Country-of-Origin Labeling for Foods

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Summary

Effective March 16, 2009, many retail food stores are required to inform consumers about the country of origin of fresh fruits and vegetables, seafood, 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 food labeling, but only for products already pre-packaged for consumers.

Both the authorization and implementation of country-of-origin labeling (COOL) by the U.S. Department of Agriculture's Agricultural Marketing Service have not been without controversy. Much attention has focused on the labeling rules that now apply to meat and meat product imports. A number of leading agricultural and food industry groups continue to oppose COOL as costly and unnecessary. They and some major food and livestock exporters to the United States (e.g., Canada and Mexico) also view the new requirement as trade-distorting. Others, including some cattle and consumer groups, maintain that Americans want and deserve to know the origin of their foods, and that many U.S. trading partners have their own, equally restrictive import labeling requirements.

Obama Administration officials announced in February 2009 that they would allow the final rule on COOL, published just before the end of the Bush Administration on January 15, 2009, to take effect as planned on March 16, 2009. However, the Secretary of Agriculture also urged affected industries to adopt—voluntarily—several additional changes that, the new Administration asserts, would provide more useful origin information to consumers and also would more closely adhere to the intent of the COOL law. With the program now under way, stakeholders are watching to see the outcome of consultations, requested by Canada and Mexico, that have expressed concerns with the trade-distorting effects of COOL and the more recent additional "voluntary suggestions." In December 2008, both countries had begun, under the auspices of the World Trade Organization, a formal challenge of the legality of COOL, particularly regarding its impact on their meat and livestock exports to the United States. Depending upon unfolding developments, additional legislative action is possible in the 111th Congress.

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Most Recent Developments

On May 7, 2009, both Canada and Mexico renewed their requests that the United States enter into formal consultations under the World Trade Organization's (WTO's) dispute resolution process regarding their concerns with the U.S. law and rules on mandatory country-of-origin labeling (COOL) of meats, fruits and vegetables, among other specified agricultural products. Earlier, Canadian trade officials had asked the U.S. government to clarify what was required of Canadian livestock producers by last-minute "suggested" recommendations made by the new Secretary of Agriculture before COOL implementation began on March 16, 2009. Their concerns are that these "suggestions" would add to the challenges that their livestock sectors are already experiencing because of COOL (e.g., U.S. processors choosing not to buy Canadian or Mexican animals or trying to purchase them at a reduced price). Reportedly, not receiving a response, Canada decided to restart its request for consultations, which started a 60-day period for bilateral talks. If no resolution is reached, then Canada or Mexico could request the creation of a WTO dispute settlement panel to consider their complaints on COOL.

Background

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. 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 other 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.

With passage of the 2002 farm bill (P.L. 107-171, § 10816), retail-level COOL was to become mandatory for fresh fruits and vegetables, beef, pork, lamb, seafood, and peanuts, starting September 30, 2004. Continuing controversy over the new requirements within the food and agricultural industry itself 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 appropriation (P.L. 109-97) further postponed it until September 30, 2008.[1]

[1] An interim final rule for seafood COOL was published on October 5, 2004, and took effect April 4, 2005 (69 *Federal Register*, pp. 59708-59750).

During deliberations on a new omnibus farm bill in 2007 and 2008, those affected by COOL reached consensus on a series of amendments intended to ease what many of them viewed as some of the more onerous provisions of the 2002 COOL law. Modified were provisions dealing with recordkeeping requirements, the factors to be considered for labeling U.S. and non-U.S. origin products, and penalties for noncompliance. These amendments were incorporated into the final farm bill (P.L. 110-246, § 11002). The enacted 2008 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.

Final rules to fully implement the COOL requirements were published 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. Obama Administration officials announced in February 2009 that they would allow the final rules to take effect as planned on March 16, 2009. However, they also urged affected industries to adopt—voluntarily—several additional changes that, the new Administration asserts, would provide more specific origin information to consumers and more closely adhere to the intent of the COOL law.

Major U.S. trading partners, including Canada and Mexico, which already had taken steps to challenge COOL in the WTO, are closely watching implementation developments. So are lawmakers in the 111th Congress, where additional legislation to further shape the program is possible.

Other Laws with Labeling Provisions

Tariff Act

Under §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 §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."[2] Although J List items themselves

[2] The J list is published in 19 C.F.R. 134.33, available at http://edocket.access.gpo.gov/cfr_2008/aprqtr/
(continued...)

have been exempt from the labeling requirements, § 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 are sold unpackaged at retail in a store bin, country labeling had not been required by the Tariff Act.

