canada, "Minister Ritz Calls for Outright Repeal of United States Country of Origin Labelling (COOL)," press release, July 30, 2015, http://news.gc.ca/web/article-en.do?nid=1011969&_ga=1.70883986.385702904.1438289226.

[92] U.S. Congress, House Committee on Appropriations, Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 3547, Consolidated Appropriations Act, 2014, 113th Cong., January 13, 2014, p. 12, http://docs.house.gov/billsthisweek/20140113/113-HR3547-JSOM-FM-B.pdf.

[93] Letter from Representative DeLauro to Secretary Vilsack, January 23, 2014, http://delauro.house.gov/images/pdf/letter_to_usda_re_cool_fy14_approps.pdf.

On December 18, 2015, mandatory COOL for muscle cuts of beef and pork and ground beef and pork were repealed in Section 759 of the enacted Consolidated Appropriations Act, 2016 (P.L. 114-113, Division A). The provision removed all references to beef and pork in the COOL statute (7 U.S.C. §1638 et seq.).

Farm Bill

In the 113th Congress, House and Senate conferees completed work on the farm bill without making any major changes to COOL's statutory language.

Earlier, in May 2013, during the Senate Agriculture Committee markup of the Senate farm bill (S. 954), Senator Mike Johanns offered and then withdrew an amendment to repeal COOL for beef, lamb, and pork. Senator Johanns noted that he believed the rule USDA had proposed to address the WTO findings would be a regulatory nightmare and would not satisfy the U.S. WTO obligations. But instead of asking for a roll call vote on the amendment, he withdrew it in recognition that the committee's opinion on COOL was divided. S. 954, the Senate-passed farm bill, contains no provisions on COOL.

The House-passed farm bill (H.R. 2642, passed July 11, 2013) contained a provision (Section 11105) that would have required USDA to conduct an economic analysis of USDA's March 2013 proposed COOL rule (78 *Federal Register* 15645). The analysis was to include the impact on consumers, producers, and packers of the COOL law and rule. The report on COOL would have been due to Congress within 180 days of farm bill enactment. During the first farm bill conference meeting on October 30, 2013, several conferees from both the House and Senate raised concerns about the COOL rules. While the farm bill conference leaders worked, reports speculated that conferees would repeal the COOL law or perhaps modify it.[94] COOL opponents encouraged conferees to find a WTO-compliant resolution to the WTO COOL dispute.[95] Reportedly, one proposal considered called for a "North American" meat label, which COOL proponents strongly oppose.[96] USDA's Secretary Vilsack weighed in on COOL with the view that Congress should let the WTO process resolve the issue.[97]

The farm bill conference report to H.R. 2642, released on January 27, 2014, did not contain any language or provision to repeal or modify the COOL law. The only COOL-pertinent provision (Section 12104) includes the economic analysis provision found in the House-passed farm bill. The conference report clarifies that the economic analysis is to be of the May 2013 final rule (78 *Federal Register* 31367) instead of the March 2013 proposed rule. In addition, the COOL provision adds venison as a covered commodity. In a letter to conference leadership, COOL opponents expressed their disappointment that conferees did not alter COOL in a way that would resolve the WTO COOL dispute.[98]

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[94] For example: Charles Abbott, "U.S. Meat-Labeling Law, a WTO Issue, Now Farm Bill Target," Reuters, October 30, 2013, and "Opponents Secure Lucas' Support in New Push to Change Law," *Inside Trade*, October 31, 2013.

[95] Letter from 69 groups opposing COOL to Leadership of the Farm Bill Conference, October 29, 2013, http://soygrowers.com/wp-content/uploads/2013/10/COOL-letter-10-29-13-FINAL.pdf.

[96] John Maday, "Groups Encourage Congress to Preserve COOL Rules," *Drovers CattleNetwork*, January 22, 2014. Letter from 96 groups supporting COOL to Farm Bill Conferees, January 22, 2014, available at http://www.r-calfusa.com/COOL/140122FarmBillConfereeCOOLletterWith98Groups.pdf.

[97] Jenny Hopkinson, "Tom Vilsack: More Than Agriculture at Stake in Farm Bill," *Politico*, November 14, 2013, http://dyn.politico.com/printstory.cfm?uuid=9D01F578-806A-43EF-97FF-D125454D8BB2.

[98] Letter from livestock and poultry industry groups to Conference leadership, *The Hagstrom Report*, January 27, 2014.

Appendix A. Other Laws with Food Labeling Provisions

The COOL provisions of the 2002 and 2008 farm bills[99] do not change the requirements of the Tariff Act or the food safety inspection statutes described below. Instead, they were incorporated into the Agricultural Marketing Act of 1946 (Sections 281-285).

Tariff Act

Under Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. The U.S. Customs and Border Protection generally defines the "ultimate purchaser" as the last U.S. person to receive the article in the form in which it was imported. So, articles arriving at the U.S. border in retail-ready packages—including food products, such as a can of Danish ham, or a bottle of Italian olive oil—must carry such a mark. However, if the article is destined for a U.S. processor where it will undergo "substantial transformation," the processor is considered the ultimate purchaser. Over the years, numerous technical rulings by Customs have determined what is, or is not, considered "substantial transformation," depending upon the item in question.

The law has authorized exceptions to labeling requirements, including articles on a so-called "J List," named for Section 1304(a)(3)(J) of the statute. This empowered the Secretary of the Treasury to exempt classes of items that were "imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin." Among the items placed on the J List were specified agricultural products including "natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation."[100] Although J List items themselves have been exempt from the labeling requirements, Section 304 of the 1930 act has required that their "immediate container" (essentially, the box they came in) have country-of-origin labels. But, for example, when Mexican tomatoes or Chilean grapes were sold unpackaged at retail in a store bin, country labeling had not been required by the Tariff Act.

Meat and Poultry Products Inspection Acts

USDA's Food Safety and Inspection Service (FSIS) is required to ensure the safety and proper labeling of most meat and poultry products, including imports, under the Federal Meat Inspection Act, as amended (21 U.S.C. §601 *et seq*.), and the Poultry Products Inspection Act, as amended (21 U.S.C. §451 *et seq*.). Regulations issued under these laws have required that country of origin appear in English on immediate containers of all meat and poultry products entering the United States (9 C.F.R. §327.14 and 9 C.F.R. §381.205). Only plants in countries certified by USDA to have inspection systems equivalent to those of the United States are eligible to export products to the United States.

[99] P.L. 107-171, Section 10816, approved May 13, 2002, 111 Stat. 533; and P.L. 110-246, Section 11002, approved June 18, 2008, 122 Stat. 2113. The COOL provisions in the AMA of 1946 are codified at 7 U.S.C. §§1638-1638d.

[100] The J list is published in 19 C.F.R. §134.33, available at http://edocket.access.gpo.gov/cfr_2008/aprqtr/19cfr134.33.htm.

All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry destined for U.S. plants for further processing also have had to bear country-of-origin marks. However, once these non-retail items have entered the country, the federal meat inspection law has deemed them to be domestic products. When they are further processed in a domestic, FSIS-inspected meat or poultry establishment—which has been considered the ultimate purchaser for purposes of country-of-origin labeling—FSIS no longer requires such labeling on either the new product or its container. FSIS has considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.

Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules but also with Tariff Act labeling regulations. Because Customs generally requires that imports undergo more extensive changes (i.e., "substantial transformation") than required by USDA to avoid the need for labeling, a potential for conflict has existed between the two requirements.

Federal Food, Drug, and Cosmetic Act

Foods other than meat and poultry are regulated by the U.S. Department of Health and Human Services' Food and Drug Administration, primarily under the Federal Food, Drug, and Cosmetic Act (FFDCA; 21 U.S.C. §301 et seq.). This act does not expressly require COOL for foods. Section 403(e) of the FFDCA does regard a *packaged* food to be misbranded if it lacks a label containing the name and place of business of the manufacturer, packer, or distributor (among other ways a food can be misbranded). However, this name and place of business is not an indicator of the origin of the product itself.

Appendix B. Timeline of COOL

Table B-1. Major COOL Developments & WTO Dispute Settlement Case

May 13, 2002	COOL provisions are enacted in the 2002 farm bill to take effect on September 30, 2004 (P.L. 107-171, §10816).
October 30, 2003	USDA's Agricultural Marketing Service (AMS) publishes in the *Federal Register* the proposed rule on COOL. The comment period, initially to close December 29, 2003, is extended to February 27, 2004.
January 23, 2004	Implementation of COOL for covered commodities except fish and shellfish is delayed until September 30, 2006, per enactment of the FY2004 omnibus appropriations act (P.L. 108-199, Division A, §749).
October 5, 2004	AMS publishes in the *Federal Register* the interim final rule on COOL for fish and shellfish.
April 4, 2005	COOL labeling for fish and shellfish takes effect.
November 10, 2005	Implementation of COOL for all other covered commodities is delayed until September 30, 2008, per enactment of the FY2006 agriculture appropriations act (P.L. 109-97, §792).
May 22, 2008	Amendments to the 2002-enacted COOL provisions become law in the 2008 farm bill (P.L. 110-246, §11002), to take effect on September 30, 2008.
August 1, 2008	AMS publishes in the *Federal Register* the interim final rule to implement COOL for all covered commodities except fish and shellfish, to take effect on September 30, 2008.
December 16, 2008	Canada, joined by Mexico, holds consultations on COOL with the United States.
January 15, 2009	AMS publishes the final rule to implement COOL for all covered commodities, to take effect on March 16, 2009.
February 20, 2009	Secretary of Agriculture sends letter to meat and food industry representatives urging the voluntary adoption of three labeling changes.
March 16, 2009	COOL's final rule for all covered commodities takes effect.
June 5, 2009	Canada holds consultations with the United States to resolve differences on COOL.
October 7, 2009	Canada requests the establishment of a World Trade Organization (WTO) dispute settlement (DS) panel to consider its complaint on the U.S. COOL program. Mexico follows with a comparable request on October 9.
November 19, 2009	WTO establishes a DS panel to consider complaints made by Canada and Mexico on the U.S. COOL program.
November 18, 2011	WTO DS panel releases final report that concludes that some features of U.S. COOL discriminate against foreign livestock and are not consistent with U.S. WTO trade obligations.
March 23, 2012	The United States appeals the WTO DS panel's conclusions.
March 28, 2012	Canada and Mexico also appeal some of the DS panel's conclusions.
June 29, 2012	The WTO's Appellate Body (AB) issues its report, upholding the DS panel finding that U.S. COOL does not favorably treat imported livestock but reversing the other finding that COOL does not provide sufficient information to consumers on the origin of meat products.
July 10, 2012	Canada, Mexico, and the United States withdraw consideration of the AB report from the Dispute Settlement Body (DSB) agenda to provide more time to consult on the 90-day reporting requirement that was missed by the AB.
July 23, 2012	WTO's DSB adopts the AB report and the DS panel report, as modified by the AB report.
August 22, 2012	30-day deadline for the United States to inform the DSB about how it plans to implement the WTO findings.

