HEARING TO EXAMINE THE IMPLICATIONS OF POTENTIAL RETALIATORY MEASURES TAKEN AGAINST THE UNITED STATES IN RESPONSE TO MEAT LABELING REQUIREMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON LIVESTOCK AND FOREIGN AGRICULTURE

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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SUBMITTED MATERIAL

HEARING TO EXAMINE THE IMPLICATIONS OF POTENTIAL RETALIATORY MEASURES TAKEN AGAINST THE UNITED STATES IN RESPONSE TO MEAT LABELING REQUIREMENTS

WEDNESDAY, MARCH 25, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND FOREIGN AGRICULTURE,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 9:02 a.m., in Room 1300 of the Longworth House Office Building, Hon. David Rouzer [Chairman of the Subcommittee] presiding.

Members present: Representatives Rouzer, Goodlatte, DesJarlais, Hartzler, Yoho, Emmer, Newhouse, Conaway (*ex officio*), Costa, Vela, and Nolan.

Staff present: Caleb Crosswhite, Haley Graves, Jessica Carter, John Goldberg, Patricia Straughn, Scott C. Graves, Faisal Siddiqui, John Konya, Andy Baker, Mary Knigge, Mike Stranz, Rob Larew, and Nicole Scott.

OPENING STATEMENT OF HON. DAVID ROUZER, A REPRESENTATIVE IN CONGRESS FROM NORTH CAROLINA

The CHAIRMAN. This hearing of the Subcommittee on Livestock and Foreign Agriculture to examine the implications of potential regulatory measures taken against the United States in response to meat labeling requirements, will come to order.

Good morning. I would like to start out by quickly thanking Mr. Bryan Blinson for attending today's hearing. Mr. Blinson serves as the Executive Director for the North Carolina Cattlemen's Association, and as all of you all know, I represent southeastern North Carolina. And, Mr. Blinson, great to have you here with us this morning.

As we have all observed, the United States is fortunate to have the safest, highest quality, most abundant, diverse, and affordable food supply in the world. Like most Members who represent rural districts, I understand the critical importance of trade, both for our domestic prosperity as well as the moral obligation to support global food security.

While my district has not always benefited from the trade agreements the United States has entered into, my constituents and I understand the potential benefits that can be derived from fair trade agreements. And I emphasize the concept of *fairness* because

I have been critical of agreements that open our domestic markets to products produced in my district, while not necessarily gaining international market access for those same products. When countries, or blocks of countries like the European Union, impose non-tariff trade barriers on U.S. agricultural products, and encourage other nations to adopt similarly protectionist policies, one can question whether such agreements are in fact fair. I also understand that to criticize other nations for imposing protectionist barriers to our products means that we must likewise be critical of our own policies that do the same.

In 2002, and I happened to be on the staff of Senator Jesse Helms at that point in time when we were working on the 2002 Farm Bill, the Congress of the United States adopted a discriminatory country-of-origin labeling requirement for meat products. As a staff member for Senator Helms during that conference negotiation, I can attest to the fact that those folks who opposed this mandate warned that the policy might not comply with our trade agreements, and would likely not withstand a challenge in the WTO. Those concerns have proven to be well-founded considering the United States Country-of-Origin Labeling Program for beef and pork was almost immediately challenged by Canada and Mexico, and has lost at every level in the WTO thus far.

Now, in the next few weeks, we expect to hear the results of our final appeal, and if we lose there, we will likely face substantial retaliatory sanctions. While we do not know for certain what the WTO appellate body will decide, observers believe that there is little likelihood that the appellate body will reverse their earlier decision.

This Subcommittee has a responsibility to review the potential impacts of retaliation by Canada and Mexico if those countries are authorized to do so. As such, I have asked members of the business community to testify today on what that retaliation may look like and what this will mean for our economy.

Secretary Vilsack has stated publicly that if the United States loses the appeal, country-of-origin labeling cannot be fixed administratively. The law will need to be changed. As a Subcommittee, we need to understand the ramifications of inaction and be prepared to move quickly after the WTO decision is announced to avoid retaliation.

[The prepared statement of Mr. Rouzer follows:]

PREPARED STATEMENT OF HON. DAVID ROUZER, A REPRESENTATIVE IN CONGRESS FROM NORTH CAROLINA

Good morning.

I would like to start by quickly thanking Mr. Bryan Blinson for attending today's hearing. Mr. Blinson serves as the Executive Director for the North Carolina Cattlemen's Association. We are happy to have him join us today and appreciate all his hard work on behalf of North Carolina's cattlemen.

As we have all observed, the United States is fortunate to have the safest, highest quality, most abundant, diverse, and affordable food supply in the world. Like most Members who represent rural districts, I understand the critical importance of trade, both for our domestic prosperity as well as the moral obligation to support global food security.

While my district has not always benefited from the trade agreements the United States has entered into, my constituents and I understand the potential benefits that can be derived from fair trade agreements. I emphasize the concept of "fairness" because I have been critical of agreements that open our domestic markets

to products produced in my district while not necessarily gaining international market access for these same products. When countries—or blocks of countries like the European Union—impose non-tariff trade barriers on U.S. agricultural products, and encourage other nations to adopt similarly protectionist policies, one can question whether such agreements are in fact fair.

I also understand that to criticize other nations for imposing protectionist barriers to our products means that we must likewise be critical of our own policies that do the same.

In 2002, the Congress of the United States adopted a discriminatory country-of-origin labeling requirement for meat products. As a staff member for a Senate Agriculture Committee Member during the 2002 Farm Bill conference, I can attest to the fact that those folks who opposed this mandate warned that the policy might not comply with our trade commitments and would likely not withstand a challenge in the WTO.

Those concerns have proven to be well-founded considering the United States COOL program for beef and pork was almost immediately challenged by Canada and Mexico, and has lost at every level in the WTO thus far.

In the next few weeks, we expect to hear the results of our final appeal and if we lose there, we will likely face substantial retaliatory sanctions.

While we do not know for certain what the WTO appellate body will decide, observers believe that there is little likelihood that the appellate body will reverse the earlier decision.

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Secretary Vilsack has stated publicly that if the United States loses the appeal, country-of-origin labeling cannot be fixed administratively. The law will need to be changed. As a Subcommittee, we need to understand the ramifications of inaction and be prepared to move quickly after the WTO decision is announced to avoid retaliation.

With that, I want to thank our witnesses that are here today and recognize the Ranking Member, Mr. Costa of California, for his opening remarks.

The CHAIRMAN. With that, I want to thank our witnesses that are here today and recognize the Ranking Member, Mr. Costa of California for his opening remarks. Mr. Costa.

OPENING STATEMENT OF HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA

Mr. COSTA. Thank you very much, Chairman Rouzer, and Members of the Subcommittee, and our Chairman who is here with us this morning. We do have a group of distinguished individuals on our panel, and I am pleased that they are going to be able to give an opportunity to let us get a better sense of the challenges we face when the World Trade Organization will rule on the appeal that has been made.

I think many of us who have been around for a while are familiar with the Mandatory Country-of-Origin Labeling rules, whether you refer to it as MCOOL or COOL, it is all the same. The fact is is that the debate has been going on for decades as to whether Country-of-Origin Labeling is an experiment that can or cannot work. Having worked with various elements of both the pork and the beef and the poultry, and other industries that have been impacted, the challenges facing Mandatory Country-of-Origin Labeling it was destined not to work for a number of factors. And while the supporters have argued the opposite, we have to look at the facts. I think we have seen increase in production costs, we have seen impacts to cost to consumers that are factoring in meat purchasing.

What I would like to hear today from our witnesses is how we move beyond the eventual ruling that we believe will be forthcoming. One thing is for certain, the World Trade Organization, the WTO, is set to release its decision on the United States' appeal in conjunction with the ruling, and the countries of Canada and Mexico are posed to react. To that end, we need to talk about the potential reaction, and as the Chairman indicated here of the Subcommittee, the fact that Secretary Vilsack has indicated that no Administrative action, if we have an adverse ruling, as many of us expect that we will have, is going to resolve the issue. And, therefore, we will have to move with legislation.

It is incumbent upon this Subcommittee and the full Committee then to take action. The challenges to our trading partners are significant. And for those of us who believe that trade is critical for our country's economic well-being, and especially for our agricultural economy throughout the 50 states, we can look at some harsh retaliation efforts that will take place if, in fact, what many of us conclude will occur in the next several months. As a matter of fact, and I suspect some of the witnesses will testify to this point, the Canadian Government has already published a list of commodities that will be subject to retaliatory measures. Estimates say that the impact could well be over $1 billion in California alone. We annually export a great deal. In California, our agricultural exports last year totaled over $18.5 billion, so this is significant.

I remember very clearly, only a few years ago, when we had a similar issue on trade with the Mexican Government on the trucking dispute, devastating effects, as we saw the Mexican Government take action on a host of issues involving agricultural products that we import—or export, excuse me, to Mexico. It was estimated that those retaliatory tariffs cost U.S. agriculture over $2.6 billion. Of course, it was Mexico's right to take that action. And it also impacted jobs, and when we have a recovering economy, jobs are critical. No one wants that, I don't believe. No one wants to see any retaliatory efforts made by Canada or Mexico. And I know that—or I sense, in talking with officials of those two governments, that they don't want to impose these proposed retaliation tariffs.

So I am pleased that this hearing is taking place this morning. It gives us an opportunity to establish a record as to the potential impacts. And I would also like the witnesses to suggest how you think we might want to go about with legislation in the event that action takes place, as many of us believe that it will. However, it is important that once this process is complete, that the Congress resolve this issue.

In closing, Mr. Chairman, I have heard from the livestock industry, the pork producers, as well as people from the wine and tree and other manufacturing processing industries throughout California who are very concerned about the potential retaliatory effects that could be taken by Canada and Mexico. It is time we get to work.

And again, thank you, Mr. Chairman, for calling this hearing of the Subcommittee. Thank you, Mr. Chairman, of the full Committee, because you and I talked about this issue over the last several years, and I know it concerns you as well. So I look forward to listening to the testimony.

The CHAIRMAN. Thank you, Mr. Costa.

I would now like to recognize the Chairman of the full Committee, Chairman Conaway.

OPENING STATEMENT OF HON. K. MICHAEL CONAWAY, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Mr. CONAWAY. Thanks, Chairman Rouzer, and, David, thank you for those kind comments.