Meat and Poultry Products Inspection Acts

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

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.

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19cfr134.33.htm.

Implementation of Farm Bill COOL Requirements

The COOL provisions of the 2002 and 2008 farm bills do not change the requirements of the Tariff Act or the food safety inspection statutes; rather, they amend the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 note). USDA's Agricultural Marketing Service (AMS) administers most AMA-authorized programs, including COOL.[3] AMS published a final rule to implement COOL for all covered commodities on January 15, 2009, to take effect March 16, 2009.[4] This final rule, issued during the closing days of the Bush Administration, replaces both the April 4, 2005, interim final rule for seafood (see footnote 1), and the August 1, 2008, interim final rule for all other covered commodities.[5]

The COOL rule was re-examined by newly confirmed Secretary of Agriculture Tom Vilsack to comply with an Obama White House directive that all agencies review recent regulations issued by the outgoing Administration. After this re-examination, Secretary Vilsack announced, on February 20, 2009, that the regulations would take effect as planned on March 16. However, the Secretary's announcement included two significant provisos. First, he urged affected industries to voluntarily adopt several suggested labeling changes in order to provide more useful information to consumers than the rule itself might imply, and to better meet congressional intent. Second, he stated that USDA would closely monitor industry compliance to determine whether "additional rulemaking may be necessary to provide consumers with adequate information."[6]

The Secretary's "suggestions for voluntary action" were detailed in a February 20, 2009, letter sent to industry representatives. They deal with the treatment of meat products with multiple countries of origin, exemptions in the rules for processed products, and time allowances provided to ground meat manufacturers regarding their inventory.[7] These are further detailed below, in the appropriate sections.

In a separate but related action, Secretary Vilsack had earlier rescinded a Bush Administration decision to transfer in FY2009 more than $3 million from a $49 million Specialty Crops Block Grant Program (authorized by the 2008 farm bill) in order to implement COOL. Subsequently, in funding USDA programs for the balance of FY2009, the FY2009 Omnibus Appropriations Act (P.L. 111-8) allocates an additional $9.6 million to the Agricultural Marketing Service to implement and enforce COOL's labeling requirements.

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[3] 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/.

[4] USDA, January 12, 2009, "USDA Issues Final Rule On Mandatory Country of Origin Labeling," available at http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1RD?printable=true&contentidonly=true&contentid=2009/01/0006.xml; 74 *Federal Register*, January 15, 2009, pp. 2658-2707. 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.

[5] 73 *Federal Register*, August 1, 2008, pp. 45106-45151. AMS had indicated in August 2008 that it would not aggressively enforce the interim rule for six months (a period that, under the final rule as well, was to continue through March 2009) to give those affected more time to understand and fully comply with it.

[6] USDA, "Vilsack Announces Implementation of Country of Origin Labeling Law," February 20, 2009, available at http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1RD?printable=true&contentidonly=true&contentid=2009/02/0045.xml.

[7] This letter is available at http://www.usda.gov/documents/0220_IndustryLetterCOOL.pdf.

Key Provisions

Mandatory country-of-origin labeling:

- *applies* to ground and muscle cuts of beef, lamb, and pork, farm-raised and wild fish and shellfish, peanuts, "perishable agricultural commodities" as defined by the Perishable Agricultural Commodities Act (PACA, i.e., fresh and fresh frozen fruits and vegetables), goat meat, chicken, pecans, macadamia nuts, and ginseng (these are referred to as "covered commodities").
- *exempts* these items if they are an ingredient in a processed food.
- *covers* only PACA-regulated retailers (those purchasing at least $230,000 a year in fresh fruits and vegetables), 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."
- *exempts* from these labeling requirements such "food service establishments" as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public.

Defining Origin

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

- *permits* the U.S. origin label to be used only on items 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.

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 from U.S. livestock. After issuance of the interim rules in August 2008, many retailers and meat processors reportedly had planned to use the "catch-all" label (see second bullet, above) 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 whole intent of COOL (i.e., to distinguish between U.S. and non-U.S. meats).[8] 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.[9]

The final (January 2009) rule attempts to further clarify the "multiple countries of origin" language. For example, muscle cut products of exclusively U.S. origin along with those from foreign-born animals, if commingled 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.[10]

The clarifying change failed to mollify some producer groups, who have 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. This is misleading to consumers," stated National Farmers Union (NFU) President Tom Buis.[11]

In his February 20, 2009 letter, Secretary Vilsack asked industry representatives to voluntarily provide additional information. 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."