August 31, 2012	United States informs the DSB that it intends to comply with the WTO recommendations and rulings, and states its need for a "reasonable period of time" to do so.
October 4, 2012	With Canada, Mexico, and United States unable to agree on what a reasonable period of time should be and on who the arbitrator should be, the WTO's Director appoints an arbitrator to determine this.
December 4, 2012	WTO's arbitrator announces his determination that the "reasonable amount of time" for the United States to implement the DSB's recommendations and rulings is 10 months from when the AB and DS panel reports were adopted (i.e., May 23, 2013).
March 12, 2013	AMS issues a proposed rule to modify certain COOL labeling requirements for muscle-cut commodities to bring them into compliance with WTO's findings and to improve the COOL program's overall operation.
April 11, 2013	Deadline for interested parties to submit comments to AMS on proposed COOL rule.
May 23, 2013	Deadline for the United States to comply with the WTO's findings on U.S. COOL.
May 24, 2013	At the DSB meeting, the United States notifies that it had complied with the WTO findings on COOL by issuing a final rule on May 23. No compliance proceeding was initiated by Canada or Mexico.
June 7, 2013	Canada releases an itemized tariff list of products that could be targeted in a retaliatory action against the United States.
August 19, 2013	Canada and Mexico notify the DSB that they will request the establishment of a compliance panel at the August 30 meeting of the DSB.
August 30, 2013	The United States objects to the establishment of a compliance panel. The request will be made again at the September DSB meeting on September 25, and the United States will not be able to object to its formation.
September 27, 2013	The DSB selects the members of the compliance panel, the same members that served earlier on the COOL dispute settlement panel.
February 18-19, 2014	The WTO's compliance panel hears the COOL case.
October 20, 2014	The WTO releases the compliance panel report. Parties have 60 days to appeal.
November 28, 2014	The United States appeals the findings of the compliance panel report.
February 16-17, 2015	Appellate Body hears the U.S. appeal of the compliance panel report.
May 18, 2015	WTO releases the Appellate Body report.
May 29, 2015	The DSB adopted the AB report and the compliance report as modified by the AB report.
June 4, 2015	Canada and Mexico request authorization to retaliate against the United States. Canada values damages at $2.4 billion and Mexico at $653.5 million. Mexico subsequently revises its damages to $713 million on June 17, 2015. The United States objects to the requests.
June 10, 2015	House of Representatives passes H.R. 2393 to repeal beef, pork, and chicken provisions from the COOL statute.
June 17 & 22, 2015	Canada's request is referred to arbitration on the 17th and Mexico's on the 22nd.
July 23, 2014	Senator Hoeven introduces S. 1844, which repeals COOL for beef, pork, and chicken. It also requires USDA to create a voluntary U.S. label for meat from livestock exclusively born, raised, and slaughtered in the United States.
September 15-16, 2015	The arbitration panel hears Canada and Mexico's requests, and the U.S. objections.
December 7, 2015	The arbitration panel set the retaliation level for Canada at C$1.055 billion (US$781 million) and for Mexico at US$228 million.
December 18, 2015	Section 759 of the Consolidated Appropriations Act, 2016 (P.L. 114-113, Division A) repeals COOL for muscle cuts of beef and pork and ground beef and pork.

December 21, 2015	The DSB grants authorization to Canada and Mexico to retaliate against the United States.
March 2, 2016	USDA amends the COOL regulations to reflect the repeal of the COOL law for beef, pork, and ground beef and pork in P.L. 114-113.

Table B-2. Developments in the Meat Industry Lawsuit

July 8, 2013	Led by the American Meat Institute (AMI), U.S., Canadian, and Mexican meat industry organizations file suit against USDA to block the May 2013 COOL rule in the U.S. District Court for the District of Columbia.
July 25, 2013	AMI requests that the District Court grant a preliminary injunction to stop USDA from implementing the May 2013 revised COOL rule.
September 11, 2013	The U.S. District Court denies the plaintiffs' request to halt the implementation of the COOL rule. The plaintiffs appeal the ruling.
January 9, 2014	The U.S. Court of Appeals for the District of Columbia Circuit hears the meat industry's appeal of the September denial of the preliminary injunction halting COOL.
March 28, 2014	A three-judge panel of the U.S. Court of Appeals denies AMI's request for a preliminary injunction to halt USDA from implementing the revised COOL rule of May 2013.
April 4, 2014	The Court vacates the March 28 ruling and orders an *en banc* hearing of the case on May 19, 2014. The Court will reexamine the compelled speech aspect of the AMI's case to determine if COOL labeling requirements violate the plaintiff's free speech rights.
July, 29, 2014	The full court denies the request for a preliminary injunction against COOL in an 8-3 ruling. The Court finds that the plaintiffs' free speech rights are not violated by COOL.
September 12, 2014	AMI petitions the Court for an *en banc* rehearing, claiming that the previous rulings allowed USDA to vastly expand its jurisdiction over the day-to-day operations of the livestock industry through required livestock segregation, that Congress did not grant the agency.
October 31, 2014	The U.S. Court of Appeals rejects AMI's petition.

Appendix C. North American Livestock Trade

Overview

After COOL took full effect in March 2009, Canada and Mexico continued to question the trade legality of mandatory COOL, and claimed that COOL disrupted normal live cattle and hog trade patterns and caused large financial losses to their livestock industries. Canada and Mexico were concerned that labeling requirements and the need to segregate imported and domestic animals to assure proper labeling would raise the cost of handling and processing imported animals. The increased cost would ultimately lead U.S. livestock buyers to reduce live animal imports or to offer lower prices for imported animals.

The cattle and hog industries of Canada, Mexico, and the United States have become increasingly integrated over the last two decades, particularly after NAFTA took effect in 1994 and, before that, the Canada-U.S. Free Trade Agreement in 1988. These agreements, along with the global Uruguay Round Agreements under the WTO that reduced tariff and non-tariff barriers to trade, have enabled animals and animal products to move across borders more freely, based on market demand.

A number of animal health incidents have disrupted this market integration from time to time. The most significant event was the discovery of *bovine spongiform encephalopathy* (BSE or mad cow disease) in 2003, first in Canada and later in the United States, which halted most cross-border movement of cattle from Canada to the United States from mid-2003 through mid-2005. The predominance of BSE cases in Canada rather than in the United States may have contributed to wider support for the mandatory COOL law, some analysts believe, although government officials assert that both countries now have strong, scientifically defensible safeguards in place to ensure that BSE is controlled and that its infectious agent does not enter the human food supply.

Proximity, abundant feed supplies, and established feeding operations in the United States have resulted in an increase in live cattle and hog imports from Canada and Mexico. Imports may fluctuate year to year as factors such as relative animal and feed prices, inventory levels, currency exchange rates, and weather conditions influence the movement of cattle and hogs into the United States.

Value of North American Livestock Trade

Canada and Mexico are important U.S. trading partners for live animals. The value of U.S. cattle and hog exports to Canada and Mexico was about $76 million in 2014 (**Table C-1**), accounting for about 47% of the total value of U.S. cattle and hog exports. The United States primarily exports breeding stock, and in recent years, U.S. cattle and hogs have been shipped to more than 70 foreign markets. Prior to 2011, Canada and Mexico accounted for a majority of the value of cattle and hog exports, but from 2011-2013 Russia and Turkey were leading markets for breeding cattle, and China was a leading market for breeding hogs. Shipments to those markets declined sharply in 2014, thus boosting the share of U.S. cattle and hogs moving to Canada and Mexico.

On the import side, the value of trade with Canada and Mexico is much greater. In 2014, the United States imported more than $2.9 billion worth of cattle and hogs from Canada and Mexico, a record value for cattle and hog imports (**Table C-1**). Almost all U.S. live cattle imports come from Canada and Mexico and almost all live hog imports come from Canada.

