



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

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## Summary

Most retail food stores are now 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 are required by the 2002 farm bill (P.L. 107-171) as amended by the 2008 farm bill (P.L. 110-246). Other U.S. laws have required such labeling, but only for imported food products already pre-packaged for consumers. The final rule to implement country-of-origin labeling (COOL) took effect on March 16, 2009.

Both the authorization and implementation of COOL by the U.S. Department of Agriculture (USDA) have been controversial, particularly for the labeling rules for meat and meat products. A number of livestock and food industry groups continue to oppose COOL as costly and unnecessary. They and the main livestock exporters to the United States—Canada and Mexico—view the requirement as trade-distorting. Others, including some cattle and consumer groups, maintain that Americans want and deserve to know the origin of their foods.

Less than one year after the COOL rules took effect, Canada and Mexico challenged them in the World Trade Organization (WTO), arguing that COOL has 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 agreed to by the United States. In November 2011, the WTO dispute settlement (DS) panel found that (1) COOL treats imported livestock less favorably than like U.S. livestock (particularly in the labeling of beef and pork muscle cuts), and (2) COOL does 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 DS panel's finding that the COOL measure treats imported Canadian cattle and hogs, and imported Mexican cattle, less favorably than like domestic livestock. But the AB reversed the finding that COOL does not fulfill its legitimate objective to provide consumers with information on origin. The Obama Administration welcomed the AB's affirmation of the U.S. right to adopt labeling requirements to inform consumers on the origin of the meat they purchase. Participants in the U.S. livestock sector had mixed reactions, reflecting the heated debate on COOL that has occurred over the last decade.

The WTO's Dispute Settlement Body (DSB) adopted the AB and DS panel reports in July 2012. A WTO arbitrator set a deadline of May 23, 2013, for the United States to comply with the WTO findings. In order to comply, USDA issued a final rule requiring that labels show where each production step (i.e., born, raised, slaughtered) occurs and prohibits commingling of muscle cut meat from different origins.

COOL's supporters have applauded the final rule for providing consumers with specific and more useful information on origin. Domestic opponents decried the rule, arguing that it is more discriminatory than the previous rule and imposes additional recordkeeping burdens on processors and retailers, and in turn, additional costs on consumers. In July 2013, COOL opponents filed suit to stop USDA from implementing the final COOL rule. However, in September, the court decided against granting a preliminary injunction against the rule.

Canada and Mexico have expressed disappointment with the final rule, and argue that it does not bring the United States into compliance with its WTO obligations. In August 2013, Canada and Mexico requested the establishment of a compliance panel to determine if the final COOL rule complies with WTO findings. Once the compliance panel is formed, a panel report could be released within 90 days. The compliance report could be appealed. Depending on the outcome of

the compliance ruling(s), procedural timelines, and whether or not the case progresses to the retaliation phase and arbitration, the WTO COOL case may not be concluded before 2015.

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## Overview

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 dealing with 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 country-of-origin labeling (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.

## 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.

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.<sup>1</sup> It included changes to the interim rule

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<sup>1</sup> USDA, January 12, 2009, “USDA Issues Final Rule On Mandatory Country of Origin Labeling,” available at (continued...)

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, the Secretary of Agriculture announced that the final rule would take effect as planned on March 16, 2009.<sup>2</sup> 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).

## 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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<http://www.usda.gov/wps/portal/usda/usdahome?printable=true&contentidonly=true&contentid=2009/01/0006.xml>; and 74 *Federal Register* 2658, January 15, 2009. This final rule replaced both the October 5, 2004, interim final rule for seafood (69 *Federal Register* 59708), and the August 1, 2008, interim final rule (73 *Federal Register* 45106) for all other covered commodities. An AMS fact sheet on the final rule, including a summary of changes from the interim final rules and estimates on COOL implementation costs, is available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074847>.

<sup>2</sup> USDA, “Vilsack Announces Implementation of Country of Origin Labeling Law,” press release, February 20, 2009, [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2009/02/0045.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&edeployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2009/02/0045.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&edeployment_action=retrievecontent).

<sup>3</sup> Wendy J. Umberger, “Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?,” *Choices*, 4<sup>th</sup> quarter 2004, <http://www.choicesmagazine.org/2004-4/cool/2004-4-04.htm>.

<sup>4</sup> Gary W. Brewster et al., “Who Will Bear the Costs of Country-of-Origin Labeling?,” available at <http://www.choicesmagazine.org/2004-4/cool/2004-4-02.htm>; Daniel D. Hanselka et al., “Demand Shifts in Beef Associated with Country-of-Origin Labeling to Minimize Losses in Social Welfare,” *Choices*, 4<sup>th</sup> quarter 2004, <http://www.choicesmagazine.org/2004-4/cool/2004-4-03.htm>; 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.

<sup>5</sup> 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* 2682-2700, January 15, 2009.

## **COOL's Meat Labeling Challenged in the 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. They expressed concerns that normal livestock trade flows would be disrupted in response to the COOL regulations and questioned COOL's legality under international trade rules. In November 2011, a WTO dispute settlement panel found that COOL discriminated against foreign livestock and was not consistent with WTO rules. After weighing available options, the Obama Administration decided to appeal the WTO panel's adverse findings. In June 2012, WTO's appellate body upheld one of the panel's findings that favored Canada's and Mexico's positions, and overturned another. Under a ruling since made by a WTO arbitrator, the United States must bring those features of COOL addressed by the appellate body's findings into compliance by May 23, 2013.

## **Key Provisions of COOL**

Mandatory country-of-origin labeling:

- *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”);<sup>6</sup>
- *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,<sup>7</sup> 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.

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<sup>6</sup> A slightly different COOL requirement applies to packaged honey if it bears any official USDA certificate, mark, or statement with respect to quality and grade. It was added by Section 10402 of the 2008 farm bill (P.L. 110-246) to the Agricultural Marketing Act, and took effect on October 6, 2009. For more information, see <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?startIndex=1&startIndex=2&startIndex=1&startIndex=2&template=TemplateN&navID=ProcessedFVUpdates&rightNav1=&topNav=&leftNav=&page=ProcessedFVUpdates&resultType=&acct=procsdgrdcert>.

<sup>7</sup> 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.



## 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:<sup>8</sup>

- *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;
- *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 to implementing regulations to the retail labels to be used for each of these five categories.

## 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).<sup>9</sup> 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.<sup>10</sup>

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

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<sup>8</sup> 7 U.S.C. 1638a.

<sup>9</sup> *Cattle Buyers Weekly*, August 4, 2008; and *Food Chemical News*, September 15, 2008.

<sup>10</sup> AMS, “Country of Origin Labeling (COOL) Frequently Asked Questions,” September 26, 2008, <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5071922>.

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.<sup>11</sup>

The clarifying changes failed to mollify some. The National Farmers Union 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”.<sup>12</sup> 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.”<sup>13</sup>

## **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. 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.” (See also “Scope of Coverage.”)

Secretary Vilsack also stated that USDA would closely monitor industry compliance to determine whether “additional rulemaking may be necessary to provide consumers with adequate

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<sup>11</sup> USDA, AMS, January 12, 2009, fact sheet on the mandatory COOL final rule, p. 5, <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074847>.

<sup>12</sup> “NFU Statement: USDA Issues Final Rule for COOL,” January 12, 2009, <http://nfu.org/news/news-archives/2009-news/86-agriculture-programs/198-nfu-statement-usda-issues-final-rule-for-cool>.

<sup>13</sup> Letter to Secretary of Agriculture Tom Vilsack, February 3, 2009, <http://web.archive.org/web/20090226012829/http://dorgan.senate.gov/newsroom/extras/020309vilsack.pdf>.

information.”<sup>14</sup> His letter was widely viewed as an effort to address the concerns of COOL 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.<sup>15</sup> 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.<sup>16</sup>

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.