The Vilsack letter also 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." The Vilsack letter is 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.

For perishable agricultural commodities, ginseng, peanuts, pecans, and macadamia nuts, retailers may only claim U.S. origin if they were exclusively produced in the United States. However, a

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[8] *Cattle Buyers Weekly*, August 4, 2008; and *Food Chemical News*, September 15, 2008.

[9] "Country of Origin Labeling (COOL) Frequently Asked Questions," September 26, 2008. Virtually all foreign live meat animals now come from either Canada or Mexico.

[10] USDA, AMS, January 12, 2009, fact sheet on the mandatory COOL final rule, available at http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5074847.

[11] "NFU Statement: USDA Issues Final Rule for COOL," January 12, 2009, available at http://nfu.org/news/2009/01/12/nfu-statement-usda-issues-final-rule-for-cool.html.

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 either harvested 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 seafood.

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.[12] Whole peanuts are almost always purchased in roasted form, which will not have to be labeled. Some critics are arguing that AMS overstepped its authority, and congressional intent, by excepting such minimally processed commodities.

AMS had 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.[13]

In his February 20, 2009 letter, however, Secretary Vilsack acknowledged that the "processed foods" definition in the final rule "may be too broadly drafted. Even if products are subject to curing, smoking, broiling, grilling, or steaming, voluntary labeling would be appropriate," he wrote.

Record-Keeping, Verification, and Penalties

The COOL law prohibits USDA from using a mandatory animal identification (ID) system,[14] 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-

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

[13] USDA, AMS, "Frequently Asked Questions," January 12, 2009, available at http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5074846.

[14] For information on this related issue, see CRS Report RS22653, *Animal Identification: Overview and Issues*, by Geoffrey S. Becker.

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 the 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.

Economic and Trade Issues

Costs and Benefits

COOL supporters argue that a number of 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 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.[15] USDA earlier had estimated that purchases of (i.e., demand for) covered commodities would have to increase by between 1% and 5% for benefits to cover COOL costs, but added that such increases were not anticipated. Data from several economic modeling studies of COOL impacts appear to fall within this range.[16] Another research paper found that demand for domestic apples would need to increase by a range of 3% to 7% and for domestic tomatoes by 8% to 22% for COOL to increase total economic welfare in these markets.[17]

[15] Wendy J. Umberger, "Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?" *Choices*, 4th quarter 2004, available online at http://www.choicesmagazine.org/2004-4/cool/2004-4-04.htm.

[16] Gary W. Brewster et al., "Who Will Bear the Costs of Country-of-Origin Labeling?" (http://www.choicesmagazine.org/2004-4/cool/2004-4-02.htm); and Daniel D. Hanselka et al., "Demand Shifts in Beef Associated with Country-of-Origin Labeling to Minimize Losses in Social Welfare" (http://www.choicesmagazine.org/2004-4/cool/2004-4-03.htm), *Choices*, 4th quarter 2004.

[17] Alejandro Plastina and Konstantinos Giannakis, "Market and Welfare Effects of Mandatory Country-of-Origin Labeling in the U.S. Specialty Crops Sector," Selected Paper, American Agricultural Economics Association Annual Meeting, Portland, Oregon, 2007.

Critics of mandatory COOL have argued that large compliance costs will more than offset any consumer benefits. USDA's analysis of its final rule estimates that 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 includes estimates of record-keeping costs and of food sector economic losses due to the rule.

North American Livestock Trade

Overview

With implementation now underway, foreign suppliers, notably in Canada and Mexico, have questioned the trade legality of mandatory COOL. They claimed that the August 2008 publication of the interim rule had already altered normal trade patterns and caused large financial losses. The initial focus of these concerns was on livestock (i.e., cattle and hogs, and their products).