I just want to do a couple of things. One, congratulate you on your chairmanship, and you are chairing your very first official hearing. You bring great talent and a wealth of background and experiences to the tasks, and I have great confidence in you and Mr. Costa that you will get this done.

I also want to thank our witnesses for coming here today to help us understand some of the retaliatory impacts that may occur if we fail to act, and in fact, the WTO rules against the appeal that is out there. This debate surrounding Mandatory Country-of-Origin Labeling precedes my term in Congress, although as a freshman, one of my first Floor speeches related to agriculture was related to this topic. In spite of the reservations that cattlemen and pork producers expressed at the time this was being considered that it wouldn't work and that we would suffer consequences as a result of it. Congress decided to go ahead and try to implement it, at great costs, and in my view, unquantifiable benefits as a result of this process. In addition to that, the impact has been that our North American livestock market has been fractured unnecessarily, and again for no good reason.

So as we examine the impacts of retaliation, if we lose the appeal, I hope that the Members will also recognize the failure of this experiment, and work together to avoid the economic damages that will be felt by American businesses both inside and outside agriculture.

So with that, Mr. Chairman, good luck on your role as Chairman of this Subcommittee, and I look forward to your leadership. I yield back.

[The prepared statement of Mr. Conaway follows:]

PREPARED STATEMENT OF HON. K. MICHAEL CONAWAY, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Thank you, Chairman Rouzer and Ranking Member Costa, for holding this important hearing.

Thank you, also to all of our witnesses for taking your time to be here today and helping us understand the consequences we face if we fail to act and the WTO appellate body ultimately finds against the United States as the previous panels have.

The debate surrounding mandatory country-of-origin labeling for meat precedes my being a Member. In fact, as a freshman Member of this House, one of my very first Floor speeches related to agriculture was on this very topic.

Considering the discussions that took place prior to the initial passage of COOL in 2002, mainstream cattlemen and pork producers have raised concerns that this policy would likely not withstand legal challenges in the WTO. Yet we proceeded to implement a program with enormous costs and no quantifiable benefits. Our North American livestock market has been unnecessarily fractured by this policy, but I believe that the damage can be repaired.

As we examine the impacts of retaliation if we lose this appeal, I hope that all Members will recognize the failure of this experiment and work together to avoid the economic damages that could be felt by American businesses both inside and outside of agriculture.

Once again, I thank Chairman Rouzer for holding this hearing and yield back.

The CHAIRMAN. Thank you, Mr. Chairman. I appreciate your confidence and look forward to working in this role as well.

The chair would request that other Members submit their opening statements for the record so the witnesses may begin their testimony, and to ensure that there is ample time for questions.

[The prepared statement of Mr. Goodlatte follows:]

PREPARED STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM VIRGINIA

Chairman Rouzer and Ranking Member Costa, thank you for holding this critical hearing to examine the implications of potential retaliatory measures to be taken against the United States in response to meat labeling requirements under the mandatory country-of-origin labeling requirement. As you know, our nation now stands at a cross roads as we face the daunting impacts of international trade retaliation as the World Trade Organization's (WTO) Appellate Body is scheduled to rule shortly on whether the U.S. mandatory Country-of-Origin (COOL) rule violates World Trade Organization (WTO) obligations.

The COOL provisions, as originally written, have raised many concerns among producers, processors, suppliers and retailers. In response, I have long called for a voluntary program that is market driven, recognizes existing labeling programs, minimizes record-keeping, allows flexibility, trade compliant and is cost-effective.

As you know, in 2002, Congress enacted mandatory country-of-origin labeling (COOL) provisions requiring retailers of certain meat products to inform consumers of a product's country-of-origin. In June of 2003, when I chaired the House Committee on Agriculture one of the first hearings on COOL portended the serious widespread impacts, as I was able to note at that time, "This hearing reinforces my belief that we are moving forward with an idea that will have a negative impact on our producers, and little or no benefit for those it was intended to help."

In 2005, I was led to introduce voluntary country-of-origin labeling (VCOOL) legislation, which would have established a voluntary program to allow producers to work with processors and retailers to provide labeling information in the marketplace in such a way that informs consumers and benefits producers. As I noted 10 years ago, "this approach benefits consumers and producers and is preferable to a mandatory program that is more likely to hurt the people it was intended to help."

It has now been nearly 13 years since enactment of the 2002 Farm Bill and yet there is still a lack of consensus about how the COOL provisions could be implemented not only in a cost effective manner but in a manner compliant with our trade obligations. Even the U.S. Department of Agriculture estimated implementation costs stand at roughly $2.6 billion, with each affected commodity producer paying $370, intermediary firms paying $48, 219 each, and retailers paying $254,685 a piece.

In November 2014, Secretary of Agriculture Vilsack said that USDA analysis shows that there is no regulatory fix that will allow COOL regulations to be consistent with the COOL law and also satisfy the WTO rulings. The WTO's Appellate Body decision anticipated this spring will once again rule against the U.S. due to discrimination against imported livestock. Canada and Mexico have clearly stated that they will request WTO authorization to suspend concessions with the United States, through retaliation, in the form of raising tariffs on U.S. products that they import.

My home, the Commonwealth of Virginia could face tariffs on $331 million worth of exports, including targeted retaliation already proposed by Canada impacting 22 key state exports such as bread and pastries $17 million, fresh chilled poultry parts $6 million, prepared cocoa and chocolate products of $4 million, impacting my Congressional district, and as importantly restricting worldwide global trading markets.

The stated intent of those who advocate a mandatory COOL scheme has been to benefit producers, which is a worthy goal. Unfortunately, United States' continued failure to bring the Country-of-Origin Labeling (COOL) rules into compliance with its WTO obligations is threatening the U.S. economy and exports to our two largest trading partners. With the threat of retaliation looming for wide range of our nation's agricultural as well as manufactured products, Congress must move quickly to address these WTO-inconsistent provisions—to preserve both our standing in world international trade markets and sustain economic capacity for our nation.

The CHAIRMAN. The chair would like to remind Members that they will be recognized for questioning in order of seniority for

Members who were present at the start of the hearing, after that, Members will be recognized in order of their arrival. I appreciate Members' understanding.

The witnesses are asked to limit their oral presentation to 4 minutes. All written statements will be included in the record.

I would like to welcome our witnesses to the table. First, we have Mr. John Weber, President-Elect, National Pork Producers Council; Mr. Christopher Wenk, Executive Director of International Policy, U.S. Chamber of Commerce; Mr. Roger Johnson, President, National Farmers Union; Ms. Linda Dempsey, Vice President of International Economic Affairs, National Association of Manufacturers; Mr. Alison—pardon me, Mr. Tom LaFaille, Vice President and International Trade Counsel of the Wine Institute. I almost skipped you there. My apologies. Ms. Alison Bodor, Executive Vice President, National Confectioners Association; and Mr. Michael Smith, Special Projects Manager, Harris Ranch Company, Selma, California.

Mr. Weber, please begin when you are ready.

STATEMENT OF JOHN P. WEBER, PRESIDENT-ELECT, NATIONAL PORK PRODUCERS COUNCIL, DYSART, IA

Mr. WEBER. Mr. Chairman, I appreciate the opportunity to represent NPPC at this hearing today.

Exports add significantly to the bottom line of each U.S. pork producer. U.S. exports of pork and pork products totaled 2.18 million metric tons in 2014, representing over ¼ of our total production. These exports add more than $63 to the value of each and every hog marketed. Mexico and Canada are our second and third largest foreign markets for pork, with U.S. exports totaling $1.55 billion and $904 million respectively.

Our exports to Canada since the implementation of the U.S.-Canada Free Trade Agreement in 1989 have grown over 20 times. Our pork exports to Mexico since NAFTA in 1994 have grown by over 12 times. We cannot afford to have these exports disrupted, nor can workers in allied sectors.

The U.S. pork industry supports an estimated 550,000 domestic jobs, mostly in rural areas, and about 110,000 of these are the result of pork exports. The loss of the Mexican and Canadian markets, valued at $2.4 billion, could, therefore, cost over 16,000 non-farm jobs. But these job losses are only those that relate to pork exports. According to a CRS report, it has been estimated that retaliation by both Mexico and Canada could target between $1 billion and $2 billion in exports from the United States. Other estimates suggest it could exceed $2 billion, and Canada and Mexico will likely seek an even higher number; perhaps as much as a combined total of $4 billion. If it comes to this, a WTO panel will ultimately decide the actual number. But any of these figures could result in a devastating blow to tens of thousands of people in our sector and others.

Canada has published a list of over three dozen categories of products that could be hit. Mexico has not yet made public its list, but our experience with retaliation by Mexico resulting from its successful challenge to the U.S. ban on Mexican trucking suggests

that its list will be at least as long, and likely quite similar to the trucking retaliation. That retaliation totaled $2.4 billion.

We understand that Mexican importers are already looking for alternative sources of supply for products on the list. There is no way we can compete with products from other countries when our products are subject to steep retaliatory duties.

Regrettably for us, pork is on Canada's target list and will likely be on Mexico's. Because COOL involves agricultural products, retaliation is inevitably going to fall heavily on U.S. agriculture. If the situation were reversed, the United States would retaliate against imported products in the same sector. When the European Union refused to lift its illegal ban on imports of U.S. beef in the hormone dispute, we retaliated against European food products. But that dispute, involving trade of $93 million, pales in comparison with the Country-of-Origin Labeling case in terms of the scope of the retaliation involved.

Because the damage to U.S. exports will be multiplied across our economy, the economic effect will greatly exceed whatever retaliation is ultimately authorized by WTO, and will hurt many Americans that had nothing to do with implementing COOL. Not only will innocent bystanders be harmed, the economy as a whole will suffer. Professor Dermot Hayes of Iowa State University calculates that the effect of $2 billion in retaliation would be 17,000 lost U.S. jobs. Retaliation of $4 billion would double this figure. Estimates of state-by-state job losses are contained in *Attachment 1* of the NPPC written statement.

We expect the WTO to once again rule against the United States in mid-May. Congress must be prepared to repeal the offending parts of the statute to bring the U.S. into compliance with WTO rules. Congress should not allow retaliation against pork producers and other sectors of the U.S. economy.

Thank you.