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<sup>14</sup> USDA, “Vilsack Announces Implementation of Country of Origin Labeling Law,” February 20, 2009, <http://www.usda.gov/wps/portal/usda/usdahome?printable=true&contentidonly=true&contentid=2009/02/0045.xml>. His letter is available at [http://www.usda.gov/documents/0220\\_IndustryLetterCOOL.pdf](http://www.usda.gov/documents/0220_IndustryLetterCOOL.pdf).

<sup>15</sup> 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).

<sup>16</sup> AMS, “Frequently Asked Questions,” January 12, 2009, available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074846>.

## **Record-Keeping, Verification, and Penalties**

The COOL law prohibits USDA from using a mandatory animal identification (ID) system,<sup>17</sup> 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 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 Agricultural Marketing Service implements COOL through cooperative agreements with all 50 states.<sup>18</sup> In 2012, state agencies conducted 3,836 retail surveillance reviews (out of the 37,000 individual retail stores subject to COOL), and 521 follow-up retail reviews, to ensure compliance with COOL requirements. These reviews involved the auditing of 225 products as they moved from initial suppliers to retail shelves. AMS resources (i.e., appropriated funding of \$5.0 million and 16 staff years in FY2013) were available to train federal and state employees on enforcement responsibilities, conduct supply chain audits, analyze and respond to formal complaints, and develop educational and outreach activities for retailers, suppliers, and other interested parties. In June 2012, AMS began to implement a real-time database to track the findings of federal-state retail reviews, enforcement actions taken, and other information viewed as critical to COOL operations.<sup>19</sup>

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<sup>17</sup> For information on this related issue, see CRS Report R40832, *Animal Identification and Traceability: Overview and Issues*.

<sup>18</sup> AMS maintains an extensive website on COOL, with links to implementing regulations, cost-benefit analysis, and other materials at <http://www.ams.usda.gov/cool/>.

<sup>19</sup> USDA, Office of Budget and Program Analysis (OBPA), FY2014 USDA Budget Explanatory Notes for Committee on Appropriations for Agricultural Marketing Service, pp. 19-31 to 19-32, 19-86, <http://www.obpa.usda.gov/exnotes/FY2014/19ams2014notes.pdf>.

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. The remaining three were anticipated to be put into effect in March 2013, according to AMS.<sup>20</sup>

In reviews conducted during 2012 in retail stores, AMS found that overall retail compliance (based on the average of covered commodities sold in a store) was about 96%, but that only 19% of the stores reviewed were in full compliance. Findings of noncompliance with COOL were due to the lack of labeling on covered commodities (72%), followed by inaccurate labeling (10%), the absence of a label showing method of production on covered fish and shellfish commodities (7%), and non-compliance with recordkeeping requirements (5%). Of the 536 suppliers selected for traceback audits, AMS reported 21 findings of noncompliance. Nine suppliers were cited for providing inaccurate country-of-origin information to the immediate subsequent recipient of a covered commodity; five suppliers did not provide records within the required five business days.<sup>21</sup>

## **COOL Challenged by Canada and Mexico in WTO**

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. 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

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<sup>20</sup> USDA, OIG, "Implementation of Country of Origin Labeling," August 2011, pp. 1 and 4, <http://www.usda.gov/oig/webdocs/01601-04-HY.pdf>; USDA, OBPA, FY2014 Budget Explanatory Notes for Committee on Appropriations for AMS, pp. 19-32.

<sup>21</sup> USDA, AMS, COOL Compliance Data, "2012 Retail Review and Supplier Traceback Audit Compliance", <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5104265>.

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.<sup>22</sup>

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 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.

On November 19, 2009, the WTO’s Dispute Settlement Body (DSB)<sup>23</sup> 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, 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.<sup>24</sup>

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), 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.<sup>25</sup>

In opposition, the U.S. Cattlemen’s Association (USCA) and the National Farmers Union argued that COOL is “fully consistent” with the General Agreement on Tariffs and Trade and the

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<sup>22</sup> U.S. Trade Representative, “Vilsack, Kirk Comment on Canadian Panel Request Regarding Country-of-Origin Labeling,” October 7, 2009, <http://www.ustr.gov/about-us/press-office/press-releases/2009/october/vilsack-kirk-comment-canadian-panel-request-regard>.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> 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>.

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).<sup>26</sup> The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF), presented similar comments.<sup>27</sup>

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.”<sup>28</sup>

## **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 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.<sup>29</sup> 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.<sup>30</sup>

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<sup>26</sup> USCA, “USCA and Farmers Union Urge Vigorous COOL Defense,” January 12, 2010, [http://www.uscattlemen.org/TheNewsRoom/2010\\_News/1-12COOLdefense.htm](http://www.uscattlemen.org/TheNewsRoom/2010_News/1-12COOLdefense.htm).

<sup>27</sup> R-CALF USA, “Canada, Mexico Have No Standing to Bring Complaint Against U.S. COOL Law,” July 2, 2009, [http://www.r-calfusa.com/news\\_releases/2009/090702-canada.htm](http://www.r-calfusa.com/news_releases/2009/090702-canada.htm).

<sup>28</sup> NCBA, “NCBA Statement on Canadian WTO Complaint against U.S. COOL Law,” October 7, 2009.

<sup>29</sup> 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.”

<sup>30</sup> 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](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](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](http://wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm) (Mexico).

## **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).<sup>31</sup> 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."<sup>32</sup>

## **Appellate Body's 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 completely fulfill its legitimate objective to provide consumers with information on origin.

## **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.<sup>33</sup> 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.

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<sup>31</sup> This "is a standing body of seven persons that hears appeals from reports issued by panels in disputes brought by WTO Members. ... Appellate Body Reports, once adopted by the Dispute Settlement Body (DSB), must be accepted by the parties to the dispute." See [http://wto.org/english/tratop\\_e/dispu\\_e/appellate\\_body\\_e.htm](http://wto.org/english/tratop_e/dispu_e/appellate_body_e.htm).

<sup>32</sup> Reuters, "U.S. to appeal WTO ruling against meat labels," March 23, 2012 (hereinafter cited as Reuters); Agri-Pulse.com, "USTR will appeal WTO ruling on COOL," March 23, 2012. USTR's appeal submission to the WTO is available at [http://www.ustr.gov/sites/default/files/US.AppellantSub.fin\\_.pdf](http://www.ustr.gov/sites/default/files/US.AppellantSub.fin_.pdf).

<sup>33</sup> 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*.



## **WTO Procedures for the United States to Comply with Reports’ Findings**

The WTO’s Dispute Settlement Understanding (DSU) lays out a multi-step process for a country to comply with the adopted WTO findings.<sup>34</sup> 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.

### **Timetable to Comply; Arbitrator’s Role**

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 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 three countries 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 (i.e., 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.

### **Form of 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 “Options to Bring COOL into Compliance” for discussion). On March 12, 2013, USDA published a proposed rule in the *Federal Register* that modifies COOL labeling regulations. The proposed rule had a 30-day comment period. USDA published the final rule in the *Federal Register* on May 24, 2013, making it effective May 23, 2013 (see “USDA’s Final COOL Rule”).

