

WTO Rules on COOL Appeal



The United States may provide origin information to consumers; Canada requests amendment to cease live cattle segregation in lieu of retaliation.

by **Meghan Richey**

Both proponents and opponents of mandatory country-of-origin labeling (COOL) could find small victories in the June ruling issued by the World Trade Organization's (WTO) highest judicial body. COOL isn't going anywhere, but it will be undergoing some changes.

"What the WTO found was that we, and other WTO members, have the right to provide information to our consumers, including the country of origin of beef and pork products. That's a very important affirmation for us," said U.S. Trade Representative (USTR) General Counsel Tim Reif.

"Consumers have a right to know from where their meat comes, and they overwhelmingly want to know just that. WTO's decision confirmed that right," agreed National Farmers Union President Roger Johnson.

Yet affirming that right to provide information was only half the ruling. The Appellate Body also ruled that the United States violated the WTO's agreement on technical barriers "by accord[ing] less favorable treatment to imported Canadian (and Mexican) cattle and hogs than to like domestic cattle and hogs."

Records, segregation, costs

"The core issue, the way the WTO saw it, was the recordkeeping burden on the ranchers was disproportionate to the amount of information that the recordkeeping provided to consumers. They found it was too onerous to the livestock producers to justify the limited amount of information we got out of it," explained Reif. "We're going to have to go back and look at that. We either have to get more information to the consumers or maybe ask a little bit less of the folks upstream."

Under existing COOL regulations there are four label variations with accompanying recordkeeping requirements:

- For meat to be labeled as an exclusively U.S. product it must be from animals

born, raised, harvested and processed in the United States, or from animals already in the United States before July 2008.

- Meat directly imported to the United States is labeled with that country's origin.
- Live animals imported for immediate harvest are labeled with the origin country, followed by the United States.
- Other meat from animals that may have spent various life stages in different countries is labeled with all applicable countries. Additionally, ground meat must list all countries from which raw materials have been used in a processing plant within the last 60 days.

Based on these categories, a substantial recordkeeping system must be in place to track origins and ensure accuracy of labels.

In its complaint to the WTO, Canada's trade ministers noted that U.S. processors are forced to segregate Canadian animals and meat, which led some operators to avoid those products and the resulting added costs.

Informa Economics Inc. estimated in 2010 that segregation costs to U.S. firms that use imported cattle were \$45.50-\$59 per head. Meanwhile, it estimated that if U.S. producers use only cattle originating in America, their costs would raise by only \$1.50 per head.

Canada and Mexico alleged the required segregation, records and cost differentials acted as strong incentives for U.S. firms to avoid imported cattle or demand large discounts. Indeed, since COOL became law in 2008, Canadian cattle exports to the United States have decreased by 42%, according to the USDA Foreign Agricultural Service. The Canadian Cattlemen's Association says COOL has cost the Canadian cattle industry some \$400 million annually, or \$90 per head. *Reuters* says that, under COOL, Mexican cattle are valued \$95 per head less than U.S. cattle.

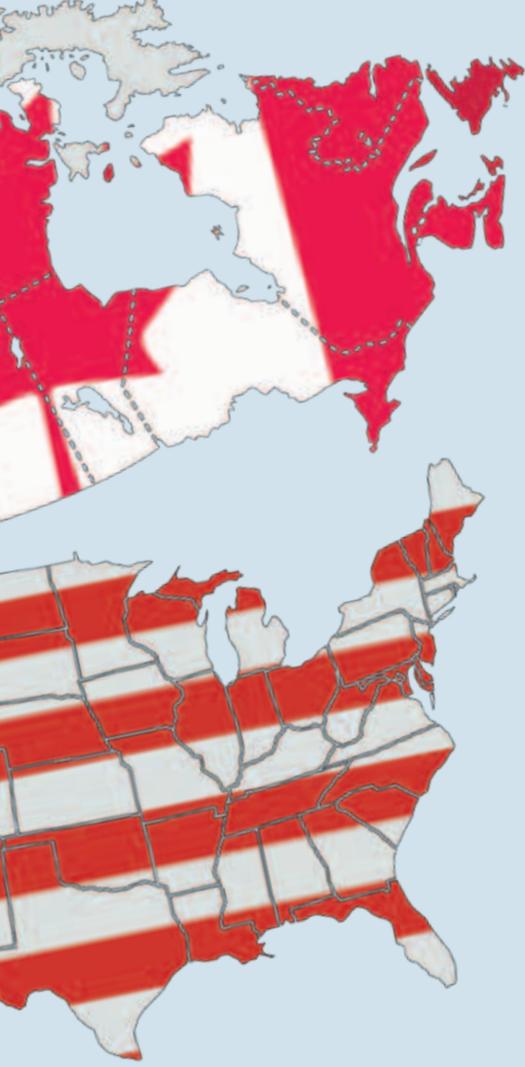
Yet some are quick to shift the blame of these price differences to packers, while also implicating the WTO.