Table C-1. Value of U.S. Cattle and Hog Trade

	U.S. Exports ($ million)				
	2010	**2011**	**2012**	**2013**	**2014**
Cattle					
Canada	19.7	42.3	31.5	24.8	22.5
Mexico	30.8	20.8	8.1	49.4	50.6
Rest of World	82.3	315.3	362.8	205.9	79.9
Total Cattle	132.7	378.4	402.4	280.0	149.9
Hogs					
Canada	1.6	2.1	1.7	1.0	1.4
Mexico	2.0	2.9	6.4	2.8	1.9
Rest of World	5.0	19.1	25.2	26.7	9.5
Total Hogs	8.6	24.1	33.4	30.5	12.7
Total Cattle & Hogs	**141.3**	**402.5**	**435.8**	**310.6**	**162.6**
	U.S. Imports ($ million)				
	2010	**2011**	**2012**	**2013**	**2014**
Cattle					
Canada	1,082.2	862.3	1,060.1	1,268.7	1,753.3
Mexico	522.8	616.9	716.6	508.4	738.7
Rest of World	0.0	0.0	0.0	0.0	0.0
Total Cattle	1,605.0	1,479.1	1,776.6	1,777.1	2,492.0
Hogs					
Canada	363.3	362.9	330.5	333.9	433.9
Mexico	0.0	0.0	0.0	0.0	0.0
Rest of World	0.2	0.0	0.0	0.0	0.1
Total Hogs	363.5	362.9	330.6	333.9	434.0
Total Cattle & Hogs	**1,968.5**	**1,842.2**	**2,107.2**	**2,111.0**	**2,926.0**

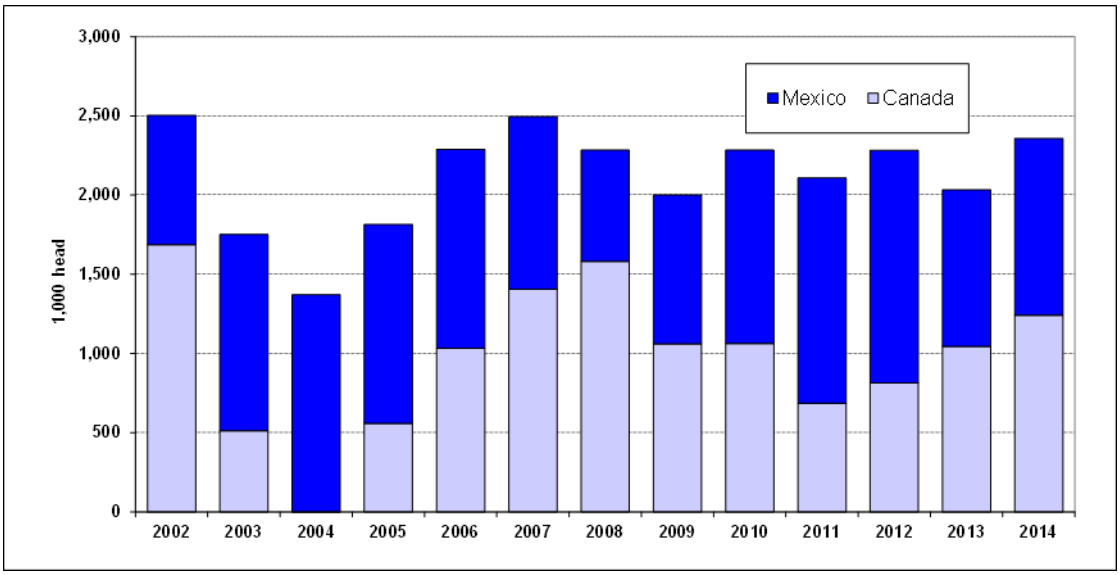
Source: USDA, Foreign Agricultural Service (FAS), Global Agricultural Trade System (GATS).

Note: Excludes trade in live buffalo. If there were cattle and hog imports from the Rest of World, they were usually less than $100,000. There were no hog imports from Mexico.

U.S. Cattle Imports

U.S. cattle imports plunged in 2004 after the discovery of BSE in Canada in May 2003 and the subsequent U.S. ban on Canadian cattle imports. In 2004, all U.S. cattle imports came from Mexico. But once the border was reopened to Canadian cattle in 2005, imports steadily increased and reached near pre-BSE levels by 2007 due to the steady rebound in imports from Canada. In 2008, cattle imports dropped 8% to 2.3 million head, and fell 12% to 2 million head in 2009 (**Figure C-1**).

Figure C-1. U.S. Cattle Imports from Canada and Mexico



Source: USDA, FAS, GATS.

U.S. cattle imports during the first half of 2008 were almost 9% higher than the previous year, but import growth slowed during the second half of 2008, and by December cattle imports had fallen 8% below 2007. Imports from Canada continued to grow during 2008 and imports of Canadian feeder cattle were particularly strong in the first half of the year. Under COOL regulations, cattle that were in the United States before July 15, 2008, were considered U.S. origin cattle, which likely encouraged feeder imports from Canada during the first part of the year. Canadian feeder imports through June 2008 were 72% higher than the previous year, but ended the year only 16% higher. However, during 2008 cattle imports from Mexico were 35% lower than 2007, and the lowest imports since 1998. Good range and forage conditions in Mexico likely allowed producers to keep cattle on grass and resulted in reduced U.S. imports.

In 2009, U.S. cattle imports continued to decline, dropping 12%. But contrary to 2008, imports from Canada fell, while imports from Mexico increased. USDA's Economic Research Service (ERS) indicated that weaker U.S. cattle prices and weaker demand for beef in the United States, combined with a stronger Canadian dollar, reduced Canadian returns and incentives to send cattle to the United States.[101] On the other hand, imports from Mexico started rising due to worsening drought conditions in Mexico during the latter part of 2009 that encouraged Mexican producers to ship cattle to the United States.

Some analyses attribute the import decline during the last part of 2008 and all of 2009 to COOL, but differ on the extent currency exchange rates may have contributed to this development. CattleFax, an industry-funded data and analysis service based in Colorado, observed that the 2008 decline in cattle imports was due to mandatory COOL regulations, and that imports would "face a big wild card in 2009" for the same reason.[102] Livestock sector analysts with the Chicago Mercantile Exchange (CME), examining cattle import trends through year-end 2008, commented that the COOL law "has been quite effective, if you measure effectiveness by the degree to which it has been able to stifle cattle trade in North America." They wrote that reductions in imports

[101] USDA, Economic Research Service (ERS), *Livestock, Dairy, and Poultry Outlook*, December 17, 2009, p. 5.

[102] CattleFax, "CattleFax Long Term Outlook Special Edition," December 12, 2008, p. 3.

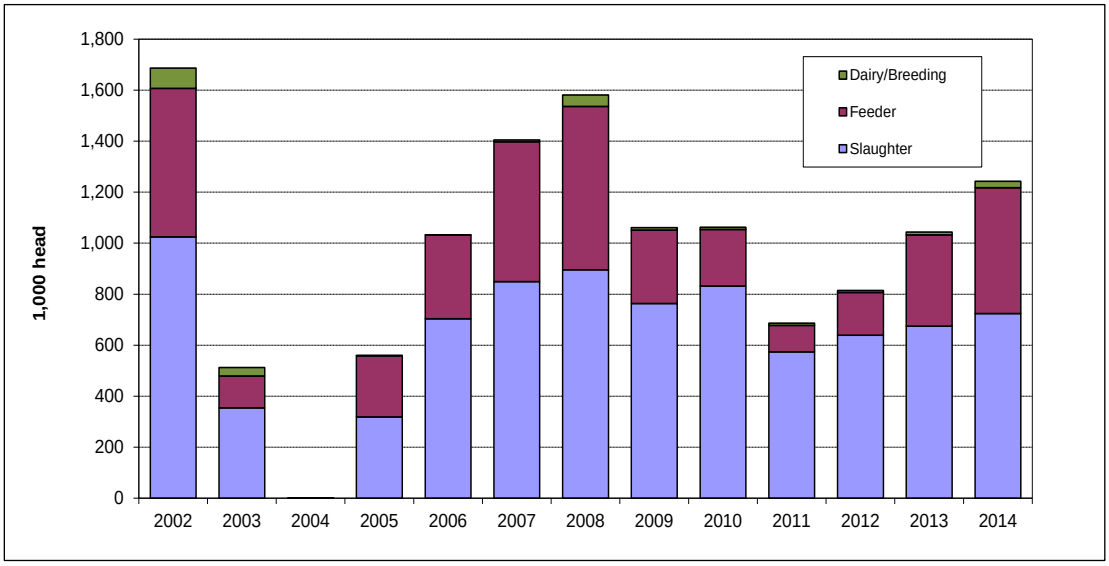
from both Mexico and Canada "came at a time when a significant devaluation in the value of the Peso and Canadian dollar normally would have been conducive of increased imports from these two countries. Under normal circumstances, one would expect cattle imports to actually increase rather than be cut by almost 40%."[103] However, USDA's ERS suggested that the currency exchange factor may be somewhat more involved and that Canada's available supplies of slaughter cattle were reduced by earlier strong shipments of feeder cattle.[104]

Since 2009, U.S. cattle imports have been in the 2.1 million-2.4 million head range. In 2014, cattle imports increased 16% to nearly 2.4 million head, the highest level of imports since 2007. Imports from Canada were 19% higher and from Mexico 13% higher. Record high U.S. cattle prices provided ample incentive to pull Canadian and Mexican cattle into the United States.

Cattle Imports from Canada

In 2014, U.S. imports of cattle from Canada increased 19% to surpass 1.2 million head, the highest since 2008 (**Figure C-2**). A majority of Canadian cattle shipped to the United States are for immediate slaughter—58% in 2014. Most of the remaining imports are feeder cattle that are usually destined for U.S. feedlots to be fed out to slaughter-ready weights. Dairy cows and breeding stock account for a small share of imports from Canada.

Figure C-2. U.S. Cattle Imports from Canada



Source: USDA, FAS, GATS.

In 2014, slaughter cattle imports from Canada increased 7% to 724,000 head from the previous year. Increases in slaughter cattle imports have been supported by larger shipments of cows coming into the United States for immediate slaughter. High U.S. cow prices and the closure of a cow slaughter plant in Quebec in 2012 have contributed to increases in slaughter cow imports. Feeder cattle imports increased 38% to 493,000 head. The share of feeder cattle imports—40% in

[103] *CME Daily Livestock Report*, January 7, 2009.

[104] USDA, ERS, *Livestock, Dairy, and Poultry Outlook*, December 18, 2008, p. 8. ERS analysts point out that prior to 2008, the United States was easing the BSE-related restrictions on Canadian cattle imports; in November 2007, cattle over 30 months of age were again permitted to enter from Canada.