[The prepared statement of Mr. Weber follows:]

PREPARED STATEMENT OF JOHN P. WEBER, PRESIDENT-ELECT, NATIONAL PORK PRODUCERS COUNCIL, DYSART, IA

Introduction

The National Pork Producers Council (NPPC) is an association of 43 state pork producer organizations that serves as the global voice for the nation's pork producers. The U.S. pork industry represents a significant value-added activity in the agriculture economy and the overall U.S. economy. Nationwide, more than 68,000 pork producers marketed more than 111 million hogs in 2013, and those animals provided total gross receipts of more than $20 billion. Overall, an estimated $21.8 billion of personal income and $35 billion of gross national product are supported by the U.S. hog industry. Economists Daniel Otto, Lee Schulz and Mark Imerman at Iowa State University estimate that the U.S. pork industry is directly responsible for the creation of nearly 35,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture. It is responsible for approximately 111,000 jobs in the manufacturing sector, mostly in the packing industry, and 65,000 jobs in professional services such as veterinarians, real estate agents and bankers. All told, the U.S. pork industry is responsible for more than 550,000 mostly rural jobs in the United States.

The U.S. Pork Industry is Dependent on Exports

Exports add significantly to the bottom line of each U.S. pork producer. U.S. exports of pork and pork products totaled 2.18 million metric tons in 2014, representing over ¼ of U.S. production. These exports add more than $63 to the value of each hog marketed.

Mexico and Canada are the second and third largest foreign markets, respectively, for U.S. pork, with U.S. exports totaling $1.55 billion and $904 million, respectively. U.S. exports to Canada since the implementation of the U.S.-Canada Free Trade Agreement in 1989 have grown by over 20 times, while pork exports to Mexico since NAFTA in 1994 have grown by over 12 times.

The U.S. pork industry cannot afford to have these exports disrupted and nor can workers in allied sectors. The U.S. pork industry supports an estimated 550,000 domestic jobs, most in rural areas, and about 110,000 of these are the result of pork exports. The loss of the Mexican and Canadian markets valued at $2.4 billion could, therefore, cost over 16,000 non-farm jobs. But these job losses are only those that relate to pork exports. According to a CRS report,[1] it has been estimated that retaliation by both Mexico and Canada could target between $1 billion and $2 billion in exports from the U.S. Other estimates suggest it could exceed $2 billion, and Canada and Mexico will likely seek an even higher number, perhaps as much as a combined total of $4 billion. If it comes to this, a WTO panel will ultimately decide the actual number.

But any of these figures could result in a devastating blow to tens of thousands of people in the U.S. pork sector and others. Canada has published a list[2] of over three dozen categories of products that could be hit. Mexico has not yet made public its list, but U.S. experience with retaliation by Mexico, resulting from its successful challenge to the U.S. ban on Mexican trucking, suggests that its list will be at least as long and likely quite similar to the trucking retaliation list. That retaliation totaled $2.4 billion. It has been rumored that Mexican importers are already looking for alternative sources of supply for products on the list. There is no way the United States can compete with products from other countries when U.S. products are subject to steep retaliatory duties.

Regrettably for the U.S. pork industry, pork is on Canada's target list and will likely be on Mexico's. Because COOL involves agricultural products, retaliation is inevitably going to fall heavily on U.S. agriculture. If the situation were reversed, the United States would retaliate against imported products in the same sector. When the European Union refused to lift its illegal ban on imports of U.S. beef in the hormone dispute, the United States retaliated against European food products. But that dispute, involving trade of $93 million,[3] pales in comparison with the COOL case in terms of the scope of retaliation involved.

Because the damage to U.S. exports will be multiplied across the economy, the economic effect will greatly exceed whatever retaliation is ultimately authorized by the WTO and will hurt many Americans who had nothing to do with implementing the COOL law. Not only will innocent bystanders be harmed, the economy as a whole will suffer. Professor Dermot Hayes of Iowa State University calculates that the effect of $2 billion in retaliation would be 17,000 lost U.S. jobs. Retaliation of $4 billion would double this figure. Estimates of state-by-state job losses are contained in *Attachment 1.*

The Commerce Department recently reported[4] that nearly 30 percent of gross domestic product (GDP) growth over the last 5 years has been the result of export growth. Moreover, two of the three export markets that contributed the most to this export growth are Mexico and Canada. Retaliation by them would needlessly put a brake on an element of the U.S. economy that has been performing well.

The Cost of Retaliation is Not Worth the Insignificant Benefits from COOL

So what, one may ask, does our nation gain from COOL as it is presently constituted?

- COOL imparts no useful health or safety information to consumers. No health or safety rationale for COOL has ever been advanced by USDA, because, quite simply, there is none. Imported meat products are already subject to the same strict sanitary requirements applied to domestically produced meat.
- COOL imposes additional costs on processors that are passed onto consumers. Moreover, the need for the Department of Agriculture to ensure compliance means COOL adds costs to the taxpayer. 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)

[1] *http://fas.org/sgp/crs/misc/RS22955.pdf..*

[2] *http://www.international.gc.ca/media_commerce/comm/news-communiques/2013/06/07a.aspx?lang=eng*

[3] Congressional Research Service Report R40449.

[4] "The Role of Exports in the United States Economy," The U.S. Department of Commerce, May 13, 2014.

$48,219 each and retailers $254,685 each.[5] When USDA announced the modification of the COOL rule in May 2013 in a vain effort to comply with the adverse WTO ruling, it said that that change in the regulation alone would cost an estimated $123.3 million, with a range of $53.1 million to $192.1 million, and that 33,350 establishments owned by 7,181 firms will be either directly or indirectly affected by this rule. Of these establishments/firms, USDA estimated that 6,849 qualified as small businesses.[6]

- COOL has caused trade tensions with two of the largest trading partners of the United States, and now it appears that retaliation by them will result in significant additional costs to the U.S. economy in lost exports and jobs.

Because the WTO does not and could never have an enforcement arm, sanctioned retaliation tailored to bring rights and obligations back into balance is the only permissible recourse to address trade measures that have been judged not to comply with internationally accepted rules if nations do not act to bring those measures into compliance.

The United States has been the global leader in the creation of both a rules-based global trading system and a dispute settlement process within that system that is fair and balanced. The rules COOL has been found to violate are those the United States helped write and those the United States demanded other countries abide by in their treatment of U.S. exports. The United States is quick to applaud when panels find in its favor and quick to insist that U.S. trading partners bring offending measures into conformity with those rules.

The United States should be equally quick to do so itself.

Background

COOL became effective on Sept. 30, 2008, under an interim final rule published by USDA. USDA published a final rule with several changes to the interim final rule in January 2009, and the final rule took effect March 16 of that year.

The following table provides an overview of the rule and its complexity with respect to determining the appropriate label at the retail level.

[5] Congressional Research Service RS22955.
[6] *http://www.gpo.gov/fdsys/pkg/FR-2013-05-24/pdf/2013-12366.pdf*

Muscle Cuts & Ground Meat Categories	COOL Statutory Definition	AMS Final Rule (January 2009)	COOL Label at Retail Level
United States Country-of-Origin [Category A or Label A]	"beef [or] . . . pork . . . derived from an animal that was . . . exclusively born, raised, and slaughtered in the United States"	For beef and pork, means: "(1) From animals exclusively born, raised, and slaughtered in the United States; (2) From animals born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and slaughtered in the United States; . . ."	Product of the US(A).
Multiple Countries of Origin [Category B or Label B]	"beef [or] . . . pork . . . derived from an animal that is— (i) not exclusively born, raised and slaughtered in the United States; (ii) born, raised or slaughtered in the United States; and (iii) not imported into the United States for immediate slaughter"	For muscle cuts of beef and pork "derived from animals that were born in Country X or (as applicable) Country Y, raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter [defined as 'consignment directly from the port of entry to a recognized slaughtering establishment and slaughtered within 2 weeks from the date of entry'], the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y." For muscle cuts of beef and pork "derived from animals born, raised, and slaughtered in the U.S. that are commingled during a production day with muscle cuts [of beef and pork from animals born outside the U.S., raised and slaughtered in the U.S., and not imported for immediate slaughter], the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y." For muscle cuts of beef and pork "derived from animals that are born in Country X or Country Y, raised and slaughtered in the United States, that are commingled during a production day with muscle cut[s of beef and pork] derived from animals that are imported into the United States for immediate slaughter . . ., the origin may be designated as Product of the United States, Country X, and (as applicable) Country Y." "In each case, the countries may be listed in any order. In addition, the origin declaration may include more specific information related to production steps provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements."	Product of the U.S., Country X and Country Y (if applicable).
Imported for Immediate Slaughter [Category C or Label C]	"beef [or] . . . pork . . . derived from an animal that is imported into the United States for immediate slaughter"	"If an animal was imported into the United States for immediate slaughter [defined as 'consignment directly from the port of entry to a recognized slaughtering establishment and slaughtered within 2 weeks from the date of entry'], the origin of the resulting [beef and pork] derived from that animal shall be designated as Product of Country X and the United States."	Product of Country X, U.S.

Muscle Cuts & Ground Meat Categories	COOL Statutory Definition	AMS Final Rule (January 2009)	COOL Label at Retail Level
Foreign Country-of-Origin [Category D or Label D]	“beef [or] . . . pork . . . derived from an animal . . . not born, raised, or slaughtered in the United States”	“Imported [beef and pork] for which origin has already been established as defined by this law (*e.g.,* born, raised, and slaughtered or produced) and for which no production steps have occurred in the United States, shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale.”	Product of 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 pork, . . .”	“The declaration for ground beef, ground pork . . . shall list all countries of origin contained therein or that may be reasonably contained therein. In determining what is considered reasonable, when a raw material from a specific origin is not in a processor’s inventory for more than 60 days, that country shall no longer be included as a possible country-of-origin.”	Product of U.S., Country X, [and as applicable] Country Y, Country Z.

Source: Congressional Research Service Report RS22955.

Canada and Mexico initiated separate dispute settlement cases in December 2008. The two cases were combined in May 2010 because of the similarity of the claims. See *Attachment 2* for a full timeline of actions in this case. A WTO summary of key findings by various WTO bodies can be found in *Attachment 3* and at the WTO website: *https://www.wto.org/english/tratope/dispu_e/cases_e/ds384_e.htm*.

