FACTS: MANDATORY COUNTRY OF ORIGIN LABELING

The mandatory country of origin labeling (COOL) law requires retail grocers to inform consumers about the country or countries of origin of certain foods. Food products covered by the law (covered commodities) include whole muscle cuts and ground beef, veal, pork, lamb, goat, venison, and chicken; wild and farm-raised fish and shellfish; fresh and frozen fruits and vegetables; peanuts, pecans, and macadamia nuts; and ginseng.

Regulations for fish and shellfish covered commodities became effective in 2005. The final rule for all other covered commodities took effect in March 2009. USDA's Agricultural Marketing Service (AMS) administers and enforces COOL. Restaurants and foodservice operations are not subject to the COOL rules.

Mandatory COOL is controversial and the rules applicable to muscle cuts of meat have been the subject of international trade litigation. Twice AMS has promulgated mandatory COOL rules applicable to muscle cuts and twice Canada and Mexico challenged the rules before the World Trade Organization (WTO). In both cases the WTO found the rules violated the United States' international trade obligations. Absent repeal of COOL for meat products, all that remains is for the WTO to determine the values of the tariffs Canada and Mexico may impose on American goods exported to those countries.

COOL for Meat and Poultry: Covered Commodities

Meat and poultry packers and processors that supply covered commodities to retail customers must provide COOL information to those retailers and that information can be provided in a number of ways -- including providing the information on invoices or other transaction documents, providing labels to the retailer, or labeling the product directly.

A meat product from beef (including veal), pork, lamb, chicken, venison, or goat must bear a COOL label or is subject to labeling providing COOL information if:

1. It is sold at retail;

AND

2. It is a muscle cut, or
3. It is a ground product.

The product is EXEMPT from COOL labeling requirements if:

1. The meat product is sold at foodservice (*e.g.*, restaurants, institutions, *etc.*);

OR

2. The meat product has undergone specific processing resulting in a change of character (*e.g.* cooking, curing, smoking or restructuring) or has been combined with at least one other covered commodity or other substantive food component. The processing exemption includes, but is not limited to, the following:
   - a. Hot dogs and sausages
   - b. Lunch meat
   - c. Cooked products
   - d. Breaded products
   - e. Cured products
   - f. Products in which the meat is an ingredient (*e.g.*, spaghetti sauce with meat)
   - g. Fabricated steak
   - h. Meatloaf
   - i. Marinated pork tenderloin

Any person supplying a covered commodity to a retailer, directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of the product. These records must identify the product unique to that transaction by means of a lot number or other unique identifier, for a period of one (1) year from the date of the transaction.

Establishments that slaughter livestock are considered initiating suppliers of a covered commodity. AMS requires the initiating supplier (packer) to have records in its possession that substantiate the country of origin of the meat product at issue. These records can be in a variety of forms, and can include animal health records, import or customs documents, as well as producer affidavits. Suppliers must make records available for review within five days of a request for such records.

At retail, records and other documentary evidence relied upon at the point of sale to establish a product's country(ies) of origin also must be made available to USDA representatives for so long as the product is on hand and that information must be provided within five days of the request being made. For pre-labeled products, a retailer may rely on the label to establish a product's origin.

COOL for Meat and Poultry: What the Labels Look Like

Ground meat products can be made from beef or pork from more than one nation and the proportion and precise sourcing may vary from day to day. The rules permit labels on ground beef to list all "reasonably possible" countries of origin. This flexibility allows a processor to use the same label for all ground beef so along as the label lists all the countries of origin in the plant's inventory for the last 60 days.

For example, a ground beef label may read: "Beef from countries that may include United States, Canada, Australia, New Zealand."

Labels for retail beef and pork cuts are more complex and vary depending upon the source. The vast majority of labels read "Born, Raised and Slaughtered (Harvested) in the U.S." If meat is from an animal that was born, raised and slaughtered in another country, it will say "Product of Canada" or "Product of New Zealand." However, some labels may name multiple countries.