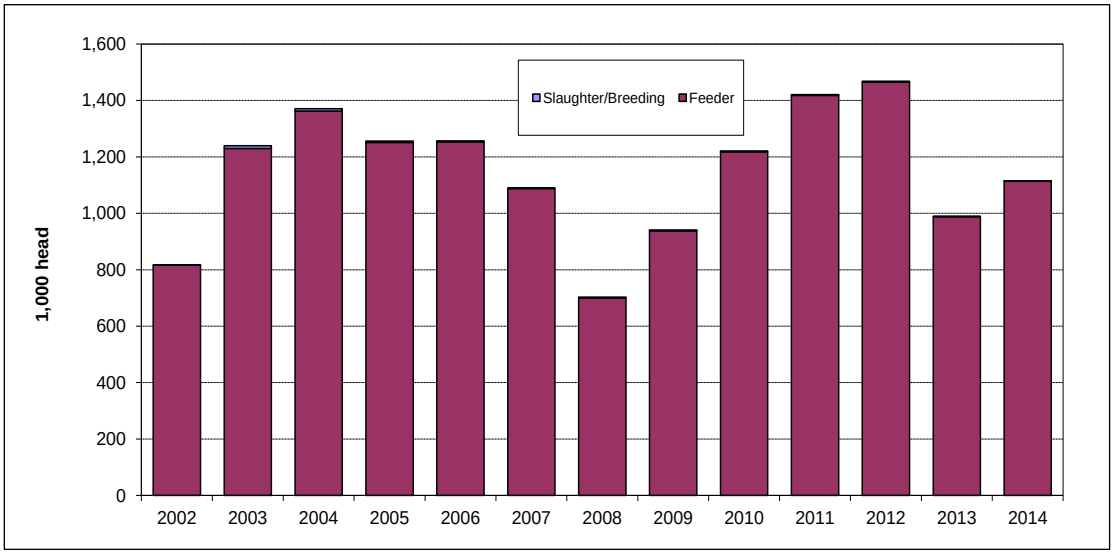
2014—has been steadily rising over the last several years. Record high U.S. feeder cattle prices supported the southern movement of Canadian feeders.

Cattle Imports from Mexico

Almost 100% of Mexican cattle shipped to the United States are stocker or feeder cattle that are usually raised in the northern states of Mexico, then shipped to the United States and placed on pasture or into feedlots (**Figure C-3**).[105] Cattle imports from Mexico are often influenced by prevailing precipitation conditions in northern Mexico. Persistent drought from 2009-2012 led to an increasing number of cattle imports from Mexico, reaching nearly 1.5 million head in 2012.

Reduced cattle inventory and improved pasture conditions in Mexico in 2013 resulted in a decline of 33% in feeder cattle shipments to the United States. In 2014, imports from Mexico increased 13% as the record high feeder cattle prices encouraged Mexico's cattle producers to send more animals to the United States.

Figure C-3. U.S. Cattle Imports from Mexico



Source: USDA, FAS, GATS.

U.S. Hog Imports

U.S. hog imports from Canada started to rise sharply in the mid-1990s. U.S. hog imports were a record 10 million head in 2007, growing more than 13% per year on average during the previous 10 years. Furthermore, the composition of U.S. hog imports significantly shifted from hogs for immediate slaughter to feeder pigs.[106] At one time the U.S. hog industry was composed of many small operations that raised hogs from birth to slaughter-ready weight (farrow-to-finish

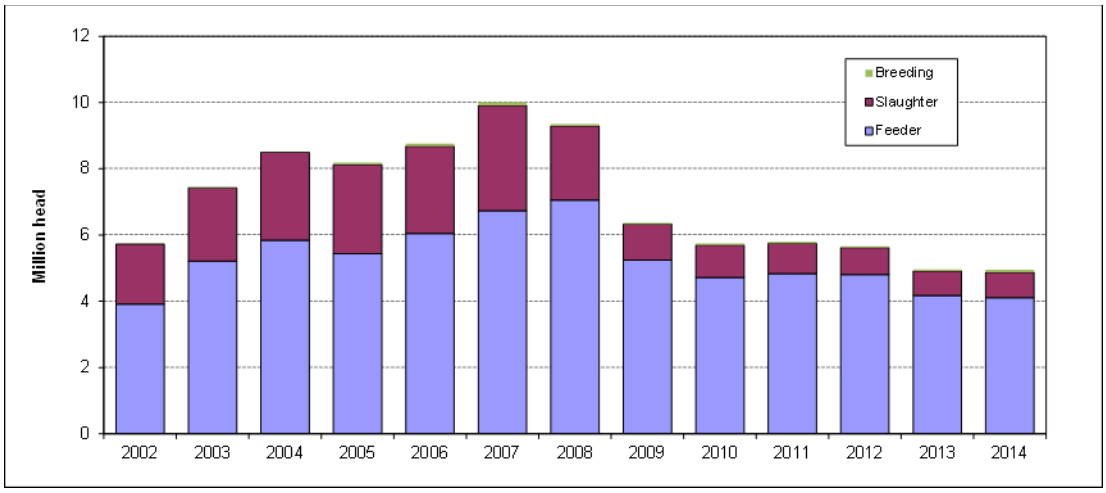
[105] Darrell S. Peel, Kenneth H. Mathews, Jr., and Rachel J. Johnson, *Trade, the Expanding Mexican Beef Industry, and Feedlot and Stocker Cattle Production in Mexico*, USDA, ERS, August 2011. Stocker cattle are lightweight, usually 200 to 400 pounds, and are placed in grazing programs to grow the animals. Feeder cattle are heavier, mostly 400 to 700 pounds, and may be placed on grass or placed directly in feedlots.

[106] Feeder pigs are light-weight pigs—the majority weighing less than 15 pounds, others weighing between 15 and 100 pounds—that are shipped to the United States for feeding to slaughter-ready weight.

operations), but from the mid-1980s the hog industry moved toward vertical integration. With vertical integration there came increased demand for feeder pigs to meet the needs of finishing operations. Some Canadian producers focused their production on providing feeder pigs for shipment to the United States where access to abundant and cheaper supplies of grain made it more economical to feed pigs to slaughter weight.[107] The feeder pig share of hog imports increased steadily from the mid-1990s, peaking at 85% in 2012. The feeder pig share of imports was 83% in 2014.

U.S. imports of Canadian hogs dropped sharply from the 2007 peak. U.S. hog imports from Canada fell 7% in 2008 on a 30% drop in hogs for immediate slaughter. In 2009, hog imports dropped another 32% as both feeder pigs and hogs for immediate slaughter declined (**Figure C-4**).

Figure C-4. U.S. Hog Imports from Canada



Source: USDA, FAS, GATS.

An early 2009 USDA analysis suggested that COOL's implementation likely "made U.S. swine finishers reluctant to import Canadian finishing animals, in light of some major U.S. packers' stated unwillingness to process Canadian-origin animals."[108] Another report suggested that COOL was affecting the U.S. hog sector, particularly in Iowa, as packers moved to process only U.S.-born hogs. With many Iowa producers operating finishing operations that source feeder pigs from Canada, a USDA document on COOL implementation cited that some producers' barns are "empty because of a lack of an assured outlet for slaughter hogs of mixed country of origin" (i.e., Product of Canada and United States). USDA also reported that some lenders were not extending credit to operations that finish mixed-origin pigs, and that lower prices at times were "being paid for mixed origin slaughter hogs compared to hogs of exclusively U.S. origin."[109]

After the sharp decline in 2009, U.S. hog imports were stable at about 5.7 million-5.8 million head for 2010-2012. In 2013, hog imports declined 12% to about 5 million head, and remained at that level in 2014. Canadian hog inventories have declined from the mid-2000s level resulting in tighter hog supplies available for export to the United States. However, as with the cattle markets, record high hog prices in 2014 encouraged feeder pig imports.

[107] Mildred Haley, *Market Integration of the North American Hog Industries*, USDA, ERS, November 2004, pp. 9-12.

[108] USDA, ERS, *Livestock, Dairy, and Poultry Outlook*, April 16, 2009, p. 4.

[109] Steve Kay, "MCOOL Hurts Iowa Hog Finishers," Cattle Buyers Weekly, April 27, 2009.

Appendix D. WTO Findings

The key WTO findings that U.S. COOL regulations violated U.S. WTO obligations centered on Article 2.1 and Article 2.2 of the Technical Barriers to Trade (TBT) agreement.[110] Article 2.1 states that "Members shall ensure that... products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin.... " Article 2.2 states that "technical regulations [such as COOL] shall not be more trade-restrictive than necessary to fulfil a legitimate objective."

This section summarizes key WTO findings of the dispute settlement panel, the Appellate Body, the compliance panel, and the Appellate Body on the compliance panel. The first two sections describe the key rulings on Articles 2.1 and 2.2 of the Technical Barriers to Trade (TBT). The last two sections summarize issues that were before the dispute settlement panel, but were not key in the appeal and compliance processes.

COOL Treats Imported Livestock Less Favorably Than Domestic Livestock

Dispute Panel

The DS panel found that Canada and Mexico demonstrated that COOL is a technical regulation governed by, and in violation of, Article 2.1 of the TBT. The AB upheld this finding, but for different reasons (see below). This TBT article states: "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." The panel first found that the COOL statute and the final rule (but not the Vilsack letter) are a "technical regulation" because they are legally enforceable requirements governing the labeling of meat products offered for sale.[111] The panel further found that Canadian and U.S. cattle, Canadian and U.S. hogs, and Mexican and U.S. cattle are "like products," and the muscle cut labels used to implement COOL affect competitive conditions for these products in the U.S. market to the detriment of imported livestock. According to the panel, COOL creates this "competitive advantage" by creating an incentive for "processing exclusively domestic livestock and a disincentive against handling imported livestock." More specifically, the panel found that to comply with COOL, processors need to segregate imported from domestic livestock to an extent that discourages them from using imported livestock at all. In turn, this reduces the competitive opportunities for imported livestock relative to those for domestic livestock.