In short, Canada and Mexico both stated that they were not challenging mandatory country-of-origin labeling as such; they were arguing that COOL requirements, as implemented, act as a protectionist trade barrier that distorts competition between imported and domestic meat products. A major complaint involved the reservation of the "Product of the United States" label for animals that were born, raised and slaughtered in the U.S. They argued that this unfairly denied the use of that label to products from animals that were exported to the U.S. at a young age and subsequently raised and slaughtered in the United States. Mexico pointed out that 70 percent of the weight and value of the feeder cattle it exports to the U.S. is added within U.S. territory.

In July 2012, the WTO ruled against the United States, with the WTO Appellate Body finding that COOL "does not impose labeling requirements for meat that provide consumers with origin information commensurate with the type of origin information that upstream livestock producers and processors are required to maintain and transmit."

The United States then attempted to come into compliance with the WTO ruling by amending the regulation and requiring the industry to provide more information. A table comparing the two is provided here:

Category	2009 Label	2013 Label
A (U.S.)	Product of the United States	Born, Raised, and Slaughtered in the United States
B (Multiple)	Product of the United States and X; or, Product of the United States, X, and Y	Born in X, Raised and Slaughtered in the United States; or, Born in X, Raised in Y, Slaughtered in the United States.
C (Imm. Slaughter)	Product of X and the United States	Born and Raised in X, Slaughtered in the United States
D (Foreign)	Product of X	Product of X
Commingled (A) + (B)	Product of the United States and X	Prohibited
Commingled (B) + (C)	Product of the United States and X; or Product of X and the United States	Prohibited

In August 2013, Canada and Mexico formally initiated WTO compliance proceedings to challenge USDA's amended COOL rule. Canada and Mexico stated that, like its predecessor, the new regulation discriminates against meat products derived from livestock from their respective countries and, therefore, violates WTO rules.

On Oct. 20, 2014, a WTO compliance panel agreed with most the Canadian and Mexican claims, finding that the amended COOL rule "accords imported [Canadian and Mexican] livestock treatment less favorable than that accorded to like domestic livestock." The U.S. subsequently appealed that ruling, and the WTO Appellate Body is expected to rule on that appeal in May.

The WTO is likely once again to find that COOL violates WTO principles. Once that happens, Mexico and Canada will request the WTO to allow them to place retaliatory tariffs on U.S. pork and many other U.S. products. Absent Congressional or regulatory action to eliminate offending elements of the COOL statue, Canada and Mexico can be expected to retaliate against U.S. exports during the second part of this year.

U.S. Agriculture has Unfortunate Experience with Retaliation

On March 16, 2009, Mexico announced it would retaliate against the United States for the cancellation of the Cross-Border Trucking Demonstration Program. This action was taken as a result of a ruling by a neutral NAFTA dispute settlement panel, which found that the U.S. trucking restrictions were in breach of its NAFTA obligations. The Mexican announcement raised tariffs on 89 different U.S. products, ranging from many agriculture goods (pork, apples, soups and sauces, cheese, pears, pet food, potatoes, nuts, almonds, strawberries, onions, pistachios, peanuts, wine and various other fruits and vegetables) to such items as jewelry. These totaled $2.4 billion (2008 value) in U.S. exports. Perhaps no U.S. sector was as hard hit as the potato industry, which saw immediate losses in market share to Canada and prices to growers plummet. Potato producers learned the hard way that once a market is lost to competitors, it is hard and takes time to recapture. Sometimes a market is lost for good.

Mexico later decided to revise the list of affected products on Aug. 18, 2010, and raised the number of products to 99 valued at $2.03 billion (2009 value), with tariffs ranging from 5–25 percent. Sixteen products were dropped from the original list and 26 products were added to the revised list. This "carrousel" form of retaliation added additional uncertainty to markets and further harm to affected U.S. producers.

On July 6, 2011, the U.S. and Mexico signed a formal agreement, allowing Mexican trucks to operate in the U.S. as part of a pilot program, which resulted in the Mexican government phasing out the retaliatory tariffs.

Conclusion

The U.S. pork industry expects the WTO to once again rule against the United States in mid-May. Congress must be prepared to repeal the offending parts of the statue to bring the U.S. into compliance with WTO rules. Congress should not allow retaliation against pork producers and other sectors of the U.S. economy.

ATTACHMENT 1

Estimated American Job Losses Due to Retaliation for COOL by Canada and Mexico

	Job Losses from $2 Billion Retaliation	Job Losses from $4 billion in Retaliation
Alabama	108	215
Alaska	0	0
Arizona	874	1,749
Arkansas	130	260
California	828	1,657
Colorado	230	460
Connecticut	141	283
Delaware	24	48
Florida	93	186
Georgia	227	454
Hawaii	1	2
Idaho	79	158
Illinois	406	812
Indiana	828	1,657
Iowa	598	1,197
Kansas	418	837
Kentucky	74	148
Louisiana	598	1,197
Maine	34	68
Maryland	135	270
Massachusetts	307	614
Michigan	1,473	2,945
Minnesota	245	491
Mississippi	204	409
Missouri	287	573
Montana	14	28
Nebraska	437	874
Nevada	79	157
New Hampshire	74	147
New Jersey	249	497
New Mexico	44	88
New York	367	734
North Carolina	226	452
North Dakota	163	326
Ohio	460	920
Oklahoma	81	162
Oregon	63	125
Pennsylvania	382	764
Rhode Island	22	44
South Carolina	224	447
South Dakota	158	317
Tennessee	448	896
Texas	4,234	8,468
Utah	99	198
Vermont	52	104
Virginia	152	305
Washington	333	666
West Virginia	9	18
Wisconsin	283	565
Wyoming	4	8

Estimated American Job Losses Due to Retaliation for COOL by Canada and Mexico—Continued

	Job Losses from $2 Billion Retaliation	Job Losses from $4 billion in Retaliation
Total	17,000	34,000

Source: Dr. Dermot Hayes, Iowa State University.
Based on trade in products likely to be included in Canada's and Mexico's retaliation lists, as determined by the COOL Coalition.

ATTACHMENT 2

Major COOL Developments & WTO Dispute Settlement Case

May 13, 2002	COOL provisions are enacted in the 2002 Farm Bill to take effect on September 30, 2004 (P.L. 107–171, § 10816).
October 30, 2003	USDA's Agricultural Marketing Service (AMS) publishes in the *Federal Register* the proposed rule on COOL. The comment period, initially to close December 29, 2003, is extended to February 27, 2004.
January 23, 2004	Implementation of COOL for covered commodities except fish and shellfish is delayed until September 30, 2006, per enactment of the FY 2004 omnibus appropriations act (P.L. 108–199, Division A, § 749).
October 5, 2004	AMS publishes in the *Federal Register* the interim final rule on COOL for fish and shellfish.
April 4, 2005	COOL labeling for fish and shellfish takes effect.
November 10, 2005	Implementation of COOL for all other covered commodities is delayed until September 30, 2008, per enactment of the FY 2006 agriculture appropriations act (P.L. 109–97, § 792).
May 22, 2008	Amendments to the 2002-enacted COOL provisions become law in the 2008 Farm Bill (P.L. 110–246, § 11002), to take effect on September 30, 2008.
August 1, 2008	AMS publishes in the *Federal Register* the interim final rule to implement COOL for all covered commodities except fish and shellfish, to take effect on September 30, 2008.
December 16, 2008	Canada, joined by Mexico, holds consultations on COOL with the United States.
January 15, 2009	AMS publishes the final rule to implement COOL for all covered commodities, to take effect on March 16, 2009.
February 20, 2009	Secretary of Agriculture sends letter to meat and food industry representatives urging the voluntary adoption of three labeling changes.
March 16, 2009	COOL's final rule for all covered commodities takes effect.
June 5, 2009	Canada holds consultations with the United States to resolve differences on COOL.
October 7, 2009	Canada requests the establishment of a World Trade Organization (WTO) dispute settlement (DS) panel to consider its complaint on the U.S. COOL program. Mexico follows with a comparable request on October 9.
November 19, 2009	WTO establishes a DS panel to consider complaints made by Canada and Mexico on the U.S. COOL program.
November 18, 2011	WTO DS panel releases final report that concludes that some features of U.S. COOL discriminate against foreign livestock and are not consistent with U.S. WTO trade obligations.
March 23, 2012	The United States appeals the WTO DS panel's conclusions.
March 28, 2012	Canada and Mexico also appeal some of the DS panel's conclusions.
June 29, 2012	The WTO's Appellate Body (AB) issues its report, upholding the DS panel finding that U.S. COOL does not favorably treat imported livestock but reversing the other finding that COOL does not provide sufficient information to consumers on the origin of meat products.
July 10, 2012	Canada, Mexico, and the United States withdraw consideration of the AB report from the Dispute Settlement Body (DSB) agenda to provide more time to consult on the 90 day reporting requirement that was missed by the AB.
July 23, 2012	WTO's DSB adopts the AB report and the DS panel report, as modified by the AB report.
August 22, 2012	30 day deadline for the United States to inform the DSB about how it plans to implement the WTO findings.
August 31, 2012	United States informs the DSB that it intends to comply with the WTO recommendations and rulings, and states its need for a "reasonable period of time" to do so.
October 4, 2012	With Canada, Mexico, and United States unable to agree on what a reasonable period of time should be and on who the arbitrator should be, the WTO's Director appoints an arbitrator to determine this.
December 4, 2012	WTO's arbitrator announces his determination that the "reasonable amount of time" for the United States to implement the DSB's recommendations and rulings is 10 months from when the AB and DS panel reports were adopted (*i.e.,* May 23, 2013).
March 12, 2013	AMS issues a proposed rule to modify certain COOL labeling requirements for muscle-cut commodities to bring them into compliance with WTO's findings and to improve the COOL program's overall operation.

Major COOL Developments & WTO Dispute Settlement Case—Continued

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.
September 27, 2013	The DSB selects the members of the compliance panel, the same members that served earlier on the COOL dispute settlement panel.
February 18–19, 2014	The WTO's compliance panel hears the COOL case.
October 20, 2014	The WTO releases the compliance panel report. Parties have 60 days to appeal.
November 28, 2014	The United States appeals the findings of the compliance panel report.
February 16–17, 2014	Appellate Body hears the U.S. appeal of the compliance panel report.
May 18, 2015	Expected date of Appellate ruling on the U.S. appeal.

Main source: Congressional Research Service RS22955.