### **Ratification of Substance of Compliance; Consequences If Not Ratified**

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 on May 23. If either or both countries assert that the United States has not complied or has only partially complied with the WTO’s findings, Canada and Mexico may request that a compliance panel investigate whether the United States

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<sup>34</sup> 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.

has in fact adopted a compliance measure or whether any measure that it has adopted is consistent with the WTO decision. 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.<sup>35</sup>

Both Canada and Mexico have argued that USDA’s May 23 COOL rule fails to bring the United States into compliance with its WTO obligations.<sup>36</sup> On June 10, Canada, Mexico, and the United States provided the DSB with sequencing agreements that each agreed they would follow as the COOL case moves forward.<sup>37</sup> On August 19, 2013, Canada and Mexico informed the WTO that they would request a compliance panel to rule on whether or not USDA’s final COOL rule complies with the WTO findings (see “Compliance Panel”).<sup>38</sup>

### **Consequences of Non-Compliance: Compensation or Retaliation**

If the United States is found to not be in compliance with the WTO decision, Canada and Mexico can request that the United States negotiate a compensation agreement. If such an agreement is not requested, or if an agreement is not reached on a request, Canada and Mexico can request authorization from WTO’s DSB to retaliate. The retaliation request would need to be made within 30 days after the compliance period ends. Retaliation can involve the suspension of concessions or obligations owed by Canada and Mexico to the United States under a WTO agreement. One permitted action could involve Canada and Mexico increasing tariffs on products imported from the United States.<sup>39</sup> The United States may object to the retaliation request, in which case it would be automatically sent to arbitration (see “Canada’s Preliminary Retaliation List”). At the same time, the WTO DSU provides that a country cannot suspend WTO concessions or other obligations as retaliatory measures in a particular dispute unless authorized by the WTO Dispute Settlement Body. If unauthorized retaliation were to occur, the United States could challenge such retaliation in a separate WTO dispute settlement proceeding. But if Canada and Mexico felt that the United States was making progress toward compliance, they could agree to extend the original compliance deadline.

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<sup>35</sup> For details, see “Compliance Issues, Sequencing” in CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

<sup>36</sup> 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](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>.

<sup>37</sup> WTO, *WT/DS/384/25 Understanding Between the United States and Canada Regarding Procedures Under Articles 21 and 22 of the DSU*, June 13, 2013, and *WT/DS/384/24 Understanding Between the United States and Mexico Regarding Procedures Under Articles 21 and 22 of the DSU*, June 13, 2013.

<sup>38</sup> WTO, *WT/DS/384/26 Recourse to Article 21.5 of the DSU by Canada*, August 20, 2013, and *WT/DS/384/25 Recourse to Article 21.5 of the DSU by Mexico*, August 20, 2013.

<sup>39</sup> For details, see “Compliance Panels (Article 21.5)” and “Compensation and Suspension of Concessions (Article 22)” in CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

## WTO Findings

### 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.<sup>40</sup> 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 (**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 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.

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<sup>40</sup> 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.”

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.

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

<b>Muscle Cuts &amp; Ground Meat Categories</b>	<b>COOL Statutory Definition</b>	<b>AMS Final Rule (January 2009)</b>	<b>COOL Label at Retail Level</b>
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 <i>exclusively born, raised, and slaughtered in the United States</i> ; (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 <i>born in Country X</i> or (as applicable) <i>Country Y, raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter</i> [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 <i>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]</i> , 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 <i>born in Country X</i> or <i>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 ...</i> , 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 US, Country X, and Country Y (if applicable)

Muscle Cuts & Ground Meat Categories	COOL Statutory Definition	AMS Final Rule (January 2009)	COOL Label at Retail Level
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 <i>for immediate slaughter</i> [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, US
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 <i>no production steps have occurred in the United States</i> , 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
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 beef, ground pork, ...”	“The declaration for ground beef, ground pork, ... shall <i>list all countries of origin contained therein or that may be reasonably contained therein</i> . 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 US, 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 CFR 65.260(a)(1), 65.300(e)(1)-(4) and 65.300(h), as published in the *Federal Register*, January 15, 2009, p. 2706; Agricultural Marketing Service, “Labeling Options,” p. 2, <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074845>.

**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.

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<sup>41</sup> 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” 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**

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.<sup>42</sup>

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

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<sup>41</sup> These involve applying mathematics and statistical methods to study relationships between economic variables.

<sup>42</sup> “Obama Administration Appeals Ruling On Country Labeling For Beef, Pork,” *Inside US Trade*, March 30, 2012.

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.<sup>43</sup>

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.”

## **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,<sup>44</sup> 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.

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<sup>43</sup> 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](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm).

<sup>44</sup> 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).

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 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**

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 U.S. 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.<sup>45</sup>

Since the United States won its appeal on this finding, no U.S. response is required.

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<sup>45</sup> 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](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm).



## **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 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.

## Reaction to WTO DS Panel and Appellate Body Reports

### 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.<sup>46</sup>

The U.S. meat sector expressed mixed reactions. Those in favor of making changes to COOL to address the panel's conclusions include the National Cattlemen's Beef Association (NCBA), the National Pork Producers Council (NPPC), and the American Meat Institute (AMI). 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. The 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."<sup>47</sup>

Livestock groups that support COOL as now implemented include the Ranchers-Cattlemen Action Legal Fund (R-CALF) and the U.S. Cattlemen's Association (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?" The 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."<sup>48</sup>

Other groups that had participated in the debate leading up to COOL's enactment also weighed in. 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

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<sup>46</sup> USTR, "Statement in Response to WTO Panel Decision on Country of Origin Labeling," November 18, 2011, <http://www.ustr.gov/about-us/press-office/press-releases/2011/november/statement-office-us-trade-representative-response>.

<sup>47</sup> NCBA, "Statement ... [on] WTO Ruling on US Country of Origin Labeling," November 11, 2011, <http://www.beefusa.org/newsreleases1.aspx?NewsID=1248>; *Pork Magazine*, "NPPC: What's on Tap for 2012?," January 2012, <http://www.porknetwork.com/pork-magazine/pork-exec/Whats-on-Tap-for-2012-136695033.html?view=all>; AMI, "WTO Rules in Favor of Canada in Complaint Over U.S. Country-of-Origin Labeling Law," November 18, 2011, <http://www.meatami.com/ht/display/ArticleDetails/i/73951>.

<sup>48</sup> R-CALF, "U.S. Sovereignty Usurped by WTO's COOL Decision," November 18, 2011, [http://www.r-calfusa.com/news\\_releases/2011/111118-sovereignty.htm](http://www.r-calfusa.com/news_releases/2011/111118-sovereignty.htm); USCA, "WTO Dispute Panel Issues Final COOL Report," November 21, 2011, [http://www.uscattlemen.org/TheNewsRoom/2011\\_News/11-21WTO\\_DisputePanel.htm](http://www.uscattlemen.org/TheNewsRoom/2011_News/11-21WTO_DisputePanel.htm).

Congress and USDA “to develop an alternative system” that informs consumers with useful information.<sup>49</sup> Among those supporting COOL, the National Farmers Union (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.”<sup>50</sup>

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. Senator Pat Roberts, ranking Member of the Senate Agriculture Committee, at a regional livestock meeting 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.”<sup>51</sup> 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.”<sup>52</sup>

## **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

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<sup>49</sup> FMI, “Food Retail Industry Applauds WTO Ruling on COOL,” November 23, 2011, <http://www.fmi.org/news-room/news-archive/view/2011/11/23/food-retail-industry-applauds-wto-ruling-on-cool>.

<sup>50</sup> NFU, “NFU Will Work With Administration to Ensure COOL Compliance With WTO Rules,” November 18, 2011, <http://nfu.org/news/65-international-policy/723-nfu-will-work-with-administration-to-ensure-cool-compliance-with-wto-rules>; Public Citizen, “WTO Rules Against Country-of-Origin Meat Labeling Law: Third Ruling Against U.S. Consumer Safeguards in 2011,” November 18, 2011, <http://www.citizen.org/documents/release-wto-rules-against-coo-11-18-11.pdf>; Food and Water Watch, “WTO Decision on COOL Attacks Consumers’ Right to Know,” November 18, 2011, <http://www.foodandwaterwatch.org/pressreleases/wto-decision-on-cool-attacks-consumers%e2%80%99-right-to-know/>.