The panel based this conclusion on its assessment of the compliance requirements of COOL. It first reviewed the four statutory definitions used to label the origin of beef and pork muscle cuts (see **Table 1**), noting that "origin is determined by the country in which specific livestock production and processing steps took place (i.e., birth, raising and slaughtering)," and highlighted the distinctions between the exclusive U.S. origin label and the other three labels that identified

[110] A summary of key WTO findings and full WTO panel reports are available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm.

[111] The panel made its determination on what is, and is not, a technical regulation with reference to TBT's Annex 1.1. It defines such to be a document that spells out "labeling requirements" among other features, including administrative provisions, "with which compliance is mandatory." The panel concluded that the COOL statute and final rule are "legal instruments that are legally binding in US law," with wording clearly mandating compliance, while the Vilsack letter, rather than mandating additional labeling requirements, presents them as "suggestions for voluntary action."

livestock with an imported element (i.e., at least one step took place outside the United States). It observed that "there was ... major flexibility" under COOL's interim final rule (August 2008) to use "multiple countries of origin" (Category B) for muscle cuts eligible for the U.S.-origin only label (Category A) "without limitations." However, in response to public comment, COOL's final rule (January 2009) ended this flexibility, allowing the multiple countries declaration (Category B) to be used to label U.S.-origin meat only if U.S. and foreign livestock were commingled for slaughter "on a single production day."

The panel then examined what is involved in segregating livestock and meat between domestic and foreign origin under five business scenarios. It determined that "the least costly way" to comply with COOL "is to rely on exclusively domestic livestock" rather than imported livestock. Accepting evidence provided by Canada and Mexico that major U.S. slaughterhouses are "applying a considerable COOL discount of [US$] 40-60 per head for imported livestock" but not to domestic livestock, the panel observed that COOL creates an incentive to process domestic rather than imported livestock because it is less costly to do so. It pointed out that several U.S. meat processors indicated they plan to move to use Category A (U.S. origin) "for the vast majority of their beef and pork products" and to ensure segregation by origin (i.e., minimize commingling). Other evidence presented confirmed that the U.S.-origin label accounts for a large share of the meat marketed. The United States indicated that 71% of the beef, and 70% of the pork, sold at the retail level carries the exclusive U.S. label. Canada showed that close to 90% of meat sold at retail carries this U.S. label.

Based on the above, the panel "preliminarily" concluded that COOL "creates an incentive to use domestic livestock—and a disincentive to handle imported livestock—by imposing higher segregation costs on imported livestock than on domestic livestock." The panel's report also showed that some U.S. plants and companies "are simply refusing to process any imported livestock anymore," and that fewer U.S. processing plants are accepting cattle and hog imports than before. It also noted that certain suppliers had to transport imported livestock longer distances than before COOL, and that they also faced logistical problems and additional costs for timing delivery to specific times or days when processing is scheduled. Although the panel took these into account, it decided it also was important to make findings on COOL's actual trade effects. To do this, it considered data, economic analyses, and econometric studies submitted by Canada, Mexico, and the United States.

In reviewing two economic studies on COOL's livestock segregation costs submitted by Canada, the panel stated "both studies shed some light on the different types of segregation and compliance costs encountered at different stages of the supply chain." Noting that such costs need to be absorbed somewhere in the marketing system, it concluded that "economic competition pressure" will dictate how these costs are allocated. Whether this involves processing only U.S.-origin livestock because it is the cheapest way to comply with COOL and because many U.S. consumers are not willing to pay a price premium for country-of-origin labeling, or incurring the additional costs associated with segregating imported livestock before processing, either option "is likely to cause a decrease in the volume and price of imported livestock."

The panel also reviewed econometric analyses[112] submitted by Canada and the United States that purported to assess COOL's impacts on prices and shares of imported livestock. Whereas the Canadian study concluded that COOL caused reduced competitive opportunities for Canadian livestock in the U.S. market, the U.S. study concluded that the economic recession was the primary cause. Rather than seeking to reconcile these disparate conclusions, the panel instead assessed "the robustness of each study." It considered Canada's study to be "sufficiently robust"

[112] These involve applying mathematics and statistical methods to study relationships between economic variables.

because it included other economic variables that confirmed that COOL—not the economic recession that began in 2008, the 2004-2005 U.S. import ban due to the discovery of BSE in Canada's cattle herds, or transport costs—"had a negative and significant impact on Canadian import shares and price basis." Conversely, the panel found the U.S. study did not sufficiently show that the economic recession rather than COOL accounted for the negative impacts experienced in the cattle sector, did not fully analyze what occurred in both countries' hog sectors, and thus did not refute what Canada's study laid out.

Appellate Body on the Dispute Panel Report

The United States appealed the DS panel's finding that COOL treats imported livestock less favorably than domestic livestock (i.e., that COOL is inconsistent with TBT's Article 2.1). Its main argument was that COOL did not change the "conditions of competition" to the detriment of Canadian and Mexican cattle and hog producers. The U.S. legal brief acknowledged that though private market participants incur costs in complying with COOL, "any country of origin labeling will necessarily introduce compliance costs" and governments cannot control how participants respond to these costs. The brief argued that market forces, rather than the COOL measure in and of itself, increased the cost of selling Canadian and Mexican livestock into the U.S. market, and that COOL cannot be faulted for being discriminatory.[113]

In reviewing the U.S. appeal, the Appellate Body found that the panel's analysis of the finding of unfavorable treatment was incomplete in not considering whether or not the detrimental impact on imports was due exclusively to a "legitimate regulatory distinction" (i.e., a legally valid reason for similar products to be treated differently), which the TBT allows. The AB found that the COOL measure:

> lacks even-handedness because its recordkeeping and verification requirements impose a disproportionate burden on upstream producers and processors of livestock as compared to the information conveyed to consumers through the mandatory labelling requirements for meat sold at the retail level. That is, although a large amount of information must be tracked and transmitted by upstream producers for purposes of providing consumers with information on origin, only a small amount of this information is actually communicated to consumers in an understandable or accurate manner, including because a considerable proportion of meat sold in the United States is not subject to the COOL measure's labelling requirements at all.[114]

Based on these findings, the AB concluded that COOL's "regulatory distinctions" (i.e., the prescribed labels and labeling exemptions) "amount to arbitrary and unjustifiable discrimination against imported livestock, such that they cannot be said to be applied in an even-handed manner," rather than being based upon a "legitimate regulatory distinction." It thus upheld the DS panel's finding, but for different reasons, that COOL's requirements on labeling beef and pork accord "less favorable treatment to imported livestock than to domestic livestock."

Compliance Panel

The compliance panel found that the revised (May 2013) COOL rule violated Article 2.1 of the TBT. Like the dispute panel and the Appellate Body, the panel found that the revised rule was a technical regulation and that Canadian and Mexican cattle and hogs were like products. The compliance panel determined that the revised COOL rule required increased segregation and recordkeeping due to the ban on commingling and raises the possibility of needing more labels

[113] "Obama Administration Appeals Ruling on Country Labeling for Beef, Pork," *Inside US Trade*, March 30, 2012.

[114] WTO, United States—Certain Country of Origin Labelling (COOL) Requirements, 'Summary of Key Findings," available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm.

compared with the original rule, both of which increase the disincentive to use imported livestock. Therefore, it was found that the revised rule afforded less favorable treatment to imported livestock. The panel found that less favorable treatment was not due exclusively to a legitimate regulatory distinction—the need to inform consumers where livestock was born, raised, and slaughtered—because there still existed the possibility of inaccurate label information and a large amount of beef and pork was still exempt under the revised COOL rule. The compliance panel concluded that

> 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 and Mexican] livestock, and this detrimental impact does not stem exclusively from legitimate regulatory distinctions.[115]

Appellate Body on the Compliance Report

The Appellate Body upheld the findings of the compliance panel report that COOL violated Article 2.1 through increased recordkeeping and verification requirements that burden imported livestock. The panel found that the legitimacy for COOL is undermined because a large amount of beef and pork is exempt under COOL, placing imported livestock at a competitive disadvantage to domestic livestock for no reason. The panel notes between 57.7% and 66.7% of beef and 83.5% and 84.1% of pork do not provide origin information to consumers.

COOL Does Not Meet Objective of Providing Consumers with Information on Origin of Meats

Dispute Panel

Canada and Mexico also alleged that COOL violates Article 2.2 of the TBT by being more trade-restrictive than necessary to fulfill a legitimate policy objective. Article 2.2 reads:

> Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations *shall not be more trade-restrictive than necessary to fulfil a legitimate objective*, taking account of the risks non-fulfillment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products. (italics added for emphasis)

The panel accepted the U.S. position that COOL's objective is to inform consumers of the country of origin of meat products,[116] and it agreed with the United States that this is a "legitimate" policy objective under TBT's Article 2.2 to pursue. However, it concluded that COOL's implementation is more trade restrictive than is necessary to fulfill its objective because it does not meaningfully inform consumers about the countries of origin of meat products.

In reaching its conclusion that COOL does not achieve its objective, the DS panel agreed with Canada and Mexico that the labels identifying multiple countries of origin could confuse or

[115] Compliance panel report, Section 8.3, pp. 205 and 206.

[116] The panel rejected Canada's and Mexico's argument that COOL's objective is to protect the domestic U.S. livestock industry (p. 143 of WTO panel's report, footnote 30).

mislead, rather than inform, consumers. It noted that a consumer could not readily distinguish the origins of meat products listed on a Category B label as coming from multiple countries, from the origins of meat products shown on a Category C label as coming from those same multiple countries (e.g., Product of the United States, Canada [Category B], compared to Product of Canada, United States [Category C]—see **Table 1**). The panel added that because processors have the flexibility to use both types of labels interchangeably for commingled meat (i.e., meat processed from animals of different origins on the same day), the labels not only fail to inform the average consumer of the distinction between them but could also mislead a fully informed consumer about the precise origins of some meat products.