ATTACHMENT 3

WTO SUMMARY OF KEY FINDINGS OF THE DISPUTE SETTLEMENT PANEL, THE APPELLATE BODY AND THE COMPLIANCE PANEL

Summary of Key Findings of the Initial Dispute Settlement Panel Report, November 18, 2011

This dispute concerns: (i) the U.S. statutory provisions and implementing regulations setting out the United States' mandatory country-of-origin labeling regime for beef and pork ("COOL measure"); as well as (ii) a letter issued by the U.S. Secretary of Agriculture Vilsack on the implementation of the COOL measure ("Vilsack letter").

The Panel determined that the COOL measure is a technical regulation under the TBT Agreement, and that it is inconsistent with the United States' WTO obligations. In particular, the Panel found that the COOL measure violates Article 2.1 of the TBT Agreement by according less favorable treatment to imported Canadian cattle and hogs than to like domestic products. The Panel also found that the COOL measure does not fulfil its legitimate objective of providing consumers with information on origin, and therefore violates Article 2.2 of the TBT Agreement.

As regards the Vilsack letter, the Panel found that the letter's "suggestions for voluntary action" went beyond certain obligations under the COOL measure, and that the letter therefore constitutes unreasonable administration of the COOL measure in violation of Article X:3(a) of the GATT 1994. The Panel refrained from reviewing the Vilsack letter under the TBT Agreement, as it found that this letter is not a technical regulation under that agreement.

In light of the above findings of violation, the Panel did not consider it necessary to rule on the claims under Article III:4 of the GATT 1994 (national treatment) or on the non violation claims under Article XXIII:1(b) of the GATT 1994.

Summary of Key Findings of the Appellate Body Regarding the U.S. Appeal of the Panel Report

The appeal concerned primarily the COOL measure (the U.S. statutory provisions and implementing regulations setting out the United States' mandatory country-of-origin labeling regime for beef and pork), and the Panel's findings that this measure is inconsistent with Articles 2.1 and 2.2 of the TBT Agreement. The United States appealed both findings. Canada appealed certain aspects of the Panel's analysis under Article 2.2, and requested the Appellate Body to complete the legal analysis in the event that it reversed the Panel's finding under Article 2.2. Canada also raised conditional appeals with respect to the COOL measure under Articles III:4 and XXIII:1(b) of the GATT 1994. Although Canada originally also sought to have the Appellate Body make certain rulings with respect to the Vilsack letter, Canada withdrew these requests following the United States' assertion that this measure had been withdrawn.

The Appellate Body upheld, albeit for different reasons, the Panel's finding that the COOL measure violates Article 2.1 of the TBT Agreement by according less favorable treatment to imported Canadian cattle and hogs than to like domestic cattle and hogs. The Appellate Body reversed the Panel's finding that the COOL measure violates Article 2.2 of the TBT Agreement because it does not fulfil its legitimate objective of providing consumers with information on origin, and was unable to complete the legal analysis and determine whether the COOL measure is more trade restrictive than necessary to meet its objective.

In its analysis under Article 2.1 of the TBT Agreement, the Appellate Body agreed with the Panel that the COOL measure has a detrimental impact on imported livestock because its record-keeping and verification requirements create an incentive for processors to use exclusively domestic livestock, and a disincentive against using like imported livestock. The Appellate Body found, however, that the Panel's analysis was incomplete because the Panel did not go on to consider whether this de facto detrimental impact stems exclusively from a legitimate regulatory distinction, in which case it would not violate Article 2.1.

In its own analysis, the Appellate Body found that the COOL measure lacks even-handedness because its record-keeping 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 labeling 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 labeling requirements at all. Accordingly, the detrimental impact on imported livestock cannot be said to stem exclusively from a legitimate regulatory distinction, and instead reflects discrimination in violation of Article 2.1. For these reasons, the Appellate Body upheld the Panel's finding under Article 2.1.

In its analysis under Article 2.2 of the TBT Agreement, the Appellate Body found that the Panel properly identified the objective of the COOL measure as being "to provide consumer information on origin", and did not err in concluding that this is a "legitimate" objective. The Appellate Body found, however, that the Panel erred in its interpretation and application of Article 2.2. This was because 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 fulfillment, 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 Appellate Body therefore reversed the Panel's finding that the COOL measure is inconsistent with Article 2.2, but was unable to determine whether the COOL measure is more trade restrictive than necessary to fulfil a legitimate objective within the meaning of Article 2.2.

As the conditions on which Canada's appeals with respect to Articles III:4 and XXIII:1(b) of the GATT 1994 were made were not satisfied, the Appellate Body made no findings under these provisions.

At its meeting on 23 July 2012, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

Findings of the Compliance Panel with Respect to the Challenge by Canada and Mexico that the Revised U.S., Cool Regulation Complies with the Dispute Settlement Body Recommendations

The compliance panel found that the amended COOL measure violates Article 2.1 of the TBT Agreement because it accords to Canadian and Mexican livestock less favourable treatment than that accorded to like U.S. livestock. In particular, the compliance panel concluded that the amended COOL measure increases the original COOL measure's detrimental impact on the competitive opportunities of imported livestock in the U.S. market, because it necessitates increased segregation of meat and livestock according to origin; entails a higher record-keeping burden; and increases the original COOL measure's incentive to choose domestic over imported livestock. Further, the compliance panel found that the detrimental impact caused by the amended COOL measure does not stem exclusively from legitimate regulatory distinctions. In this regard, the compliance panel followed the approach of the Appellate Body in the original dispute by taking into account the amended COOL measure's increased record-keeping burden, new potential for label inaccuracy, and continued exemption of a large proportion of relevant products. These considerations confirmed that, as with the original COOL measure, the detrimental impact caused by the amended COOL measure's labeling and record-keeping rules could not be ex-

plained by the need to convey to consumers information regarding the countries where livestock were born, raised, and slaughtered.

The compliance panel determined that the complainants had not made a *prima facie* case that the amended COOL measure is more trade restrictive than necessary within the meaning of Article 2.2 of the TBT Agreement. In reaching this conclusion, the compliance panel found that the amended COOL measure makes a considerable but, given the exemptions from coverage, necessarily partial contribution to its objective of providing consumer information on origin.

The compliance panel further found that the amended COOL measure had increased the "considerable degree of trade-restrictiveness" found in the original dispute. The compliance panel also assessed the risks non-alignment of the objective would create in terms of consumer interest in, and willingness to pay for, different types of country-of-origin information. Additionally, the compliance panel reviewed four alternative measures proposed by the complainants and concluded that either they would not make an equivalent contribution to the relevant objective as the amended COOL measure would, or they were not adequately identified so as to enable meaningful comparison with the amended COOL measure. As a result, the compliance panel was not able to conclude that the amended COOL measure is more trade restrictive than necessary in the light of the proposed alternative measures.

The compliance panel found that the amended COOL measure violates Article III:4 of the GATT 1994 based on its finding that the amended COOL measure increases the original COOL measure's detrimental impact on the competitive opportunities of imported livestock in comparison with like U.S. products. In this regard, the compliance panel relied on the same considerations that informed its finding of detrimental impact under Article 2.1 of the TBT Agreement. However, consistent with Appellate Body jurisprudence, it was not necessary in order to find a violation under Article III:4 of the GATT 1994 for the compliance panel to determine whether the detrimental impact stemmed exclusively from legitimate regulatory distinctions.

The CHAIRMAN. Thank you, Mr. Weber.

Mr. Wenk.

STATEMENT OF CHRISTOPHER W. WENK, EXECUTIVE DIRECTOR OF INTERNATIONAL POLICY, U.S. CHAMBER OF COMMERCE, WASHINGTON, D.C.

Mr. WENK. Chairman Rouzer, Members of the Subcommittee, the U.S. Chamber is taking part in today's important hearing as co-chair, alongside the NAM (National Association of Manufacturers) of the COOL Reform Coalition. Launched 1 year ago, the COOL Reform Coalition includes companies and associations from a wide variety of sectors, including agriculture, agrifood and manufacturing that are advocating for U.S. compliance with obligations it has undertaken in the WTO agreements relating to the topic of this hearing.

COOL requirements are common and are often fully compatible with WTO agreements; however, an unambiguous series of rulings by WTO panels has recognized the U.S. COOL rule for muscle cuts of meat imposes real economic costs on the meat industry by forcing segregation of cattle and hogs, and requiring costly tracking systems and record-keeping. By imposing new costs exclusively on Canadian and Mexican producers has a discriminatory trade impact. This dispute has been unfolding for years and is now entering its final stage.

Why does this matter? Canada and Mexico are by far the largest markets for U.S. exports. Trade with our neighbors has reached $1.3 trillion annually. U.S. merchandise exports to Canada and Mexico rose by 66 percent over the past 5 years, topping $550 billion last year.

As noted, the COOL Reform Coalition is seeking U.S. compliance with its obligation under the WTO agreements. Our coalition is building on years of work by a variety of organizations representing ranchers, farmers, and food and agriculture businesses impacted by the COOL rule for muscle cuts of meat. Broad industry groups such as the Chamber have joined the debate over COOL to signal our concern about the broad impact retaliation could have on a wide variety of industries, including many well removed from agriculture. The Governments of Canada and Mexico have indicated they are fully prepared to proceed with WTO authorized retaliation against U.S. exports of agricultural, agrifood, and manufactured goods as soon as this summer, pending the outcome of the final appeal.

WTO-authorized retaliation by these two vital trading partners could result in billions of dollars of losses across multiple sectors. Many U.S.-made products will be subject to the steep tariffs that would effectively bar them from Canadian and Mexican markets.

A consensus has emerged that Congressional action is required to avert retaliation, and time for Congress to do so is running out. The WTO appellate body will release its final ruling no later than May 18, at which time it will be made public. Expert opinion is unanimous. This last ruling will confirm the U.S. is violating obligations it has undertaken as the member of the WTO. Over the past several years, the avenues open to the United States to avoid retaliation have dwindled. Our coalition proposed and advocated for several approaches, which are no longer feasible. Given the period of as little as 60 days between the announcement of the final ruling in May, and retaliation by Canada and Mexico, the only way to avert costly retaliation is for Congress to approve legislation repealing the COOL rule for muscle cuts of meat. For these reasons, the Chamber strongly urges Congress to move swiftly to approve legislation repealing the COOL requirements for muscle cuts of meat due to the imminent and all but certain adverse ruling by the WTO appellate body in May. Failure to do so would cost tens of thousands of American jobs, and jeopardize mutually beneficial trade relationships with our two closest neighbors and largest export markets.