The animal products industries have become increasingly integrated across all three North American countries in recent years, particularly after the onset in 1994 of the North American Free Trade Agreement (NAFTA) and, before that, the Canada-U.S. Free Trade Agreement in 1988. These agreements, along with the global Uruguay Round Agreements under the World Trade Organization (WTO), by helping to reduce tariff and nontariff barriers to trade, have enabled animals or their products to move across borders more freely, based on market demands. For example, in the pork industry, the Canadians tended toward breeding and farrowing small pigs, which in turn were shipped to the United States, where access to large supplies of grain made it more economical to feed them to slaughter weight.[18]

However, a number of animal health and other incidents have disrupted this market integration from time to time. Perhaps the most significant recent event was the discovery of *bovine spongiform encephalopathy* (BSE) in 2003, first in Canada and later in the United States, which halted most cross-border movement of cattle and beef from Canada to the United States. This trade was still recovering in 2007 and 2008. The predominance of BSE (mad cow) 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.[19]

U.S. Livestock Imports

Almost all U.S. live cattle imports come from Canada and Mexico; almost all live hog imports come from Canada. Total cattle imports from the two countries had been increasing annually since 2003, reaching 2.495 million head in 2007. Imports declined to 2.284 million head in 2008, as a modest annual increase in Canadian cattle was more than offset by a one-third reduction in

[18] See for example, USDA, Economic Research Service (ERS), *Market Integration of the North American Animal Products Complex* (LDP-M-131-01), May 2005.

[19] See archived CRS Report RS21709, *Mad Cow Disease and U.S. Beef Trade*, by Charles E. Hanrahan and Geoffrey S. Becker.

the number imported from Mexico. Hog imports also declined, from 10 million head in 2007 to 9.35 million in 2008.[20]

Cattle

Imports of cattle from Canada and Mexico have fallen significantly since mid-July 2008, when U.S. feedlots and packers began to prepare for COOL implementation. Imports from both countries during the nearly 10-month period ending in late April 2009 fell 26% from the same period in the previous year (i.e, mid-July 2007 through April 2008). USDA data show that imports of Canadian feeder cattle (those destined for feedlots), at nearly 358,000 head, were 31% lower than during the same period a year earlier. Imports of Canadian-fed (slaughter-ready) cattle (steers and heifers), at almost 478,000 head, were 31% lower. Imports of Mexican feeder cattle from mid-July through year-end 2008 were more than 323,000 head, 39% lower than in the prior-year period. However, imports of feeders from Mexico during the first four months of 2009, at almost 311,000 head, are 26% higher than in the same period a year earlier.[21]

Analyses attribute the import decline to COOL but differ on the extent that 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 were due to mandatory COOL regulations, and that imports "face a big wild card in 2009" for the same reason.[22] 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%."[23]

Late in 2008, however, USDA's Economic Research Service (ERS) suggested that the currency exchange factor may be somewhat more involved. The decline in Canadian cattle imports:

> coincided with the rapid depreciation of the Canadian dollar, making Canadian cattle relatively cheaper in U.S. dollar terms, but also making Canadian beef more competitive on the export market. Feeder cattle have been remaining in Canada. ... Imports of slaughter steers and heifers from Canada also declined dramatically in September, driven by the same exchange rate conditions affecting feeder cattle. Additionally, the past increase in Canadian exports of feeder cattle would reduce the current supply of fed cattle in Canada to be marketed or exported, lowering the number of Canadian cattle sent to the United States for slaughter.[24]

[20] USDA, ERS, Livestock and Meat Trade Data series, available at http://www.ers.usda.gov/data/meattrade/.

[21] Derived by CRS using source cited in footnote 24 and two AMS international marketing reports ("Canadian Live Animal Imports By Destination," May 6, 2009, and "Mexico to U.S. Imports," May 5, 2009)

[22] Cattle Marketing Information Service, Inc., "CattleFax Long Term Outlook Special Edition," December 12, 2008, p. 3.

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

[24] 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.

Further explaining import trends, ERS stated in its January analysis that Canadian instead of U.S. packers may have been buying more Canadian cattle. "Cattle imports should continue their decline as the relatively weaker Canadian dollar makes exporting beef to the United States more profitable."[25]

Hogs

Imports of Canadian hogs (feeder pigs and hogs ready for slaughter) from mid-July 2008 through late April 2009 (5.820 million head) are 32% below the same period in 2007/2008 (8.537 million head).[26] Though developments in Canada's hog sector account in part for this drop, a USDA analysis suggests that COOL's implementation likely "has 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."[27] One report suggests that COOL is affecting the U.S. hog sector, particularly in Iowa, as packers are moving 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 cites 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 are not extending credit to operations that finish mixed-origin pigs, and that lower prices at times are "being paid for mixed origin slaughter hogs compared to hogs of exclusively U.S. origin."[28]