Appellate Body on the Dispute Panel Report

The United States appealed the DS panel's finding that COOL does not meet the objective of providing consumers with meaningful information on the origin of meats. It challenged the two-step approach the panel followed to determine whether COOL is consistent with TBT's Article 2.2. Its brief pointed out that the panel first looked at whether COOL fulfills a legitimate policy objective, and if it had been found to do so, would have examined whether COOL is more trade-restrictive than necessary compared to other possible less trade-restrictive measures that could have just as well met the policy objective. The United States argued that the panel took the wrong approach and instead should have focused only on whether COOL is more trade-restrictive than necessary. It argued that the panel went beyond the scope of Article 2.2 to make an "intrusive and far-ranging judgment" on whether COOL "is effective public policy."

In its analysis, the Appellate Body found that the DS panel erred in interpreting and applying Article 2.2. Although it agreed with the panel that COOL's objective is to provide consumers with information on origin and that this is a legitimate objective, the AB viewed the panel's finding as too narrow. The AB found that the panel

> appeared to have considered, incorrectly, that a measure could be consistent with Article 2.2 only if it fulfilled its objective completely or exceeded some minimum level of fulfilment, and to have ignored its own findings, which demonstrated that the COOL measure does contribute, at least to some extent, to achieving its objective.

The AB reversed the panel's finding that COOL is inconsistent with Article 2.2, but was not able to determine whether COOL is more trade-restrictive than necessary to meet the TBT requirement that it be a legitimate objective.[117]

Compliance Panel

The compliance panel agreed with the dispute panel and Appellate Body that COOL is a legitimate objective providing U.S. consumers information on the country of origin of beef and pork. The panel found that the revised COOL rule contributes more than the original rule to the objective of providing origin information to consumers, but still exempted large portions of beef and pork from labeling. The panel also found that the revised rule increased trade restrictiveness compared with the original rule, but could not determine if the revised rule was more trade restrictive than necessary. To determine if the revised rule was more trade restrictive than necessary, the panel examined the risks of not fulfilling the objective of COOL and examined four alternative labeling schemes,[118] provided by Canada and Mexico, that would demonstrate

[117] WTO, United States—Certain Country of Origin Labelling (COOL) Requirements, 'Summary of Key Findings," available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm.

[118] The four alternatives were (1) label by substantial transformation, i.e., country of slaughter, with voluntary labels for

that the revised COOL rule was more trade restrictive than necessary. The panel could not determine the gravity of not fulfilling the legitimate objective, and found shortcomings in each alternative. The compliance panel found that Canada and Mexico had not made a *prima facie* case that the revised COOL rule was more trade restrictive than necessary, thus violating Article 2.2 of the TBT.

Appellate Body on the Compliance Report

The Appellate Body overturned the compliance panel's conclusion that Canada and Mexico did not make a *prima facie* case that COOL was more trade restrictive than necessary. However, like the compliance panel, the Appellate Body found there are not enough undisputed facts in the record to complete the legal analysis on whether or not COOL violated Article 2.2.

Ground Meat Label Does Not Result in Less Favorable Treatment for Imported Livestock

Dispute Panel

The DS panel determined that, unlike the muscle cut labels, the ground meat labels were consistent with Article 2.1 of the TBT. It found that the 60-day "inventory allowance" gives significant flexibility to processors (e.g., beef grinders) in labeling country of origin. This rule is based on the statutory requirement that ground meat labels list all actual or "reasonably possible" countries of origin. In practice, the rule allows a processor to use the same label for all of its ground meat so long as the label lists all countries of origin of the meat in the processor's inventory for the last 60 days. Moreover, the 60-day "inventory allowance" flexibility is available not only for meat processors, but for market participants at every stage of meat supply and distribution. The panel determined that, contrary to Canada and Mexico's assertions, the rule's flexibility "limits any additional costs of implementing" the ground meat labeling requirements. It noted that Canada and Mexico did not present any evidence that, *despite* this flexibility, compliance with COOL for ground meat affected imported livestock less favorably than domestic livestock.

Appeal Status

Canada and Mexico did not appeal the DS panel's finding to the AB.

Vilsack Letter Is Not a Technical Regulation

Dispute Panel

Although the panel recognized that the Vilsack letter is not a technical regulation within the scope of the TBT Agreement, the panel agreed with Canada and Mexico that the Vilsack letter constitutes "unreasonable administration" of COOL and thus violates Article X:3(a) of GATT 1994 (see "Vilsack Letter" for details). This article states that "[e]ach contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings ..." Specifically, the panel found that the letter is an unreasonable act of administering

other production steps; (2) extend ground beef label requirements to muscle cuts, with 60-day inventory allowance; (3) require mandatory traceback of muscle cuts of meat with precise information—that is, preserving the link between animal and muscle cut; and (4) require that labels include the state or province at each production step.

COOL because (1) it could not find any "justifiable rationale" for simultaneously permitting the final rule to enter into force and suggesting stricter practices than the ones the rule requires, (2) the language of the letter may have caused uncertainty and confusion as to its force and effect, and (3) its timing relative to the final rule's entry into force may have caused confusion about whether processors should comply with the final rule or the Vilsack letter. The letter, it wrote, did not meet the minimum standards for transparency and procedural fairness in the administration of trade regulations.

Appeal Activity

The United States did not appeal this finding. Canada, in its appeal, requested that the AB make certain rulings on the Vilsack letter. Subsequently, Canada stated that it no longer sought a finding on this matter because the United States asserted that this measure had been withdrawn on April 5, 2012.

Appendix E. Options to Bring COOL into Compliance

With the WTO arbitrator establishing May 23, 2013, as the deadline for the United States to comply with the findings of the dispute settlement (DS) panel and Appellate Body (AB) reports, the case moved to the compliance stage. The WTO found that the COOL regulations treated imported livestock in an unfavorable manner by altering the conditions of competition in a way that favored domestic livestock over imported livestock. The United States has said it will bring COOL into compliance with its WTO obligations.[119] Stakeholders have two views about how the United States should comply with the WTO findings. One is to amend the COOL legislation; the other is to change the COOL regulations to bring the United States into compliance.

Legislative Approach

Some U.S. stakeholders have argued that, for the United States to comply with the WTO findings, the COOL law would have to be changed, because the law requires that meat derived from foreign-born, or foreign-born and -raised, animals has to have a different label than meat from animals born, raised, and slaughtered in the United States.[120] The National Cattlemen's Beef Association (NCBA), the National Pork Producers Council (NPPC), the American Meat Institute (AMI), and the Food Marketing Institute (FMI) have opposed mandatory COOL from its inception. They have advocated that Congress change the law to enable the United States to meet its WTO obligations, and warn that retaliation by Canada and Mexico will harm U.S. livestock and meat markets.[121]

These industry groups point to research conducted by Kansas State University, which found that consumers valued meat with a "Product of North America" label about the same as meat with a "Product of the United States" label.[122] A "Product of North America" label could apply to any meat from imported livestock from Canada and Mexico that is substantially altered through slaughtering and processing in a U.S. meatpacking plant. A single label for meat that is from any animal slaughtered in the United States could eliminate the extra cost associated with segregating and recordkeeping for imported livestock, thus ending discriminatory pricing of imported livestock. Some in the meat industry argue that the "Product of the United States" label should apply to any meat being processed in a U.S. meatpacking plant.[123] This approach would require a change in the COOL legislation.

Canadian stakeholders have consistently contended that a change in legislation will be required. According to the Canadian Pork Council (CPC):

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[119] WTO, Communication from the United States to the Chairman of the Dispute Settlement Body, WT/DS384/19 and WT/DS386/18, August 23, 2012; John Maday, "COOL adversaries comment on ruling," Drovers CattleNetwork, July 2, 2012, http://www.cattlenetwork.com/e-newsletters/drovers-daily/COOL-adversaries-comment-on-ruling-161140725.html?view=all.

[120] 7 U.S.C. 1638a. See above "Defining and Labeling Origin for Meats."

[121] Rick Jordahl, "AMI urges U.S. to bring COOL law into compliance," *PorkNetwork*, July 2, 2012.

[122] Glynn T. Tonsor, Jayson L. Lusk, and Ted C. Schroeder, et al., Mandatory Country of Origin Labeling: Consumer Demand Impact, Kansas State University, Factsheet, November 2012, p. 2, http://www.agmanager.info/livestock/policy/Tonsor_KSU_FactSheet_MCOOL_11-13-12.pdf.

[123] Steve Kay, "Clock Ticks On MCOOL Solution," *Cattle Buyers Weekly*, December 10, 2012.

> for the U.S. to come into compliance with the WTO ruling will require legislative action to eliminate the conditions that give rise to the discrimination against live animals born outside of the U.S.—the discrimination arising from the requirement of COOL that there be different labels for animals processed in a U.S. plant (that are) born, raised and slaughtered in the U.S. from those not born raised and slaughtered in the U.S. Those labeling requirements are explicit in the legislation; thus, a legislative or statutory change will be needed.

A representative from the Canadian Cattlemen Association (CCA) agreed with the CPC assessment. In the view of the CPC and CCA, mandatory COOL labels are acceptable, but the law would have to be amended to require that all meat processed from imported livestock in a U.S. meatpacking plant be labeled the same as meat processed from domestic livestock.[124]

During the WTO arbitration process over the compliance timeline, Canada expressed the view that a regulatory change is unlikely to bring the United States into compliance and that a legislative change could be necessary.[125] In presenting their arguments for quicker compliance, Canada and Mexico argued that the United States had adequate time to take a legislative approach to compliance, especially because the ongoing 2012 farm bill debate would have provided a legislative vehicle for addressing COOL. Some U.S. stakeholders also have suggested that the farm bill would be an appropriate vehicle to legislatively comply with WTO obligations.[126] Taking advantage of the placeholder provision inserted into the House-passed farm bill (Section 11105 of H.R. 2642), COOL was one of the outstanding issues placed on the agenda of farm bill conferees. The conference agreement sent to the floor did not include any major changes to COOL (see "Congressional Action on COOL").