The U.S. Chamber of Commerce and members of the COOL Reform Coalition appreciate the Committee's attention to this vital matter, and look forward to working with this Committee to reach this goal.

Thank you for the opportunity to testify today.

[The prepared statement of Mr. Wenk follows:]

PREPARED STATEMENT OF CHRISTOPHER W. WENK, EXECUTIVE DIRECTOR OF INTERNATIONAL POLICY, U.S. CHAMBER OF COMMERCE, WASHINGTON, D.C.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—*e.g.,*

manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

On the occasion of this hearing of the House Agriculture Committee on "the implications of potential retaliatory measures taken against the United States in response to meat labeling requirements," I am pleased to testify on behalf of the U.S. Chamber of Commerce and our members. The Chamber is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers of commerce and industry associations.

The Chamber is taking part in today's hearing as co-chair—alongside the National Association of Manufacturers (NAM)—of the COOL Reform Coalition. Launched 1 year ago, the COOL Reform Coalition includes companies and associations from a wide variety of sectors—including agriculture, agrifood, and manufacturing—that are advocating for U.S. compliance with obligations it has undertaken in the World Trade Organization (WTO) agreements relating to the topic of this hearing.

Country-of-origin labeling (COOL) requirements are common, and as promulgated in many countries and for many products, they are often fully compatible with the World Trade Organization (WTO) agreements. At least 70 countries have some kind of country-of-origin labeling requirement. In the United States, mandatory COOL rules require most retailers to provide country-of-origin labeling for fresh fruits and vegetables, fish, shellfish, peanuts, pecans, macadamia nuts, ginseng, meat and poultry.

The dispute under discussion today only involves muscle cuts of meat. It arose because, 2 decades after the North American Free Trade Agreement (NAFTA) entered into force, U.S. meat producers and their counterparts in Canada and Mexico have come to treat North America as an integrated market—just as U.S. manufacturers do.

It often makes good economic sense for cattle to be born, raised, and slaughtered in different places across the continent—north or south of the 49th parallel, or north or south of the Rio Grande. Taking these realities into account, the WTO has recognized the U.S. COOL rule for muscle cuts of meat imposes real economic costs on the meat industry by forcing segregation of cattle and hogs and requiring costly tracking systems and record keeping. These costs are real, and they make labeling requirements for meat different than for, say, almonds or apples, which are grown in one spot.

The WTO Dispute

This dispute has been unfolding for years, and it is now entering its final stage. The COOL rule for muscle cuts of meat is required by the 2002 Farm Bill as amended by the 2008 Farm Bill. In late 2009, less than 1 year after the COOL rule for muscle cuts of meat took effect, Canada and Mexico began the process of challenging it at the WTO. They argued that COOL reduces the value and number of cattle and hogs shipped to the U.S. market; by imposing new costs exclusively on Canadian and Mexican producers, it has a discriminatory, trade-distorting impact.

In July 2012, the WTO Dispute Settlement Body adopted an Appellate Body ruling that the COOL rule for muscle cuts of meat violated the WTO Technical Barriers to Trade (TBT) Agreement because it treats imported Canadian cattle and hogs, and imported Mexican cattle, less favorably than domestic livestock.

A deadline of May 23, 2013, was set for the U.S. Department of Agriculture (USDA) to bring U.S. regulations into alignment with obligations the United States has undertaken in the WTO agreements. On that date, USDA published a revised rule. Government officials of both Canada and Mexico stated that the revisions were inadequate. On September 25, 2013, Canada and Mexico requested the establishment of a compliance panel to determine whether the revised rule is compliant with obligations the United States has undertaken in the WTO agreements.

On October 20, 2014, a WTO compliance panel report again found the United States had failed to comply with its WTO obligations. In fact, it found the revised rule was even more discriminatory than the earlier version. The following month, the United States appealed this decision, and the WTO Appellate Body expects to

circulate its ruling on the appeal no later than May 18, at which time it will be made public.

In other words, the end of this long and winding road is within sight. The pain for U.S. agriculture and industry, however, could be just beginning.

Trade with Canada, Mexico is Vital to U.S.

The importance of the U.S. trade relationship with Canada and Mexico for American workers, farmers, ranchers, and companies of all kinds is worth bearing in mind. A trade dispute with a minor commercial partner can be damaging; a trade dispute with the two largest markets for U.S. exports could be highly damaging. Consider the dimensions of our economic ties to Canada and Mexico today:

Trade

- Since the North American Free Trade Agreement (NAFTA) entered into force in 1994, trade with Canada and Mexico has risen nearly fourfold to $1.28 trillion in 2013, and the two countries buy about ⅓ of all U.S. merchandise exports.
- The trade boom continues. U.S. merchandise exports to Canada and Mexico rose by 66% over the past 5 years, reaching $552 billion in 2014. In fact, our North American neighbors provided 39% of all growth in U.S. merchandise exports in the 2009–2014 period.
- Canada (population 36 million) again edged the EU (population 500 million) as the top market for U.S. goods exports in 2014. U.S. merchandise exports to Mexico (population 125 million) were nearly double those to China (population 1.4 billion), which is the third largest national market for U.S. exports.
- In fact, the United States in 2014 had a trade surplus in manufactured goods ($21.6 billion (*http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_003368.pdf*)) with Canada and Mexico, just as it has for the past 4 years. In 2013, the U.S. services trade surplus with Canada and Mexico reached $45 billion (*http://www.bea.gov/itable/*). The U.S. remains a significant net importer of petroleum from its North American neighbors.

Jobs

- Trade with Canada and Mexico supports nearly 14 million U.S. jobs, and nearly 5 million of these net jobs are supported by the increase in trade generated by NAFTA, according to a comprehensive economic study (*http://www.uschamber.com/reports/opening-markets-creating-jobs-estimated-us-employment-effects-trade-fta-partners*) commissioned by the U.S. Chamber.
- The expansion of trade unleashed by NAFTA supports tens of thousands of jobs in each of the 50 states and more than 100,000 jobs in each of 17 states, according to the same study.

Manufacturing

- Canadians and Mexicans purchased U.S. manufactured goods valued at $486 billion in 2014, generating more than $40,000 in export revenue for every American factory worker. To put this in context, these export earnings are equivalent to about half the annual earnings—including pay and benefits—of the typical American factory worker ($77,500).

Agriculture

- NAFTA has been a bonanza for U.S. farmers and ranchers. U.S. agricultural exports to Canada and Mexico rose by nearly 50% between 2007 and 2013, increasing from $27 billion to nearly $40 billion. Canada was the largest agricultural export market of the United States until it was overtaken by China in 2013, and U.S. agricultural exports to Mexico have quintupled since NAFTA entered into force.

Services

- With new market access afforded by NAFTA, U.S. services exports to Canada and Mexico have tripled, rising from $27 billion in 1993 to $93 billion in 2013. Among the services industries that are benefiting are: audiovisual; finance; insurance; transportation, logistics, and express delivery services; and software and information technology services.

Small Businesses

- Canada and Mexico are the top two export destinations for U.S. small- and medium-size enterprises, more than 125,000 of which sold their goods and services in Canada and Mexico in 2011 (latest available).

The Consequences of Noncompliance

As noted, the COOL Reform Coalition is seeking U.S. compliance with its obligations under the WTO agreements. Our coalition is building on years of work by a variety of organizations representing ranchers, farmers, and food and agriculture businesses impacted by the COOL rule for muscle cuts of meat.

Broad industry groups such as the Chamber have joined in the debate over COOL to signal our concern about the broad impact retaliation could have on a wide variety of industries, including many well removed from agriculture. The governments of Canada and Mexico have indicated they are fully prepared to proceed with WTO-authorized retaliation against U.S. exports of agricultural, agrifood, and manufactured goods as soon as this summer, pending the outcome of the final appeal.

WTO-authorized retaliation by these two vital U.S. trading partners could result in losses in the billions of dollars across multiple sectors including, but not limited to, food production, agriculture, and manufacturing. Many U.S.-made products would be subjected to steep tariffs that would effectively bar them from the Canadian and Mexican markets. As noted, the stakes are especially high because these are by far our largest export markets.

Our coalition website (*www.COOLReform.com*) offers a map that shows the products likely to face retaliation and the states where these agricultural and manufactured goods are produced. It is based on information provided by the governments of Canada and Mexico, indicating their explicit intentions to retaliate should the United States fail to comply with its trade obligations, driving home the potential cost to communities all across the United States.

Earlier experiences underscore how painful retaliation could be for American workers, farmers, and companies. After a dispute settlement panel ruled in Mexico's favor in the cross-border trucking dispute several years ago, Mexico levied steep retaliatory duties on $2.4 billion worth of U.S. goods. The impact was devastating for tens of thousands of American workers and farmers. Many of the same products are likely to be targeted in the event retaliation goes forward in the COOL dispute.

One prominent COOL supporter told a recent press conference that "undoubtedly the result of [an] appeal is going to be somewhat different" from the October ruling. He further said "there is strong legal standing to resolve the dispute," and he said the United States "may win on appeal."

This is highly unlikely. Not only have WTO panels issued multiple adverse rulings, the most recent WTO panel report finds the United States has violated not just one but two agreements—the bedrock GATT 1994 agreement, which is the cornerstone of the WTO and the global rules-based trading system, and the TBT agreement. As noted, the report found the latest, revised version of the COOL rule was even more discriminatory than its predecessor. In any event, there will be no denying the immediacy of the problem when the final ruling is released within approximately 8 weeks.

The U.S. Must Meet its WTO Obligations

It is clearly in the long-term economic interests of the United States to comply with the rules of the international trading system. After all, our country did more than any other to write these rules, from the General Agreement on Tariffs and Trade in 1947 to the creation of the WTO in 1995.

A host of studies shows the United States derives tremendous benefits from the open international trading system. One widely cited study shows that trade liberalization under these rules has boosted the income of the average American household by about $10,000 annually.

As a nation, the United States flaunts its obligations under the rules-based trading system at our peril. Since the WTO was created in 1995, other countries have brought a number of disputes against the United States to the WTO, and the United States has lost a number of these. The United States has always (eventually) amended its laws or changed its practices to conform to these adverse rulings. The United States has done so because it is in the country's interest to do so.