<sup>51</sup> *High Plains/Midwest Ag Journal*, “TCFA Members Face Scary Issues from Washington,” November 14, 2011, <http://www.hpj.com/archives/2011/nov11/nov14/1109TexasCattleFeedersjmlsr.cfm>.

<sup>52</sup> Office of Senator Tim Johnson, “Johnson, Enzi to Administration: Keep COOL Strong,” December 15, 2011, press release with text of letter, <http://johnson.senate.gov/public/index.cfm?p=PressReleases>.

“[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 49<sup>th</sup> parallel.”<sup>53</sup>

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 competitiveness 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.”<sup>54</sup>

## **Reactions to the USTR Decision to Appeal**

Interest groups that had urged the Obama Administration to appeal the WTO report (R-CALF, NCA, NFU, Food and Water Watch, Public Citizen) supported this decision.<sup>55</sup> Those that advocated resolving this dispute (NCBA, NPPC) 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.<sup>56</sup> (For background on all of these groups’ positions, see “Reaction to WTO Panel Ruling, United States,” above.)

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<sup>53</sup> 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](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, <http://www.farmscape.com/f2ShowScript.aspx?i=23812&q=Canada+Hopes+for+Negotiated+Resolution+of+M-COOL+Dispute>.

<sup>54</sup> CPC, “Canadian Pork Producers Welcome the WTO Panel Decision on COOL,” November 18, 2011, <http://www.cpc-ccp.com/documents/news-releases/FINALWTOpaneldecisionpressrelease.pdf>; CCA, “WTO Rules Strongly in Favor of Canada in COOL Case,” November 18, 2011, [http://www.cattle.ca/media/file/original/1058\\_2011\\_11\\_18\\_CCA\\_News\\_Release\\_WTO\\_rules\\_strongly\\_in\\_favor\\_of\\_Canada\\_in\\_COOL\\_case.pdf](http://www.cattle.ca/media/file/original/1058_2011_11_18_CCA_News_Release_WTO_rules_strongly_in_favor_of_Canada_in_COOL_case.pdf).

<sup>55</sup> “R-CALF USA Applauds U.S. Appeal of WTO’s Adverse COOL Ruling,” March 23, 2012, <http://www.tradereform.org/2012/03/r-calf-usa-applauds-u-s-appeal-of-wtos-adverse-cool-ruling/#comment-163002>; “USCA Appreciates USTR Support for U.S. Cattle Producers,” March 26, 2012, [http://www.uscattlemen.org/TheNewsRoom/2012\\_News/3-26USTRSupport.htm](http://www.uscattlemen.org/TheNewsRoom/2012_News/3-26USTRSupport.htm); “NFU Applauds USTR Decision to Appeal WTO Ruling on COOL,” March 23, 2012, <http://nfu.org/news/212-international-policy/947-nfu-applauds-ustr-decision-to-appeal-wto-ruling-on-cool->; Food & Water Watch, “President Obama Finally Stands Up for U.S. Farmers and Consumers: U.S. Appeals WTO Decision on COOL,” March 23, 2012; “Public Citizen Applauds Obama Administration’s Efforts to Defend Consumer Country of Origin Meat Labeling; Appeal of WTO Ruling Necessary First Step,” March 23, 2012, <http://citizen.typepad.com/eyesontrade/2012/03/public-citizen-applauds-obama-administrations-efforts-to-defend-consumer-country-of-origin-meat-labe.html>.

<sup>56</sup> “NCBA Statement on USTR Appeal of WTO Ruling on Country of Origin Labeling,” <http://www.beefusa.org/newsreleases1.aspx?newsid=2419>; NPPC, “Capital Update, For the Week Ending March 23, 2012,” <http://www.nppc.org/2012/03/for-the-week-ending-march-23-2012/>; Pork Network, “Pork, beef producers fear retaliation from COOL appeal,” March 26, 2012, [http://www.porknetwork.com/pork-news/latest/Pork-beef-producers-\(continued...\)](http://www.porknetwork.com/pork-news/latest/Pork-beef-producers-(continued...))

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.<sup>57</sup>

## 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 moves to the compliance stage (see "WTO Procedures for the United States to Comply with Reports' Findings"). 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 (see "WTO Findings"). The United States has said it will bring COOL into compliance with its WTO obligations.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup> A "Product of North America" label could apply to any

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(...continued)

fear-retaliation-from-COOL-appeal-144248155.html.

<sup>57</sup> Reuters; Secretaría de Economía, "México continuará la defensa legal en OMC del caso COOL," March 23, 2012, <http://www.economia.gob.mx/eventos-noticias/sala-de-prensa/informacion-relevante/7646-boletin087-12>.

<sup>58</sup> 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>.

<sup>59</sup> 7 U.S.C. 1638a. See above "Defining and Labeling Origin for Meats."

<sup>60</sup> Rick Jordahl, "AMI urges U.S. to bring COOL law into compliance," *PorkNetwork*, July 2, 2012.

<sup>61</sup> 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/> (continued...)

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.<sup>62</sup> 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):

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.<sup>63</sup>

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.<sup>64</sup> 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.<sup>65</sup>

## **Regulatory Approach**

Other stakeholders have 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.<sup>66</sup>

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(...continued)

policy/Tonsor\_KSU\_FactSheet\_MCOOL\_11-13-12.pdf.

<sup>62</sup> Steve Kay, “Clock Ticks On MCOOL Solution,” *Cattle Buyers Weekly*, December 10, 2012.

<sup>63</sup> Ian Elliott, “Only small changes needed to comply with COOL ruling,” *Feedstuffs*, December 24, 2012.

<sup>64</sup> 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.

<sup>65</sup> Steve Meyer and Len Steiner, *Livestock Daily Report*, December 6, 2012.

<sup>66</sup> “USTR Abandons Regulatory COOL ‘Fix’ In Face Of Stakeholder Division,” *World Trade Online*, February 2, 2012.

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.<sup>67</sup> Because U.S. animal health regulations<sup>68</sup> require that imported cattle have a foreign mark and that cattle imported for 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> The Senators asked that a regulatory fix make the COOL

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<sup>67</sup> Letter from Bill Bullard, CEO, August 22, 2012, <http://www.r-calfusa.com/COOL/120822LetterToUSTRandUSDAreCOOLStrategy.pdf>.

<sup>68</sup> Steers and spayed heifers imported from Mexico must be marked M and M<sub>x</sub>, 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)].

<sup>69</sup> 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.

<sup>70</sup> NFU, "NFU Releases Analysis on COOL Compliance," press release, February 12, 2013, <http://www.nfu.org/news/current-news?start=18>. Analysis available at [http://cdn.e2ma.net/userdata/5030/assets/docs/SS\\_COOL\\_Compliance\\_Memo\\_New\\_Final\\_Four\\_Groups.pdf](http://cdn.e2ma.net/userdata/5030/assets/docs/SS_COOL_Compliance_Memo_New_Final_Four_Groups.pdf).

<sup>71</sup> 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.testersenate.gov/?p=press\\_release&id=2755](http://www.testersenate.gov/?p=press_release&id=2755).

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.

## **USDA's Final COOL Rule**

On March 12, 2013, USDA released its 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.<sup>72</sup> There was a 30-day public comment period. The department issued the final rule on May 23, 2013, and published it in the *Federal Register* on May 24, 2013.<sup>73</sup> The 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 final rule revised labeling requirements for covered meat products and is 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 final 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.

Under the final COOL rule, meat from animals that are exclusively born, raised, and slaughtered in the United States have 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."

The final 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 final 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

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<sup>72</sup> USDA, AMS, "Mandatory Country of Origin Labeling of Beef, Pork ...," 78 *Federal Register* 15645, March 12, 2013.