"With ever-increasing retail beef prices and ever-shrinking livestock supplies, it is as likely as not that multinational meatpackers that enjoy tremendous market power in the U.S. livestock market have willfully and without justification discounted imported livestock for the sole purpose of providing Canada and Mexico with evidence, albeit fabricated, with which to undermine the COOL law," stated R-CALF USA. "Given the WTO has provided no collaborative evidence linking the alleged discount to the COOL law, nor any evidence indicating whether such alleged discounts were commensurate with wholesale or retail prices, it appears the WTO is a willful participant in the meatpackers' unabashed efforts to undermine the COOL law."

Retaliation not likely

"We've had every chance possible to go to the WTO and make our case, but at the end of the day we have a program that is in violation of trade laws," said National Cattlemen's Beef Association (NCBA) Vice President of Government Affairs Colin Woodall. "The biggest concern that we have now is that this is going to put our trade relationship with Canada and Mexico in jeopardy, and they are our biggest trading partners for U.S. beef. If they retaliate against us, that is going to have a huge impact on every cattle producer's bottom line."

If within 12-15 months the United States does not come into compliance with the WTO ruling, Canada and Mexico would



Background

Mandatory country-of-origin labeling (COOL), which labels the origin of retail meat based on where it was born, raised, harvested and processed, was originally enacted in the 2002 Farm Bill, but an interim final rule was not issued until August 2008. In December 2008, Canada and Mexico separately asked to discuss the law's application to pork and beef at the consumer level. Canada and Mexico alleged that U.S. COOL requirements were designed to achieve a protectionist objective and breached World Trade Organization (WTO) obligations by discriminating against Canadian and Mexican livestock imports to the United States. In the meantime, the final rule was issued in January 2009 and became effective in March 2009.

Consultations did not resolve the dispute, and in October 2009 the countries asked that a WTO dispute settlement panel be formed. In November 2011, the panel found that COOL was in violation of the WTO Technical Barriers to Trade Agreement, providing less favorable treatment to imported cattle and hogs than for U.S. domestic products. It also found that COOL did not meet its legitimate objective of providing consumers with information on the origins of meat.

In April 2012 the U.S. government appealed the decision. This article addresses the WTO's final ruling released June 29, 2012.

be allowed to place tariffs on U.S. products. "And those could be products of any kind; it's not just U.S. beef that can be their target," Woodall explained.

Reif speculated that we aren't facing tariffs "in the immediate or even foreseeable future. We get a reasonable amount of time, usually about a year, to implement changes, and in the meantime COOL is continuing to provide millions of American consumers with important information about the food products that they are buying. And after that period of time has expired, if Canada and Mexico still feel that whatever we have done is not compliant with what the WTO found, then they have the opportunity to challenge that, which takes another six months to a

year. There's a fair amount of process in the WTO still to come."

When asked if Canada was considering tariffs, Canadian Cattlemen's Association President Martin Unrau said, "No, we haven't at this time. You know, we get that kind of talk in Canada sometimes, too, asking about retaliatory stuff, but at the end of the day what I think we need to do is find a way to move this in a positive direction.