Further, American workers, farmers, and companies rely on these rules to secure access to overseas markets. Just a few months ago, a WTO panel ruled against India in a dispute brought by the United States relating to Indian restrictions on the importation of U.S. agricultural products. As U.S. Trade Representative Michael Froman said at the time: "This victory affirms the Administration's commitment to ensuring WTO Members play by the rules, and that America's farmers, workers and businesses get the fair shot they deserve to sell Made-in-America goods under WTO rules."

Today, the shoe is on the other foot. More than 95% of the world's consumers live outside our markets, but American farmers, workers, and companies will not be able

to sell their goods and services to those consumers if we fail to live up to these rules ourselves.

The Goal of the Coalition

A consensus has emerged that Congressional action is required to avert retaliation, and time for Congress to do so is running out. The WTO Appellate Body has announced it will circulate its ruling on the final U.S. appeal no later than May 18. WTO-authorized retaliation by Canada and Mexico could be authorized as soon as 60 days thereafter.

As we learned in the U.S.-Mexico cross-border trucking dispute, export sales of products targeted for retaliation can be lost even before authorized retaliation goes into effect. Sourcing managers planning future purchases will take into account likely retaliation and shift to vendors in other jurisdictions in response to the mere possibility of higher tariff-related costs in their supply chains. Once these sourcing relationships are lost, it can be years for companies to recover lost market share.

Over the past several years, the avenues open to the United States to avoid retaliation have dwindled. Our coalition proposed and advocated for several approaches which are no longer feasible. Given the period of as little as 60 days between the announcement of the final ruling in May and retaliation by Canada and Mexico, the only way to avert costly retaliation is for Congress to approve legislation repealing the COOL rule for muscle cuts of meat.

For these reasons, the Chamber strongly urges Congress to move swiftly to approve legislation repealing the COOL requirements for muscle cuts of meat due to the imminent and all-but-certain adverse ruling by the WTO Appellate Body in May. Failure to do so could cost tens of thousands of American jobs and jeopardize mutually beneficial trade relationships with our two closest neighbors and largest export markets.

The U.S. Chamber of Commerce and members of the COOL Reform Coalition appreciate the Committee's attention to this vital matter and look forward to working with the Committee to reach this goal.

The CHAIRMAN. Mr. Johnson.

STATEMENT OF ROGER JOHNSON, PRESIDENT, NATIONAL FARMERS UNION, WASHINGTON, D.C.

Mr. JOHNSON. Thank you, Mr. Chairman, for the opportunity to testify on County-of-Origin Labeling, and the status of the WTO dispute.

U.S. producers overwhelmingly support COOL. They are proud of what they produce. Consumers demand more and more information about the food that they purchase.

In July of 2013, AMI, NCBA, NPPC, and others representing meatpackers, went to court to block USDA's revised COOL rule. The packers essentially argued that their First Amendment right to free speech included their right to not tell consumers what they didn't want consumers to know. Ultimately, courts found in favor of USDA and in favor of the COOL label.

Now, as to the WTO dispute, USDA issued a final rule to implement COOL in 2009. Canada and Mexico challenged that law and rules of the WTO, claiming that COOL created a trade-distorting impact by reducing the value and number of cattle and hogs shipped to the U.S. In 2011, the WTO dispute settlement body found that COOL does not provide enough accurate information to consumers, objecting to commingling and to confusing language. The appellate body also found that the objective of COOL was, in fact, legitimate under WTO rules. The appellate body finally found that record-keeping and verification requirements were disproportionate with the information conveyed to consumers.

In response, 2 years ago, USDA changed the rules to require labels that show each production step and prohibited commingling. Canada appealed, and WTO, last October, found that the revised

rule improved the amount of information to consumers, but still required collection of too much information. The panel also noted that COOL was the least trade-restrictive measure to achieve the objectives of consumer disclosure. Both Canada and the U.S. subsequently appealed.

Its ruling is now expected in May 18. Given the narrowing of the scope of the issues in each successive WTO decision, it is entirely feasible that the appellate body may rule in favor of the U.S. If the body rules against the U.S., the WTO process provides for arbitration, after which potential sanctions could be authorized. In that case, a recent study by Auburn University's Dr. Taylor is important because it concludes that Canadian and Mexico beef producers suffered no damage as a result of COOL. That study is attached to my testimony.

Canada has been threatening retaliation, as we all know. Dr. Taylor, however, using mandatory price reporting data reported by the meatpackers, recently found that "COOL did not directly cause the declines in livestock exports to the U.S., which largely coincided with the substantial economic downturn that sapped demand for more expensive meat products." The report issued three main and substantial findings. First, fed-cattle prices basis actually declined after COOL went into effect, meaning Canadian cattle producers and U.S. cattle producers received the same price for the same product after COOL as before COOL. Second, COOL did not negatively impact imports of slaughter cattle. And third, COOL did not significantly affect imports of feeder cattle.

Dr. Taylor's study was very robust, and directly contradicts the study that the Canadians had entered into the WTO record using proprietary data that is, frankly, not publicly available. The robust study conducted by Dr. Taylor demonstrates that Canada and Mexico's argument of restricted market access to the U.S. market as a result of COOL is simply not true. Importation of cattle from other markets is subject to a number of other variables that are independent of COOL. COOL has not had a negative impact on the Canadian industry. This study is extremely important when assessing retaliatory claims made by Canada and Mexico.

I would urge you to wait until we get a final decision from the WTO before any legislation is considered.

Thank you.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF ROGER JOHNSON, PRESIDENT, NATIONAL FARMERS UNION, WASHINGTON, D.C.

Introduction

On behalf of family farmers, ranchers, and rural members of National Farmers Union (NFU), thank you for the opportunity to testify regarding the Country-of-Origin Labeling (COOL) law and the results of the pending World Trade Organization (WTO) dispute. NFU was organized in Point, Texas in 1902 with the mission of improving the well-being and economic opportunity for family farmers, ranchers, and rural communities through grassroots-driven advocacy. That mission still drives NFU's work today. As a general farm organization, NFU represents agricultural producers across the country and in all segments of the livestock industry, including many cow/calf operators. The U.S. has the largest fed-cattle industry in the world

and the largest production of high-quality, grain-fed beef. More than 35 percent of farm operations in the U.S. are classified as beef cattle operations.[1]

Although Congress passed the first COOL laws for food in the 2002 Farm Bill, labeling laws have existed in the U.S. since 1890. Tariff laws have required nearly all imports to display labels so that the consumer can identify the country-of-origin. For over 100 years, most agricultural commodities were excluded from the labeling laws. For decades, both consumers and farm organizations such as NFU have advocated that imported food ought to display the country-of-origin just like nearly every other product imported into the U.S. Farmers and ranchers support COOL because they are proud of the fruits, vegetables, nuts, and meat they produce. Consumers demand more and more information about the food they purchase and COOL gives them one more tool to make informed decisions. Over 10 years of consumer polling demonstrates that the vast majority of consumers want country-of-origin labels (*Appendix A*).

Since well before passage of the law or implementation of the first label, COOL has had its critics including those who filed a lawsuit in the U.S. District Court for the District of Columbia. In July of 2013, the American Meat Institute, the National Cattlemen's Beef Association and the National Pork Producers Council and several other trade associations representing meatpackers and feedlot operators went to the courts in an attempt to block USDA's revised COOL rule. They challenged the labels were a violation of the COOL statute and their First Amendment rights. Despite the vast consumer support and the long history of origin labels, the meat industry argued that their First Amendment right to free speech included their right not to tell consumers what they did not want consumers to know! Ultimately, the District Court, a three-judge panel of the D.C. Circuit Court, and the en banc court all found in favor of USDA and the COOL label. Earlier this year, the North American Meat Institute agreed to drop the lawsuit after the D.C. Circuit Court denied their petition for a rehearing on the statutory claim.

WTO Dispute

In 2009, the U.S. issued a final rule to implement COOL as directed by the 2008 Farm Bill. The regulations resulted in labels that were misleading and confusing, such as "Product of U.S., Canada" or "Product of Canada, U.S." NFU and many others supported a more detailed and accurate label that included information on where the animal was born, raised, and slaughtered. Prior to implementation of the final rule, Canada and Mexico challenged the law and interim regulations at the WTO claiming that COOL was inconsistent with the U.S.'s trade obligations by creating a trade-distorting impact by reducing the value and number of cattle and hogs shipped to the U.S. COOL implementation occurred just as the economy entered the Great Recession. Many factors influenced the cattle industry, outside of agriculture, including the value of the dollar as compared to the loony, large decreases in household incomes and consumer uncertainty. Income constrained consumers eat less beef and pork. In fact, price elasticity is one of the highest for any single food category; consumers are more sensitive to changes in beef prices as compared to other food products.

In 2011, the Dispute Settlement Body issued its report. The panel found that the COOL measure does not fulfil its legitimate objective of providing consumers with information on origin under Article 2.2 because the label did not provide enough information to consumers regarding the country-of-origin, which was later overturned by the Appellate Body. The label did not provide enough information on each production step because the label allowed for commingling and was needlessly confusing.

In 2012, the U.S. and Canada appealed certain issues covered in the panel report to the WTO Appellate Body. The Appellate Body found that the objective of COOL was, in fact, legitimate under WTO rules. This Appellate Body decision thus narrowed the scope of noncompliance with U.S. WTO obligations. The Appellate Body found that the record-keeping and verification requirements were disproportionate with the information conveyed to consumers on labels. All of the information that was required to be tracked was not communicated to consumers in an understandable manner or was inaccurate altogether. The costs of the regulation exceeded the benefit from disclosure in large part because the labels were so poor at communicating the information that was tracked by packers. Warnings of segregation costs have been massively overstated. Packers already have many tracking requirements including marketing traits such as Angus or grass-fed, USDA grades, and food safety.

[1] USDA 2012 Census of Agriculture.

In response to the WTO findings, the U.S. Department of Agriculture (USDA) made changes to the COOL requirements to comply with the WTO requirements. This included requiring labels that show each production step and prohibited the commingling of muscle cuts of meat from different origins. This provided much more specific and accurate information to consumers. After implementation of the revised final rule, Canada requested the establishment of a compliance panel.

The compliance panel report was distributed in October of 2014. The panel found that the revised rule resulted in an improvement in the amount of information that was conveyed to consumers, but the remaining exemptions and the lack of precision for labeling of meat from animals with origins from more than one country meant the COOL measures still required collection of more information than what was distributed to consumers. The panel also noted that COOL was the least trade restrictive measure to achieve the objectives of consumer disclosure.