Regulatory Approach

Other stakeholders advocated that USDA rework the COOL regulations to bring the United States into compliance with the WTO ruling. Reportedly, at the beginning of 2012, USTR considered but did not follow through with making changes to COOL regulations. The change would have allowed for more flexibility for commingling imported and domestic cattle and using a multi-country label. This approach was dropped as supporters of COOL believed such a change would undermine the COOL law. Others argued that the change would not go far enough.[127]

Interest Group Support for Regulatory Fix

In August 2012, the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF) sent a letter to Secretary Vilsack and U.S. Trade Representative Kirk that proposed regulatory changes to simplify the recordkeeping requirements of COOL.[128] Because U.S. animal health regulations[129] require that imported cattle have a foreign mark and that cattle imported for

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[124] Ian Elliott, "Only Small Changes Needed to Comply with COOL Ruling," *Feedstuffs*, December 24, 2012.

[125] WTO, *United States—Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/24 and WT/DS386/23, Arbitrator's Report, December 4, 2012, p. 14.

[126] Steve Meyer and Len Steiner, *Livestock Daily Report*, December 6, 2012.

[127] "USTR Abandons Regulatory COOL 'Fix' in Face of Stakeholder Division," *World Trade Online*, February 2, 2012.

[128] Letter from Bill Bullard, CEO, August 22, 2012, http://www.r-calfusa.com/COOL/120822LetterToUSTRandUSDAreCOOLStrategy.pdf.

[129] Steers and spayed heifers imported from Mexico must be marked M and M_x, respectively, and cattle from Canada must be marked with CAN (9 C.F.R. §93.427(c) and §93.436(b)(2)). Cattle imported for immediate slaughter must be shipped in sealed conveyances from the port of entry to the slaughter facility (9 C.F.R. §93.420, §93.429, and §93.436(a)).

immediate slaughter be shipped in sealed conveyances to slaughter plants, R-CALF proposed that any cattle arriving at a slaughter plant without a mark or seal be considered U.S. cattle. The WTO found that more information was collected on imported cattle compared with what was passed on to consumers on labels. According to R-CALF, its proposed presumption for U.S. cattle would reduce additional documentation and recordkeeping for imported cattle. Currently, hogs are exempt from a country-of-origin mark under the Tariff Act of 1930.[130] R-CALF suggested that this livestock exemption be removed, thus requiring a country-of-origin mark on hogs. Once the exemption is lifted, the presumption of domestic hogs would become workable.

R-CALF also called on USDA to eliminate the use of a mixed label (Labels B or C; see **Table 1** on meat from an animal that is exclusively of U.S. origin). R-CALF also suggested that ground beef labeling be revised to not allow for a country to be listed on a label if meat from that country is not included in the ground product (see Ground Beef label, **Table 1**). Lastly, R-CALF's proposal calls for the expanded coverage of minimally processed products, such as cooked, smoked, or cured meats, that are currently exempt from COOL regulations.

On February 4, 2013, the National Farmers Union (NFU) and the United States Cattlemen's Association (USCA) released an analysis of proposed options to bring COOL into WTO compliance.[131] This analysis laid out their case for how the United States could comply with its WTO obligations if USDA required more information to be added to labels about where cattle were born, raised, and slaughtered. The proposal also called for USDA to halt the commingling of meat from animals of different origin. For minimally processed products, such as smoked, cured, or cooked products, which are exempt from labeling, USDA could revise the regulations to require that these products be labeled. The proposal also suggested that COOL should be extended to food service, which the COOL statute currently exempts. The proposal noted this would require a change in law and could not be accomplished through a change in regulations.

Congressional Support for a Regulatory Fix

Some Members of Congress have expressed the view that USDA and USTR should bring the United States into WTO compliance through regulatory means. In a January 31, 2013, letter to the Secretary of Agriculture and the U.S. Trade Representative, 31 Senators asked that USDA and USTR find a regulatory solution.[132] The Senators asked that a regulatory fix make the COOL regulations consistent with WTO rules, provide accurate origin information for all meat cuts to consumers, engage industry stakeholders in the rulemaking process, and keep Congress informed.

[130] This is the J-List exemption at 19 U.S.C. §1304(a)(3)(J). For background on the J-List, see **Appendix A**, Tariff Act. A list of products exempt from markings is found at 19 C.F.R. §134.33.

[131] NFU, "NFU Releases Analysis on COOL Compliance," press release, February 12, 2013. Analysis available at http://cdn.e2ma.net/userdata/5030/assets/docs/SS_COOL_Compliance_Memo_New_Final_Four_Groups.pdf.

[132] Letter from Senators Tester, Enzi, Johnson (SD) et al. to Secretary of Agriculture Vilsack and U.S. Trade Representative Kirk, January 31, 2013, http://www.tester.senate.gov/?p=press_release&id=2755.

Appendix F. Meat Industry Lawsuit

On July 8, 2013, a group of eight meat industry organizations, led by the American Meat Institute (AMI), filed a lawsuit in the U.S. District Court for the District of Columbia to block USDA's revised COOL rule.[133] The plaintiffs challenged the COOL rule for three reasons. They contend first, that COOL violates the U.S. Constitution because it compels speech in the form of a label that does not advance a government interest; second, that the rule violates the COOL statute, which does not allow for detailed labels; and third, that the rule is arbitrary and capricious, violating the Administrative Procedure Act, because it is burdensome for industry but provides little or no benefit to consumers.

According to the plaintiffs, USDA's final rule is more complex and discriminatory against foreign meat and livestock than the previous rule because stricter segregation will be necessary to meet the requirements. They say that the rule would be particularly onerous for U.S. meat processors that are located near the border of Mexico or Canada who often use imported livestock. Furthermore, the plaintiffs do not believe the rule will meet U.S. WTO obligations.[134]

The National Farmers Union, which supports COOL, characterized the lawsuit as a tactic to delay the implementation of a stronger COOL rule by groups that do not support COOL.[135] In response to the lawsuit, R-CALF started a petition requesting that USDA stop NCBA, one of the plaintiffs in the lawsuit, from receiving mandated beef checkoff funds. R-CALF claims that it is a conflict of interest for NCBA to receive those funds while suing USDA to halt the implementation of the popular COOL program that provides U.S. consumers information about the source of their beef.[136]

On July 25, 2013, the plaintiffs requested that the U.S. District Court for the District of Columbia grant a preliminary injunction against the implementation of the final COOL rule.[137] The plaintiffs argued that they would likely succeed in challenging USDA on the final rule, and that they would suffer irreparable harm if USDA continued to implement the rule during the challenge. On August 9, 2013, supporters of COOL, led by the United States Cattlemen's Association (USCA), filed a motion to intervene in the meat industry lawsuit, and the court granted the request on August 20.[138] The district court heard the plaintiffs' arguments for a preliminary injunction on August 27.

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[133] The plaintiffs are the American Meat Institute, the American Association of Meat Processors, the Canadian Cattlemen's Association, the Canadian Pork Council, the National Cattlemen's Beef Association, the National Pork Producers Council, the North American Meat Association, and the Southwest Meat Association. Subsequently, Mexico's National Confederation of Livestock Organizations joined the lawsuit. A copy of the lawsuit is available at http://www.meatami.com/ht/a/GetDocumentAction/i/92223.

[134] John Maday, "Eight Organizations File Legal Challenge to New COOL Rules," *PorkNetwork*, July 9, 2013, http://www.porknetwork.com/e-newsletters/pork-daily/Eight-organizations-file-legal-challenge-to-new-COOL-rules-214758951.html, and Bryan Salvage, "'COOL' Just Got a Lot Hotter," Meat & Poultry, July 9, 2013.

[135] National Farmers Union, "COOL Lawsuit Is Another Delaying Tactic," press release, July 10, 2013, http://www.nfu.org/news/news-archives/2013-news/253-consumers-and-their-food/1797-cool-lawsuit-is-another-delaying-tactic.

[136] R-CALF, "Group Circulates Petitions to Stop Federally-Funded NCBA from Suing to Eliminate COOL," press release, July 11, 2013.

[137] A copy of the injunction request is available at http://www.meatami.com/ht/a/GetDocumentAction/i/92882.

[138] In addition to USCA, the National Farmers Union, the American Sheep Industry Association, and the Consumer Federation of America joined the motion to intervene. On August 23, Food & Water Watch, R-Calf, the South Dakota Stockgrowers Association, and the Western Organization of Resource Councils also requested intervenor status.

On September 11, 2013, the court denied the plaintiffs' request.[139] The court found that the plaintiffs were unlikely to succeed on their constitutional, statutory, or arbitrary and capricious claims. Furthermore, the court found that the plaintiffs did not demonstrate they would suffer irreparable harm if an injunction was not granted. AMI disagreed with the court's decision and appealed the decision.[140] Supporters of COOL that intervened in the case will continue to oppose AMI's court challenge to the COOL rule.[141]

The plaintiffs' appeal was heard on January 9, 2014, before a three judge panel of the U.S. Court of Appeals for the District of Columbia Circuit. On March 28, the court denied the injunction request on COOL, but then vacated the ruling the following week and ordered that the case be reheard *en banc* (all judges of the court) in May to reexamine the constitutional issue of compelled speech, and whether or not COOL requirements violated the plaintiffs free speech rights.[142]

On July 29, 2014, the Court of Appeals ruled 8-3 against the meat industry plaintiffs. The court denied a request for a preliminary injunction to block USDA from implementing COOL, ruling that the COOL requirements do not amount to impermissible government-compelled speech under the First Amendment.143 In September 2014, AMI petitioned for a rehearing on the case arguing that the segregation requirements of COOL amounted to USDA dictating the day-to-day operations of the livestock industry.144 On October 31, 2014, the court denied the plaintiffs petition for a rehearing on free speech claims and a rehearing on other claims from the March ruling on non-free speech claims.145 (See Appendix A for a timeline of key lawsuit developments.)