WTO Developments

On December 1, 2008, Canada filed a request for formal WTO consultations on COOL with the United States. Normally, if such consultations are unable to resolve an issue, the next step likely would be referral to a WTO dispute settlement panel. Mexico and Nicaragua also requested WTO consultations on COOL on December 17, 2008. Both the Canadian and Mexican filings asserted that COOL is inconsistent with several WTO-related trade commitments, including those providing that imports must be treated no less favorably than products of domestic origin; that laws on marks of origin should not damage imports, reduce their value, or unreasonably increase their cost; and that laws, rules, and procedures on country of origin should not "themselves" create or disrupt international trade, among other things.[29]

The requests for consultations were not specific to livestock and their products, and presumably other covered commodities could be affected if a challenge were to be pursued. However, the Canadian beef and pork industries, led by the Canadian Cattlemen's Association (CCA) and the Canadian Pork Council, had actively pushed their government to initiate a WTO challenge. CCA had argued that COOL cost its producers $92 million (Canadian dollars) in losses over the two months following the publication of the interim rule, and could cost C$500 million per year. CCA

[25] USDA, ERS. *Livestock, Dairy, and Poultry Outlook*, January 22, 2009, p. 13.

[26] Derived by CRS from AMS marketing report "Canadian Live Animal Imports by Destination," July 17, 2008, December 31, 2008, and May 6, 2009.

[27] USDA, AMS, "Canadian Live Animal Imports By Destination," May 6, 2009; USDA, ERS, *Livestock, Dairy, and Poultry Outlook*, April 16, 2009, p. 4.

[28] CattleBuyers Weekly, "MCOOL Hurts Iowa Hog Finishers," April 27, 2009.

[29] World Trade Organization, "United States—Certain Country of Origin Labeling Requirements, Request for Consultations by Canada," December 4, 2008, and "Request for Consultations by Mexico," December 22, 2008.

had estimated that slaughter steers and heifers were losing C$90 per head, because U.S. meat establishments do 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 a fewer number of U.S. plants willing to take them. Canadian pork producers expressed similar concerns.[30]

Canada suspended its WTO challenge following publication of the COOL final rules, until it can determine whether the rules will in fact allow for more flexibility and ease the financial impacts on Canadian producers. However, the Canadians left the door open for further action. In reaction to Secretary of Agriculture Vilsack's February 20 request that the livestock industry voluntarily adopt more "strict" labeling practices and his intent to review industry performance with these "suggestions for voluntary action," Canada sought further clarification of what this request means. With no response reportedly received from the U.S. government, Canada's Trade Minister on April 27, 2009, cited this as one reason for resuming Canada's request for consultations with the United States under WTO auspices. Formal notice of this request was filed by Canada and also by Mexico on May 7.[31]

Selected Legislation

A number of lawmakers appear to agree with some industry groups' criticisms of mandatory COOL and conceivably could offer legislation to limit its scope and impacts. Other lawmakers remain strongly supportive of the new law and likely would oppose any significant changes. Observers point out that the 2008 farm bill changes were intended to balance the concerns of both sides and, in effect, settle the ongoing controversy. However, unfolding trade and market developments, including the WTO challenge resumed by Canada and changes in import patterns, could alter the dynamics of any COOL debate in the 111th Congress.

During the 2008 debate over the safety of imported foods generally, some suggested that COOL be extended to additional products—a proposal that was in an FDA reform bill (the Food and Drug Globalization Act of 2008) drafted by Representative Dingell, then chairman of the House Energy and Commerce Committee. As noted earlier, the Federal Food, Drug, and Cosmetic Act (FFDCA) does not contain express COOL requirements for foods (or drugs). The bill was introduced formally into the 111th Congress as H.R. 759. Section 133 would require all foods to be labeled with their country of origin, and all processed foods also to have a manufacturer website identifying where the ingredients originated. Final regulations to implement the provision would be required within 180 days.

[30] 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.

[31] Various trade press reports, including *Agri-Pulse*, "The COOL rule is out, but others say more changes required," January 14, 2009; *Meatingplace.com*, "New COOL soothes Canadian livestock producers, for now," January 13, 2009; and *Cattle Buyers Weekly*, "MCOOL Seems A Never-Ending Saga," February 23, 2009.

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