"You're our largest trading partner, and we and Mexico are your largest trading partners," he continued. "For trading partners that want to move forward in a positive manner, I don't think it's timely to talk about [retaliation] right now."

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Consumer demand and willingness to pay

Proponents of country-of-origin labeling (COOL) have long proclaimed consumers have a right to know from where their food comes and that they are willing to pay for that information.

With increasingly vocal support of "buy local" initiatives and direct-to-consumer sales via farmers' markets, it indeed appears a growing population of American buyers agrees.

It's curious, then, that the research data published before COOL was enacted does not match consumers' current knowledge of the labeling law and use of those labels in making purchasing decisions.

Consider the results of a spring 2002 Colorado State University (CSU) survey in which Colorado consumers indicated that they were willing to pay an average of 38% and 58% more to obtain "Certified U.S." steak and hamburger, respectively. Likewise, another CSU survey conducted in summer 2002 in Chicago and Denver found 73% of the consumers would be willing to pay average premiums of 11% and 24% for country of origin of steak and hamburger, respectively. A third CSU survey conducted in spring 2003, this time by nationwide mail, found consumers were willing to pay average premiums of only 2.5-2.9% beyond the original market price to obtain "Certified U.S." chicken breasts, pork chops and ribeye steaks. Still, it indicated they'd pay a premium nevertheless.

Despite these survey results, consumers today are largely unaware that labels even exist, let alone use them or pay more for them. A 2011 survey conducted by the USDA asked if people knew

retailers were required to list the country of origin on meat labels. Nearly six of 10 people did not know, and only 30% responded "yes." Additionally, six of 10 people said they never look at country of origin on labels.

"If there was substantial consumer demand for a 'USA-only' label, producers would have filled this market void and would have been able to increase their profit margin in so doing," says the Fraser Institute, a free-enterprise think tank based in Vancouver with no agricultural ties. "Indeed, in the years between 2003 and 2009 when voluntary country-of-origin labeling was offered by U.S. regulators, there were no takers among the main meat producers. The fact that it did not occur strongly suggests that producers know consumers are not willing to pay more for such a specific label."

Not surprisingly, proponents of COOL have a different take on this.

"Average beef prices have reached new record highs after COOL took effect, with USDA recently reporting that beef prices have continually reached new nominal price records. This fact provides no basis whatsoever for WTO's claim that consumers are unwilling to pay the additional cost, whatever that cost may be, for having COOL labels on their beef purchases," according to R-CALF USA. "Moreover, consumers do not need to pay any premium for the labeling of beef products in order for labels to facilitate true competition. When consumers respond to labels through their buying preferences, they generate demand signals in the marketplace for each differentiated product, and it is the consumers' buying choices that determine the price and volume of products sourced from either domestic livestock or imported livestock."

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Changes moving forward

While Mexico has been mostly quiet, Canada has made quite clear its wishes to move forward.

“If we can eliminate the segregation of Canadian live cattle and work toward voluntary country-of-origin labeling, that would be exactly what would work for us,” Unrau said. “If there’s one thing that worries us a little bit, it’s that the presidential election is just around the corner in the U.S., and we

wonder what the timeline will be. We’d like this done shortly, but I don’t think it has to be done tomorrow. We’ll just have to see how the election plays out.”

“We need an amendment to the legislation that would eliminate the discrimination to the Canadian cattle. I think it’s very doable,” he said. “You don’t need to pick apart the whole Farm Bill to satisfy us; all we need is an amendment to that legislation to eliminate discrimination and segregation of Canadian cattle.”

COOL supporters such as R-CALF maintain no discrimination existed in the first place.

“This is nonsense,” said R-CALF USA COOL Committee Chair Mike Schultz. “There simply is no discrimination involved, unless distinguishing a product with a Mexican or Canadian label is itself discriminatory.”

Given its tumultuous decade-plus past, it’s likely stakeholders will continue to passionately discuss COOL.

“WTO has spoken, and we’ve got to come into compliance to protect ourselves,” Woodall reminded. “This is no longer about Canada and Mexico; this is about protecting U.S. producers.”