<sup>73</sup> USDA, AMS, "Mandatory Country of Origin Labeling of Beef, Pork ...," 78 *Federal Register* 31367, May 24, 2013. The rule amends 7 C.F.R. 60.124, 65.240, and 65.300.



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 final 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 final COOL rule went into effect on May 23, 2013, and does 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 is implemented, USDA will conduct industry education and outreach activities. The six-month period also provides time for existing stocks of muscle meat labeled under old regulations to clear the pipeline. USDA also will allow meat processors to use their existing stock of old labels until they are completely used. However, under this allowance, retailers must provide in-store signs or placards that notify country of origin according to the final rule.

## **Costs and Benefits of the Final Rule**

In the proposed rule, USDA estimated the cost for implementing new labeling at \$32.8 million (range of \$17.0 million-\$47.3 million), and estimated that 33,350 establishments owned by 7,181 firms would need to rework labels.<sup>74</sup> 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-\$144.8 million. When the labeling costs are added to the loss of commingling flexibility, the total cost of implementation ranges from \$53.1 million-\$192.1 million.<sup>75</sup> USDA notes that it is not possible to specify how often packers use commingling flexibility, and therefore difficult to estimate. But USDA believes 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-\$137.8 million.<sup>76</sup>

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.<sup>77</sup> In previous analysis of COOL, USDA found the economic benefits to be positive but difficult to quantify.

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<sup>74</sup> See footnote 72, pp. 15647-15652. USDA’s cost estimate analysis is summarized in Table 1 on page 15650.

<sup>75</sup> See footnote 73, pp. 31377-31382. Adjustment costs are summarized in Table 4 on page 31381.

<sup>76</sup> *Ibid.*, p. 31368.

<sup>77</sup> See footnote 5.

## **Reaction to the New COOL Rule**

U.S. farm and ranch groups that have been long-time supporters of COOL responded positively to USDA's final rule. The National Farmers Union (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 applauded 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."<sup>78</sup> The United States Cattlemen's Association (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."<sup>79</sup> 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 (see "Regulatory Approach").

R-CALF also supported USDA's final 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."<sup>80</sup>

U.S. livestock groups that have opposed mandatory COOL requirements also weighed in on the final rule. The American Meat Institute (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."<sup>81</sup> The National Cattlemen's Beef Association (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."<sup>82</sup>

## **Meat Industry Lawsuit**

On July 8, 2013, a group of eight meat industry organizations, led by AMI, filed a lawsuit in the U.S. District Court for the District of Columbia to block USDA's final COOL rule.<sup>83</sup> The

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<sup>78</sup> NFU, "USDA Keeps COOL; Complies with WTO Ruling," press release, May 23, 2013, <http://www.nfu.org/news/253-consumers-and-their-food/1766-usda-keeps-cool-complies-with-wto-ruling?tmpl=component&print=1&layout=default&page=>.

<sup>79</sup> 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](http://www.uscattlemen.org/Templates/Press_Room/2013_Press_Room/5-23Final-COOL-Rule.html).

<sup>80</sup> R-CALF, "R-CALF USA Pleased With Final COOL Rule Released Today," press release, May 23, 2013, [http://www.r-calfusa.com/news\\_releases/2013/130523COOL.htm](http://www.r-calfusa.com/news_releases/2013/130523COOL.htm).

<sup>81</sup> 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>.

<sup>82</sup> 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>.

<sup>83</sup> 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, (continued...)

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.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup>

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.<sup>87</sup> 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.<sup>88</sup> The district court heard the plaintiffs' arguments for a preliminary injunction on August 27.

On September 11, the court denied the plaintiffs' request.<sup>89</sup> The court found that the plaintiffs were unlikely to succeed on their constitutional, statutory, or arbitrary and capricious claims.

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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>.

<sup>84</sup> 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, [http://www.meatpoultry.com/articles/news\\_home/Regulatory/2013/07/COOL\\_just\\_got\\_a\\_lot\\_hotter.aspx?ID={A8621462-A983-4A47-8580-408C09362D0C}&p=1](http://www.meatpoultry.com/articles/news_home/Regulatory/2013/07/COOL_just_got_a_lot_hotter.aspx?ID={A8621462-A983-4A47-8580-408C09362D0C}&p=1).

<sup>85</sup> National Farmers Union, "COOL Lawsuit is Another Delaying Tactic," press release, July 10, 2013, <http://www.nfu.org/news/current-news>.

<sup>86</sup> R-Calf, "Group Circulates Petitions to Stop Federally-Funded NCBA from Suing to Eliminate COOL," press release, July 11, 2013, [http://www.r-calfusa.com/news\\_releases/2013/130711-petition.htm](http://www.r-calfusa.com/news_releases/2013/130711-petition.htm).

<sup>87</sup> A copy of the injunction request is available at <http://www.meatami.com/ht/a/GetDocumentAction/i/92882>.

<sup>88</sup> 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.

<sup>89</sup> *American Meat Institute, v. USDA*, Civil Action No. 13-CV-1033 (KBJ) (U.S. District Court for the District of Columbia 2013).

Furthermore, the court found that the plaintiffs did not demonstrate they would suffer irreparable harm if an injunction was not granted. AMI disagrees with the court's decision, and has indicated that it will appeal the decision.<sup>90</sup> Supporters of COOL that intervened in the case will continue to oppose AMI's court challenge to the COOL rule.<sup>91</sup>

## **Response from Canada and Mexico**

Canadian cattle and hog industry representatives have stated their belief that the final COOL rule will not bring the United States into compliance, with both groups noting that it increases discrimination. The Canadian Cattlemen's Association 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."<sup>92</sup> 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."<sup>93</sup> 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 have rejected the USDA final 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."<sup>94</sup> 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."<sup>95</sup>

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<sup>90</sup> 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>.

<sup>91</sup> NFU, "COOL Appeal Another Attempt to Obstruct Consumers' Right to Know," press release, September 12, 2013, <http://www.nfu.org/news/current-news/244-livestock/1834-cool-appeal-another-attempt-to-obstruct-consumers-right-to-know?format=pdf>.

<sup>92</sup> Canadian Cattlemen's Association, "U.S. continues to discriminate against cattle imports," press release, May 23, 2013, [http://www.cattle.ca/news-read/363\\_us\\_continues\\_to\\_discriminate\\_against\\_cattle\\_imports](http://www.cattle.ca/news-read/363_us_continues_to_discriminate_against_cattle_imports).

<sup>93</sup> Canadian Pork Council, "US flouting of WTO Ruling on COOL shocking and appalling," press release, May 23, 2013, [http://www.cpc-ccp.com/documents/news-releases/COOL\\_May\\_23\\_media\\_release\\_2\\_.pdf](http://www.cpc-ccp.com/documents/news-releases/COOL_May_23_media_release_2_.pdf).

<sup>94</sup> 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](http://www.international.gc.ca/media_commerce/comm/news-communiques/2013/05/23a.aspx?lang=eng).

<sup>95</sup> 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>.

## 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 final rule did not meet the WTO requirements.<sup>96</sup> 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. The list was officially published in the *Canada Gazette* (Canada's *Federal Register*) for public comment.<sup>97</sup> The press release states that Canada expects to consult with stakeholders to 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.