For example:

- If a meat product comes from an animal that was born in Canada and raised and slaughtered in the U.S., the label reads "Born in Canada, Raised and Slaughtered in the U.S."
- If meat comes from an animal that was imported into the U.S. to be slaughtered immediately, a label will state, for example, "Born and Raised in Canada, Slaughtered in the U.S."

Costs of the Rules

Before the law took effect, USDA estimated the cost to implement mandatory COOL in the first year alone to be about $2.5 billion. Given the costs associated with recordkeeping and the necessary segregation of livestock and meat in plants based on their origin that are critical in ensuring label accuracy, that number likely was low. However, no analyses have been conducted to measure compliance costs.

Benefits to Consumers and Livestock Producers

Although Congress determined that country of origin labels are important to consumers, several years after implementation there is minimal evidence that the labels are of significant value to consumers or have provided a benefit to meat companies or livestock producers.

A 2012 Kansas State University Department of Agricultural Economics analysis concluded that demand for meat products covered by mandatory COOL has not been impacted by the labels.

That analysis, conducted by KSU economists Glynn Tonsor, Jayson Lusk, Ted Schroeder and Mykel Taylor, and funded, in part, by USDA, involved in person surveys and experiences in grocery stores in Texas, online surveys and an analysis of retail scanner data.

"The overriding finding of limited awareness of MCOOL, narrow use of origin information in purchasing decisions and no evidence of a meat demand impact following MCOOL implementation is consistent with the argument that voluntary labeling by country of origin would have occurred if it were economically beneficial to do so," the study's authors wrote.

The research found only 23 percent of respondents were aware of MCOOL, while 12 percent incorrectly believe it is not law and the majority of participants said they never look for origin information when buying fresh beef and pork products.

In addition, the study documented through the on-line research component that consumers value labeling such as "Product of North America" approximately the same as "Product of the United States." Finally, the authors concluded that, across species, there was no change in demand for products following MCOOL implementation.

Import Safety

Importing meat products into the U.S. is not easy because the U.S. government requires imported products meet the same high standards as U.S. products.

To be eligible to export meat to the U.S., a foreign country's inspection system has to be found by USDA to be equivalent to the U.S. system. In addition, meat plants in other countries that wish to export must document that they are following U.S. food safety standards or standards that are equivalent to U.S. standards. When the meat products arrive at the U.S. border, they are subject to more safety inspections. Finally, if the imported meat is further processed in the U.S., it is subject again to the inspection requirements administered by USDA.

Only a limited number of plants within a limited number of nations meet these tough standards. U.S. meat companies would not buy these products, use them in production, and apply the U.S. company label if they were not confident in the imported product's safety.

WTO Complaint and Ruling

When mandatory country of origin labeling was originally proposed, its proponents were transparent, in many instances, about their desire to limit imports of livestock and meat products. Canada and Mexico, in response, made clear they believed that mandatory country of origin labeling, as proposed and subsequently implemented, violated the United States' WTO obligations.

When AMS implemented COOL, the governments of Canada and Mexico lodged complaints against the U.S. with the World Trade Organization, arguing that the rules impose unfair costs on their exports and reduce their competitiveness.

In November 2011, a WTO Panel report was circulated and it agreed that the U.S. labeling policies meant beef and pork from Canada and Mexico were treated less favorably than the same U.S. products. The Panel also found that the COOL rules do not fulfill their legitimate objective of providing consumers with origin information.

In July 2012, the Dispute Settlement Body adopted the report and ruled that the U.S. must come into compliance with its WTO obligations. Two months later, the WTO determined that compliance must be achieved by May 23, 2013.

2013 Rule

In March 2013, AMS proposed a new rule purportedly intended to bring mandatory country of origin labeling in compliance with the United States' World Trade Organization obligations. The proposal provided that labels detail each country where each production step occurred. If a product was derived from livestock born, raised and slaughtered in the U.S., rather than simply saying "Product of the U.S." as was allowed by the 2009 rule, the label would say "Born, Raised, and Slaughtered

(Harvested) in the U.S."