[139] *American Meat Institute v. USDA,* No. 13-CV-1033 (D.D.C. Sept. 11, 2013).

[140] AMI, "AMI Disagrees with Denial of Request for Preliminary Injunction in Country-of-Origin Labeling Lawsuit; Will Appeal Ruling," press release, September 11, 2013, http://www.meatami.com/ht/display/ReleaseDetails/i/93815/pid/287.

[141] NFU, "COOL Appeal Another Attempt to Obstruct Consumers' Right to Know," press release, September 12, 2013.

[142] Steve Kay, "Court Vacates Own COOL Decision," *Cattle Buyers Weekly*, April 7, 2014.

[143] *American Meat Institute v. USDA,* 13-5281 (D.C. Cir. July 29, 2014).

[144] Stephen Clapp, "AMI Seeks Rehearing on Appeals Court Decision Favoring COOL," *Food Chemical News*, September 25, 2014.

[145] Tom Johnston, "Appeals Court Denies Meat Lobby's Request for COOL Rehearing," *Meatingplace*, October 31, 2014.

Appendix G. Retaliation Lists

In June 2013, Canada released a list of products (**Table G-1**) that could be targeted for retaliation if the United States fails to bring COOL into compliance with WTO obligations. Mexico has not published a similar list for the COOL case. However, Mexico has indicated that its retaliation list for COOL would be similar to products (**Table G-2**) targeted during the trucking dispute with the United States during 2009 to 2011. That list, as provided by the Embassy of Mexico, is in the second table.

Table G-1. Canada's Potential Retaliation List

Tariff heading, sub-heading, or item	Description. Descriptions are included for illustrative purposes and do not necessarily reflect Harmonized System nomenclature.
01.02	Live bovine animals
01.03	Live swine
02.01	Meat of bovine animals, fresh or chilled
02.02	Meat of bovine animals, frozen
02.03	Meat of swine, fresh, chilled, or frozen
0207.13.10	Cuts of offal, fresh or chilled, of spent fowl
0406.90	Cheese, not including the following: fresh (unripened or uncured) cheese, whey cheese or curd; grated or powdered; processed cheese; blue-veined cheese or cheese containing veins produced by *Penicillium roqueforti*
0808.10	Apples, fresh
0809.29	Cherries, other than sour cherries (*Prunus cerasus*)
0812.10	Cherries, provisionally preserved (unsuitable in that state for immediate consumption)
10.05	Corn (maize)
1006.30.00	Semi-milled or wholly milled rice, whether or not polished or glazed
1602.32.11	Prepared or preserved—prepared meals of spent fowl; prepared meals of specially defined mixtures
1602.32.92	Prepared or preserved—specially defined mixtures, other than in cans or glass jars; spent fowl other than in cans or glass jars
1602.49	Prepared or preserved swine cuts, other than ham and cuts thereof, other than shoulder and cuts thereof
1602.50	Prepared or preserved meat of bovine animals
1702.20.00	Maple sugar and maple syrup
1702.40.00	Glucose and glucose syrup, containing in the dry state at least 20% but less than 50% by weight of fructose, excluding invert sugar
1702.60.00	Other fructose and fructose syrup, containing in the dry state more than 50% by weight of fructose, excluding invert sugar

1806.20	Chocolate and other food preparations containing cocoa—preparations in blocks, slabs, or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg
1806.90	Chocolate and other food preparations containing cocoa—chocolate ice cream mix or ice milk mix; chocolates; chocolate coated nuts and other confectionery
19.02	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared
19.04	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize [corn]) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked or otherwise prepared, not elsewhere specified or included
19.05	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products
2004.10.00	Potatoes, prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 20.06
2009.11	Orange juice, frozen
2103.20	Tomato ketchup and other tomato sauces
22.04	Wine of fresh grapes, including fortified wines; grape must other than that of heading 20.09
2207.20	Ethyl alcohol and other spirits, denatured, of any strength
2940.00.00	Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 29.37, 29.38 or 29.39
3504.00	Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed
71.13	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal
7306.40.00	Other tubes, pipes and hollow profiles, welded, of circular cross-section, of stainless steel
7321.90	Parts of stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel
7326.11.00	Grinding balls and similar articles for mills, forged or stamped, but not further worked, of iron or steel
9401.30	Swivel seats with variable height adjustment
9403.30.00	Wooden furniture of a kind used in offices
9404.29.00	Mattresses of materials other than cellular rubber or plastics, whether or not covered

Source: *Canada Gazette*, Vol. 147, No. 24, June 15, 2013.

Table G-2. Mexico's Tariff Retaliation List for the Trucking Dispute, 2009 to 2011

• hams, shoulders, and cuts thereof, of swine bone in, fresh or chilled • hams, shoulders, and cuts thereof, of swine, bone in, frozen • swine meat & meat offal nes, excluding livers, including mixtures, prepared or preserved • cheese, fresh (unripened or uncured) including whey cheese unfermented & curd • cheese processed, not grated or powdered • cheese, hard or semihard, with a fat content of not more than 40% by weight: only grana or parmigiano-reggiano • cheese, nesoi, other • Christmas trees • onions and shallots, fresh or chilled • cabbage lettuce (head lettuce) fresh or chilled • sweet corn, frozen • almonds, fresh or dried, shelled or peeled • pistachios, fresh or dried, whether or not shelled or peeled • pistachios, fresh or dried, other • dates, fresh • dates, other • oranges, fresh or dried • grapefruit including pomelos, fresh or dried • grapes, fresh • apples, fresh • pears and quinces, fresh • apricots, fresh • cherries, fresh • strawberries, fresh • apples, dried • mixtures of edible nuts or dried fruits • oats, rolled or flaked grains • chewing gum containing sugar, except medicinal • chocolate & food preparations containing cocoa in blocks, slabs or bars, filled, not exceeding 2 kg • chocolate & food preparations containing cocoa in blocks, slabs or bars, not filled, not over 2 kg • beauty & skin care preparation, nesoi, • sunscreen or sun tan preparations, other • hair shampoos • hair lacquers • preparations for use on the hair, nesoi, other • dentifrices • oral or dental hygiene preparations, nes, other • pre-shave, shaving or after shaving prep	• uncooked pasta, not stuffed or otherwise prepared, nesoi, other • potatoes prepared or preserved other than by vinegar or acetic acid, frozen • peas prepared or preserved, other than by vinegar, acetic acid or sugar, not frozen • peanuts, prepared or preserved, nesoi, other • nuts & seeds nes including mx; only: roasted excluding almonds, pecan nuts, coconut • cherries nes, prep or preserved whether or not sugared, sweetened or spirited • fruit & veg juice nes (excluding mx) unfermented unspirited, whether or not sugar/sweet • juice mixtures containing only vegetable juices • mixtures of fruit juices unfermented and not spirited whether or not sugared/sweet • soya sauce • tomato ketchup and other tomato sauces • sauces and preparations nes and mixed condiments and mixed seasonings • soups and broths and preparations thereof • food preparations, nes, single fruit, legumes or vegetable • food preparations, nes, mixtures of fruit, legumes or vegetables • food preparations nes, containing milk solids exceeding 10% by weight • mineral and aerated waters not containing sugar or sweetening matter nor flavored • grape wines, sparkling, other • red, pink, claret or white wines, of an alcoholic strength by volume higher than 14% volume • fermented beverages nes; only: sparkling beverages made, in part, from malt • sunflower seed oil-cake & other solid residues, whether or not ground or pellet • rape/colza seed oil-cake, o/t low erucic acid & o solid residue, w/n ground/pellet • dog or cat food put up for retail sale • artists' students' etc. colors in sets manicure or pedicure preparations • curtain rods • office and desk equip a parts, of base metal, other • combined refrigerator-freezers w separate doors, other refrigerators, household type, compression-type • coffee makers • filtering or purifying machinery and apparatus for

• personal deodorants & antiperspirants • polishes and preps for coachwork, except metal polish • thermofusible adhesives at 100% concentration of solids made of artificial materials, waxes or other components • tableware and kitchenware of plastics • household and toilet articles nesoi of plastics, other • statuettes and other ornamental articles, of plastics • gloves, except surgical etc., vulcan rubber, nesoi • floor coverings and mats of rubber excluding cellular and hard rubber • toilet paper • exercise books of paper • printed books, brochures, etc., nesoi, other • tickets for lottery, shows, train or other transport • printed matter with blanks for writing • plastic cards for identification and for credit • yarn,>=85% of synthetic staple fibers, o/t sewing thread, put up • table/kitchenware excluding drinking glasses, other than glass-ceramics, nes • containers, alum, cap <3001, lined/heat insul or not, n/ftd w/mech/thermo equip	• gases nesoi, other dishwashing machines of the HH type • trench diggers • washing machines of a dry linen capacity <-10 kg, with built-in dryer, nes • washing machines of a dry linen capacity <=10 kg, with built-in dryer, nesoi, other • electro-thermic appliances, domestic, nes, other • sunglasses • gas masks • games operated by coins/banknotes/bank cards/sim art, o/t bowling alley equip • ball-point pens, of base metal • ball-point pens, other • felt-tipped and other porous-tipped pens and markers • duplicating stylos; pen/pencil holders; parts of pens, markers, pencils, nes, other • pencils and crayons, with leads encased in a rigid sheath, nes

Source: Handout provided by the Embassy of Mexico at a COOL briefing on March 30, 2015.

Notes: nes = not elsewhere specified, nesoi = not elsewhere specified or included, o/t = other than, n/ftd = not fitted.

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