## Damage Estimates

Should the COOL case reach the retaliation stage, the damage claims could fall between \$1 billion and \$2 billion, by some estimates. According to a Canadian Pork Council study, COOL harms the Canadian hog industry by \$500 million per year.<sup>98</sup> For the Canadian cattle industry, annual losses from COOL have been estimated at \$639 million.<sup>99</sup> 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.<sup>100</sup> In addition, Mexico's cattle industry would likely argue that COOL has led to economic losses throughout the Mexican cattle sector beyond the discounted import prices. 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

On June 10, 2013, the United States, Canada, and Mexico communicated to the DSB that they have agreed to procedures for proceeding under WTO rules to establish a compliance panel and to address compensation or suspension of concessions.<sup>101</sup> It was agreed that Canada and Mexico

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<sup>96</sup> 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](http://www.international.gc.ca/media_commerce/comm/news-communiques/2013/06/07a.aspx). The retaliation list is included in the press release.

<sup>97</sup> 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>.

<sup>98</sup> Canadian Pork Council, "CPC Releases Report on COOL Damages to Canada's Pork Industry," press release, January 14, 2013, <http://www.cpc-ccp.com/news.php?rev=e&ID=317&article=1&year=2013&da=0&incl=0>. Report available at <http://www.cpc-ccp.com/documents/news-releases/2013%20ESTIMATES%20OF%20MCOOL%20IMPACT%20ON%20CANADA%20final.pdf>.

<sup>99</sup> Dan Sumner, *Canadian Losses from U.S. COOL Implementation*, prepared for the Canadian Cattlemen's Association, September 27, 2012.

<sup>100</sup> Letter from Ross Wilson, President and CEO, Texas Cattle Feeders Association, to USDA, April 11, 2013, <http://www.regulations.gov/#!documentDetail;D=AMS-LS-13-0004-0806>.

<sup>101</sup> See footnote 37.

could request a compliance panel at any time, and consultations with the United States are not necessary prior to the request.<sup>102</sup>

On August 19, 2013, Canada and Mexico informed the DSB that they would request the establishment of a compliance panel. The United States objected to Canada's and Mexico's first request at the August 30, 2013, DSB meeting. Canada and Mexico will make the request again at the September 25 DSB meeting and the United States will not be able to object. Once established, the compliance panel could issue a report within 90 days. According to the June 10 agreement, the compliance panel report findings could be appealed to the Appellate Body (AB), and the AB report could be issued within another 90 days. Depending on the outcome of the compliance ruling(s), procedural timelines, and whether or not the case progresses to the retaliation phase and arbitration, the WTO COOL case may not be concluded before 2015.

## **Congressional Interest**

Observers point out that the 2008 farm bill amendments to the initial COOL statute were intended to balance the concerns of both proponents and opponents and to settle the longstanding controversy over requiring COOL for meats and other covered commodities. However, the outcome of the WTO challenge initiated by Canada and Mexico may influence the dynamics of COOL debate in the 113<sup>th</sup> Congress and beyond, particularly if the WTO finds that USDA's new rule is deficient in addressing the WTO findings. Some lawmakers agree with some industry groups' criticisms of mandatory COOL and could offer legislation to limit its scope and impacts. Others remain strongly supportive of COOL as enacted and oppose any rollback.

In the 113<sup>th</sup> Congress, in May 2013, during the Senate Agriculture Committee markup of the Senate farm bill (S. 954), Senator 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) contains a provision (Section 11105) that requires USDA to conduct an economic analysis of USDA's proposed COOL rule (78 *Federal Register* 15645). The analysis is to include the impact on consumers, producers, and packers of the COOL law and rule. The report on COOL is due to Congress within 180 days of the 2013 farm bill's enactment.

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<sup>102</sup> WTO, *WT/DS/384/25 Understanding Between the United States and Canada Regarding Procedures Under Articles 21 and 22 of the DSU*, June 13, 2013, [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=117305,113648,104336,94619,61814,72904,99959,28101,1026,87392&CurrentCatalogueIdIndex=0&FullTextSearch=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=117305,113648,104336,94619,61814,72904,99959,28101,1026,87392&CurrentCatalogueIdIndex=0&FullTextSearch=). Document for the United States and Mexico agreement is WT/DS/386/24.

## **Appendix A. Other Laws with Food Labeling Provisions**

The COOL provisions of the 2002 and 2008 farm bills<sup>103</sup> 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.”<sup>104</sup> 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

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<sup>103</sup> 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.

<sup>104</sup> The J list is published in 19 C.F.R. 134.33, available at [http://edocket.access.gpo.gov/cfr\\_2008/aprqrtr/19cfr134.33.htm](http://edocket.access.gpo.gov/cfr_2008/aprqrtr/19cfr134.33.htm).

have inspection systems equivalent to those of the United States are eligible to export products to the United States.

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 (FDA), 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 <i>Federal Register</i> 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 <i>Federal Register</i> 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 <i>Federal Register</i> 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.
July, August, September 2013	In July, U.S., Canadian, and Mexican meat industry organizations file suit against USDA to block the May 2013 COOL rule. They file a motion for a preliminary injunction against implementing the rule in August. In September, the District Court for the District of Columbia denies the group’s request to halt the implementation of the COOL rule.
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.

## 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.

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 \$48 million in 2012 (**Table C-1**). The United States primarily exports breeding stock. In recent years, U.S. cattle and hogs have been shipped to more than 70 foreign markets. Prior to 2010, Canada and Mexico accounted for a majority of the value of breeding cattle exports, but since then, Russia and Turkey have been leading markets. Similarly, Canada and Mexico accounted for most of the value of breeding hog exports before 2008, but now China has become a leading market for U.S. breeding hog exports.

On the import side, the value of trade with Canada and Mexico is much greater. In 2012, the United States imported nearly \$2.1 billion worth of cattle and hogs from Canada and Mexico (**Table C-1**). Almost all U.S. live cattle imports come from Canada and Mexico and almost all live hog imports come from Canada.

In volume terms, on average, cattle imports have accounted for about 6% of total U.S. commercial cattle slaughter since 2000. Over the same period, hog imports have accounted for nearly 7% of total hog commercial slaughter, but the hog share has dropped to 5% since 2009 as hog imports continue to decline.

**Table C-1. Value of U.S. Cattle and Hog Trade**  
(\$ million)

	EXPORTS				
	2008	2009	2010	2011	2012
<b>Canada</b>					
Cattle	9.7	13.5	19.7	42.3	31.6
Hogs	1.0	1.4	1.6	2.1	1.7
<b>Mexico</b>					
Cattle	51.5	25.8	30.8	20.8	8.1
Hogs	9.0	1.0	2.0	2.9	6.4
<b>Cattle and Hogs Total</b>	<b>71.2</b>	<b>41.6</b>	<b>54.1</b>	<b>68.1</b>	<b>47.9</b>
<b>World</b>					
Cattle	108.1	58.8	132.7	378.9	403.3
Hogs	27.9	9.6	8.6	24.1	33.3
<b>Cattle and Hogs Total</b>	<b>136.0</b>	<b>68.4</b>	<b>141.4</b>	<b>403.0</b>	<b>436.7</b>
	IMPORTS				
	2008	2009	2010	2011	2012
<b>Canada</b>					
Cattle	1,462.6	917.7	1,051.9	832.3	1,044.0
Hogs	482.3	295.2	363.3	362.9	330.4
<b>Mexico</b>					
Cattle	298.3	381.0	522.8	616.9	716.9
Hogs	0.0	0.0	0.0	0.0	0.0
<b>Cattle and Hogs Total</b>	<b>2,243.1</b>	<b>1,593.9</b>	<b>1,938.0</b>	<b>1,812.1</b>	<b>2,091.4</b>
<b>World</b>					
Cattle	1,760.8	1,298.7	1,574.6	1,449.2	1,761.0
Hogs	482.3	295.2	363.5	362.9	330.4
<b>Cattle and Hogs Total</b>	<b>2,243.1</b>	<b>1,593.9</b>	<b>1,938.1</b>	<b>1,812.1</b>	<b>2,091.4</b>