The Meat Institute argued the 2013 rule would be even more burdensome and costly than the initial rule and could cause packing houses in certain parts of the country to close. In addition, the Meat Institute reiterated the 2013 rule would not satisfy WTO concerns despite USDA's claims to the contrary, stating that the WTO's Appellate Body (AB) ruling read, in part, "…In reaching its finding of detrimental impact, the Panel found that it is the recordkeeping and verification requirements that "necessitate" segregation, and that create an incentive for US producers to process exclusively domestic livestock and a disincentive to process imported livestock. That is, the Panel found that the recordkeeping and verification requirements imposed under the COOL measure lead to the detrimental impact on imported livestock in the US market…."

"The proposal not only does not address this fundamental problem, it requires even more segregation, thereby enhancing the discrimination and detrimental impact on imported livestock, all while causing United States plants and businesses, including livestock producers, to close," NAMI wrote.

Despite a massive outpouring of objections to the proposal, in May 2013, AMS published a final rule with no changes from the proposal. In response, NAMI 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. This rubber stamping of the proposal begs the question of the integrity of the process: many people spoke, but no one at USDA listened. The decision to proceed with a rule that is more costly, complex and burdensome than the earlier version, when WTO and our trading partners have sent strong signals that this is no 'fix,' shows a reckless disregard for trade relations and for companies whose very survival is at risk because they rely upon imported livestock. If it wasn't obvious previously that politics were driving USDA's COOL rule, it is painfully clear now."

Canadian Reaction to 2013 Proposal

Canadian Agriculture Minister Gerry Ritz visited Washington in April 2013, where he met with Agriculture Secretary Tom Vilsack to signal his nation's dissatisfaction with USDA's purported "fix." In a press release about Ritz's visit, Agriculture Canada said, "The proposed changes will not bring the U.S. into compliance with WTO obligations and will further increase the discrimination against exports of cattle and hogs from Canada, increasing damages to the Canadian Industry."

Legal Challenge to Rule

In July 2013, NAMI and seven other meat and livestock organizations filed suit in the United States District Court for the District of Columbia to block implementation of the 2013 rule.

In their complaint, the meat and livestock organizations explained that the final rule violates the United States Constitution by compelling speech in the form of costly and detailed labels on meat products that do not advance a substantial government interest. In addition, the organizations contended the 2013 regulation exceeded the scope of the statutory mandate because the statute does not permit the kind of detailed and onerous labeling requirements the final rule puts in place. Finally, the complaint argued that the rule is arbitrary and capricious because it imposes vast burdens on the industry with little to no countervailing benefit.

"Congress mandated country-of-origin labeling for meat and poultry -- not lifetime itinerary labeling," stated NAMI Senior Vice President of Regulatory Affairs and General Counsel Mark Dopp. "Segregating and tracking animals according to the countries where production steps occurred and detailing that information on a label may be a bureaucrat's paperwork fantasy, but the labels that result will serve only to confuse consumers, raise the prices they pay, and put some producers and meat and poultry companies out of business in the process. Everyone loses under this rule."

Second WTO Complaint

Shortly after AMS published the 2013 rule, Canada and Mexico again challenged COOL and again they prevailed, before the initial panel and on appeal. Canada and Mexico submitted to a WTO Arbitrator proposed amounts for tariffs they would impose on American products exported to Canada and Mexico. The United States responded and the Arbitrator is scheduled to issue its findings on December 7, 2015. Once the tariff values are announced Canada and Mexico will be in a position to begin imposing tariffs.

ADDITIONAL INFORMATION SOURCES:

"Country of Origin Labeling for Foods and the WTO Dispute On Meat Labeling,"
Congressional Research Service, August 2012
http://www.fas.org/sgp/crs/misc/RS22955.pdf

THIRD PARTY EXPERTS:

Joel L. Greene
Analyst in Ag Policy
Congressional Research Service
jgreene@crs.loc.gov

Remy Jurenas
Specialist in Ag Policy
Congressional Research Service
rjurenas@crs.loc.go