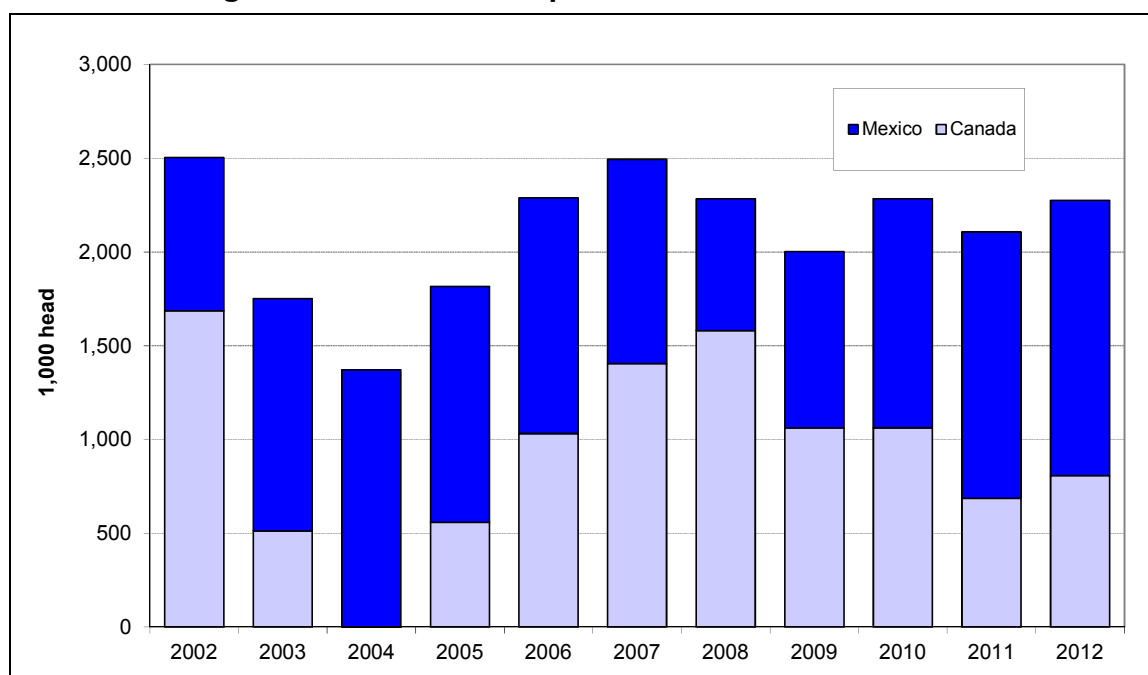
**Source:** USDA, Foreign Agricultural Service (FAS), Global Agricultural Trade System (GATS).

## 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 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.<sup>105</sup> 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.

<sup>105</sup> USDA, Economic Research Service (ERS), *Livestock, Dairy, and Poultry Outlook*, December 17, 2009. p. 5.

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.<sup>106</sup> 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 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%.”<sup>107</sup> 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.<sup>108</sup>

In 2010, U.S. cattle imports increased 14% from 2009 to 2.3 million head as shipments of feeder cattle from Mexico continued to expand, due to continued drought conditions and strong U.S. feeder cattle prices that further encouraged Mexican producers to send cattle north. Canadian cattle imports in 2010 remained flat. In 2011, total cattle imports into the United States turned down again, dropping 8% as increased imports from Mexico (+16%) were more than offset by a sharp drop in imports from Canada (-35%). Ample feed supplies in 2011 resulted in more cattle being fed in Canadian feedlots and, in addition, the relatively strong Canadian dollar dampened shipments to the United States.

In 2012, U.S. cattle imports increased 7% as shipments from both Canada and Mexico expanded. Strong U.S. feeder cattle prices coupled with continued drought in Mexico supported the movement of feeder cattle into the United States. Increased shipments of slaughter cows from Canada boosted U.S. imports for immediate slaughter in 2012.

## **Imports from Canada**

A majority of Canadian cattle shipped to the United States are for immediate slaughter—79% in 2012 (**Figure C-2**). 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. In 2011, the 15% feeder share of cattle imports was the smallest feeder share since 2000, as declining cattle inventories combined with the availability of relatively inexpensive barley supplies in Canada slowed shipments to the United States. In 2012, cattle imports from Canada increased 15% to more than 786,000 head as both feeder and slaughter cattle imports increased. Slaughter cattle imports in 2011 and 2012 remain well below the five-year average of imports from 2006 to 2010. A strong increase in slaughter cow imports in 2012 accounted for most of the 8% gain in total slaughter cattle imports. Feeder cattle imports increased 55% in 2012, but also remained well below earlier year levels.

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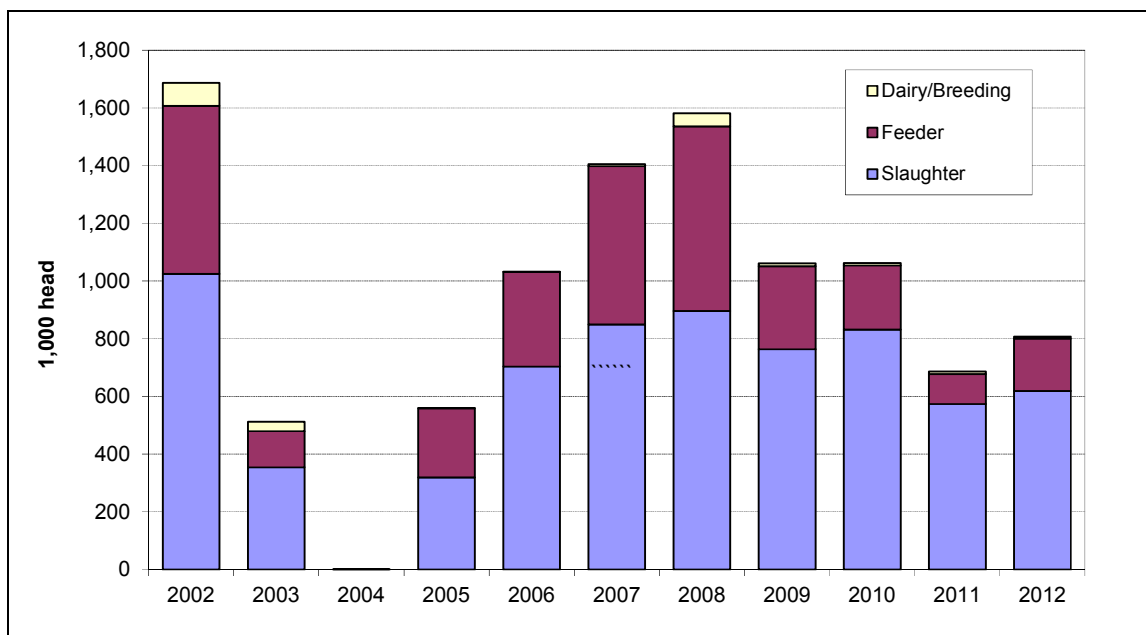
<sup>106</sup> CattleFax, “CattleFax Long Term Outlook Special Edition,” December 12, 2008, p. 3.

<sup>107</sup> *CME Daily Livestock Report*, January 7, 2009.

<sup>108</sup> 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.

USDA estimates that Canadian cattle shipments to the United States will again increase in 2013. A feed cost advantage that Canada had for a couple of years has narrowed, and with a large expected U.S. grain crop, more feeder cattle could be sent to the United States for feeding. In addition, the closure of a beef cow slaughter plant in Quebec could boost the number of slaughter cows being shipped south in 2013.<sup>109</sup>

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



Source: USDA, FAS, GATS.

## Imports from Mexico

Almost 100% of Mexican cattle shipped to the United States are stocker or feeder cattle<sup>110</sup> 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**).<sup>111</sup> Cattle imports from Mexico are often influenced by prevailing precipitation conditions in northern Mexico. Persistent drought since 2009 has led to an increasing number of cattle imports from Mexico. Cattle imports have steadily risen from the unusually low level of 2008, hitting double-digit growth from 2009 to 2011. In 2012, U.S. cattle imports from Mexico increased 3% to more than 1.47 million head. Continued drought conditions in the northern states of Mexico and strong U.S. feeder cattle prices encouraged Mexican producers to send cattle north.

This strong pace of imports from Mexico may not be sustainable in 2013 because of tight cattle supplies in Mexico. Mexico's large increase (+84%) in the shipment of heifers to the United

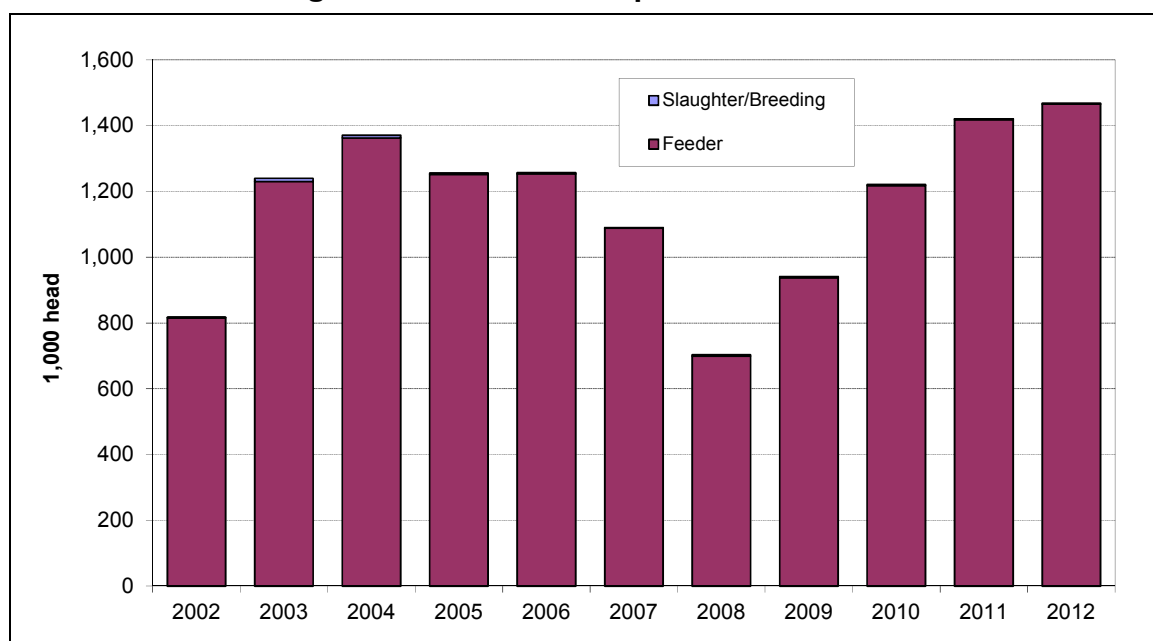
<sup>109</sup> USDA, FAS, *Canada: Livestock and Products Semi-annual*, GAIN Report, March 1, 2013, p. 4.

<sup>110</sup> 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.

<sup>111</sup> USDA, ERS, *Trade, the Expanding Mexican Beef Industry, and Feedlot and Stocker Cattle Production in Mexico*, by Darrell S. Peel, Kenneth H. Mathews, Jr., and Rachel J. Johnson, August 2011.

States was a strong indication of herd liquidation in 2012. USDA estimates that Mexico's cattle inventory was about 18.5 million head on January 1, 2013, the lowest since the early 1960s. Cattle imports from Mexico are expected to decline in 2013 compared with 2012.<sup>112</sup>

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



Source: USDA, FAS, GATS.

## U.S. Hog Imports

U.S. hog imports from Canada have grown sharply since 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.<sup>113</sup> At one time the U.S. hog industry was comprised of many small operations that raised hogs from birth to slaughter-ready weight (farrow-to-finish 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.<sup>114</sup> The feeder pig share of hog imports increased steadily from the mid-1990s, peaking at 82% in 2009, and remained stable in 2010 and 2011.

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

<sup>112</sup> USDA, FAS, *Mexico: Livestock and Products Semi-annual*, GAIN Report, March 4, 2013, p. 7.

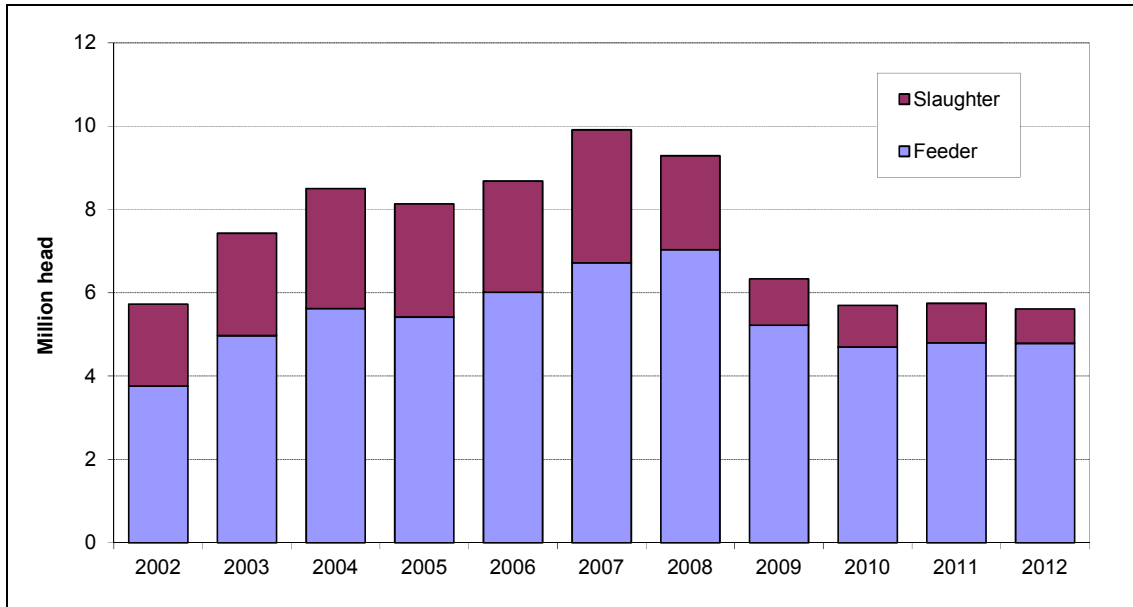
<sup>113</sup> Feeder pigs are light-weight pigs—the majority weighing less than 15 pounds, others weighing between 15 and 100 pounds—that are shipped to the United States for feeding to slaughter-ready weight.

<sup>114</sup> USDA, ERS, *Market Integration of the North American Hog Industries*, November 2004, pp. 9-12.



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."<sup>115</sup> 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."<sup>116</sup>

During 2010-2012 U.S. hog imports flattened. In 2012, hog imports declined 2% to 5.6 million head, the smallest amount since 2002. Imports for immediate slaughter averaged more than 2.3 million head from 2000 to 2009, but dropped sharply to just over 820,000 head in 2012. The number of feeder hog imports was unchanged in 2012, and have been around 4.7-4.8 million the last three years. Hog imports from Canada are expected to decline slightly in 2013.<sup>117</sup>

<sup>115</sup> USDA, ERS, *Livestock, Dairy, and Poultry Outlook*, April 16, 2009, p. 4.

<sup>116</sup> Cattle Buyers Weekly, "MCOOL Hurts Iowa Hog Finishers," April 27, 2009.

<sup>117</sup> See footnote 109, p. 7.

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