Both Canada and the U.S. have appealed the compliance panel report to the Appellate Body. The Appellate Body is expected to issue its ruling by May 18. Given the narrowing of the scope of issues with the COOL measure, it is entirely feasible that the Appellate Body may rule in favor of the U.S. Once the WTO Appellate Body issues its report, and only at that time, would any governmental or legislative action be appropriate.

Once the WTO Appellate Body issues its report, the WTO dispute resolution process has another phase for arbitrations. Arbitration must be completed within 60 days of the report. Only after the arbitration phase would sanctions be authorized. Arguments would be heard by the arbitrator regarding the extent of the damages. Canada and Mexico would be required to prove the extent to which they suffered damages from market access restrictions, at which point their claims of $1 to $2 billion would be heavily scrutinized.

Critics of COOL, including the Canadian Government, have pressured Congress for reform of the law. Yet under the guise of reform, they have pushed for repeal of all or portions of the law that have no bearing on the WTO dispute, such as removing labels from chicken. As critics of the law have continued to point out, the U.S. has agreed to abide by the obligations of the WTO agreement. As the WTO dispute resolution process is still very much underway, Congressional action is not required at this time. It is highly unconventional for Congress to intervene in the WTO process until the WTO issues its final decision.

Economic Analysis on Impacts to Cattle Industry

Given Canada's shocking estimates of authorized retaliation, C. Robert Taylor, PhD, Alfa Eminent Scholar at Auburn University, analyzed Mandatory Price Reporting (MPR) data, which is required to be reported by the meatpackers. Dr. Taylor conducted a longitudinal, multivariate econometric analysis (*Appendix B*). His analysis found that, "COOL did not directly cause the declines in livestock exports to the United States, which largely coincided with a substantial economic downturn that sapped demand for more expensive meat products." The report issued three main and substantial findings: (1) Fed cattle price basis) declined after COOL went into effect (meaning Canadian cattle producers and U.S. cattle producers received the same price for the same product after COOL as before COOL; (2) COOL did not negatively impact imports of slaughter cattle; and (3) COOL did not significantly affect imports of feeder cattle.

The study used more robust data sources than the reports submitted to the WTO by Daniel Sumner, PhD, and Sébastien Pouliot, PhD. Sumner and Pouliot used proprietary data provided to them by the Canadian Cattlemen's Association, a staunch opponent of COOL. Dr. Taylor's analysis used the same metrics of cattle exports' market access as the Sumner and Pouliot studies, including the difference between Canadian and U.S. cattle prices, the share of imported cattle processed in U.S. slaughterhouses, and the share of Canadian feeder cattle placed on U.S. feedlots. Each of these indicators was analyzed qualitatively and econometrically using MPR data and monthly trade statistics. The econometric analysis was much more robust, providing conclusive evidence that the previous analysis done had reached erroneous conclusions. The analysis addressed omitted variable bias and model specification limitations. The Sumner and Pouliot analyses failed to account for comparable cattle purchase arrangement techniques (negotiated purchase, captive supplies, and packer-owned cattle). Sumner and Pouliot also failed to compare cattle of similar grades.

Fed Cattle Price Basis Declined After COOL Went Into Effect

The weekly MPR data showed that the price basis was generally lower by class, grade, and purchase arrangement after COOL implementation than the previous 4 years (*Appendix B*). If the claims of substantial segregation costs for COOL compli-

ance rang true, the industry would expect to see an increase in the price basis after COOL went into effect. *Table 1* of the report (*Appendix [D]*) shows the price basis by class, grade, and purchase arrangement before and after COOL implementation computed as paired averages. Due to the differences in purchase arrangements domestically and in Canada, comparisons must include analysis of the types of purchase arrangements. Imported slaughter cattle are often purchased under a forward contract, but domestic acquisitions are usually under formula arrangements or the cash market. The weekly prices received for imported and domestic slaughter steers and heifers averaged over all grades and purchase arrangements generally moved together (small basis) except for in 2008 and 2009 when import prices were well above domestic prices and in 2011 and 2014 when import prices were well below domestic prices. The differences are not due to COOL, but rather are due to different arrangements dominating domestic and import slaughter cattle purchases. For instance, forward contracts accounted for 54 percent of imports, but only eight percent of domestic slaughter over the past 10 years.

COOL Did Not Negatively Impact Imports of Slaughter Cattle

Sumner and Pouliot reported finding that COOL negatively impacted imports of slaughter cattle, but in statistical terms, this finding is not robust. Their model suffered from omitted variable bias and confounded results. Taylor reports that with the addition of weekly captive supply and more observations dating back to 1995 (to account for the ban due to Bovine spongiform encephalopathy), the results of the Sumner and Pouliot regression gives statistically insignificant results. Taylor's finding is more robust than the Sumner and Pouliot finding. Including captive supplies of both domestic and foreign slaughter cattle is necessary because studies have shown that captive supplies have a negative effect on acquisition price, which could impact the number of head slaughtered. Additionally, captive supplies may directly impact trade and confound interpretation of binary variables (such as COOL) in econometric models.

COOL Did Not Significantly Affect Imports of Feeder Cattle

Because feeder cattle are especially responsive to changes in weather, economic conditions and lifecycle variability, numerical comparisons of imports of feeder cattle is very sensitive to the time period chosen. In the 3 years prior to full implementation of COOL, an average of 10,416 feeder cattle were imported monthly to the U.S. Since that time, the number has fallen to 7,456 feeder cattle imported per month. Yet, the base for comparison paints a misleading picture. The average number of imports over 1990 to 2003 was 7,047. Using a similar model to Sumner and Pouliot, Dr. Taylor found no significant impact of COOL on either Canadian or Mexican feeder cattle imports. Over the period from 2013 to 2014, U.S. imports of Canadian feeder cattle are the highest they have been in 20 years, with the exception of 2001 and 2002 when Alberta suffered an extreme drought, causing a spike in U.S. imports.

Conclusion

The robust analysis conducted by Dr. Taylor demonstrates that Canada and Mexico's argument of restricted market access to the U.S. market as a result of COOL is simply not true. The importation of cattle from other markets is subject to a number of other variables that are independent of COOL. COOL has not had a negative impact on the Canadian cattle industry. This study is extremely important when assessing the retaliation claims made by Canada and Mexico. If Canada and Mexico cannot prove damages, they will not be authorized to retaliate.

APPENDIX A

Consumers Overwhelmingly Support Country-of-Origin Labeling[2]

Poll	Year	Question	Response
Fresh Trends	2002	Percent who feel that fresh produce items, packages or displays should be labeled to identify country-of-origin	86%
National Farmers Union	2004	Do you think food should be labeled with country-of-origin information?	82% Yes

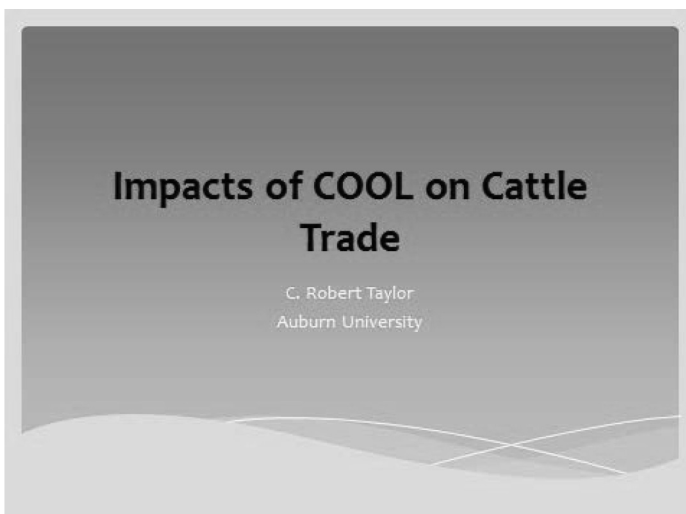
[2] Compiled by Consumer Federation of America.

Consumers Overwhelmingly Support Country-of-Origin Labeling [2]—Continued

Poll	Year	Question	Response
Public Citizen	2005	Do you favor or oppose requiring the meat, seafood, produce and grocery industries to include on food labels the name of the country where the food is grown or produced?	85% Favor
Food & Water Watch	March 2007	Should the food industry be required to provide [country-of-origin] information, or should the food industry be allowed to decide on their own?	82% Required
Consumers Union	July 2007	Imported foods should be labeled by the country-of-origin.	92% Agree
Zogby	August 2007	Consumers have a right to know the country-of-origin of the foods they purchase.	94% Agree
Consumers Union	November 2008	Country-of-origin labeling for products should always be available at point of purchase.	95% Agree
Consumers Union	October 2010	Consumers would prefer to have a country-of-origin label on the meat that they buy.	93% Agree
Consumer Federation of America	May 2013	Food sellers should be required to indicate on the package label the country-of-origin of fresh meat they sell.	90% Agree
		Food sellers should be required to indicate on the package label the country or countries in which animals were born, raised and processed.	87% Agree

[Appendix B]

Dr. Robert Taylor's Powerpoint Presentation on Impacts of COOL on Cattle Trade



Data Sources

- **Mandatory Price Reporting (MPR) weekly data**, 9/2005 through 11/2014 (not analyzed in previous COOL studies)
- **Monthly U.S. Cattle and Trade data** from various government sources, 1995-2014
- **Monthly CanFax data** (limited)
  - Public distribution of detailed Canadian cattle market statistics is controlled by the Canadian Cattlemen's Association)
- **Canadian Price and Slaughter Weekly Data** Obtained from AMS/USDA, 2005-2014

Price Basis[a] Before and After COOL, U.S. dollars

	Purchase Arrangement	Before COOL (9/5/2005--3/9/2009)	After COOL (3/16/2009--12/15/2014)
Slaughter Cattle (Dressed weight)	Formula Net	-$3.30	-$2.04
	Forward Contract Net	-$4.78	-$0.38
	Negotiated Grid Net	-$1.03	-$0.72
Feeder Cattle	Alberta Steer compared to Nebraska	-$24.38	-$17.45

[a] Price basis is defined to be the price for imports minus the price for cattle of domestic origin. Averages based on paired comparisons excluding weeks where there were no transactions, domestic or import, under the stated purchase arrangement. Negotiated cash prices are not shown because few imported cattle are acquired in a cash transaction on a live weight basis.

Price Basis[a] Before and After COOL, U.S. Dollars

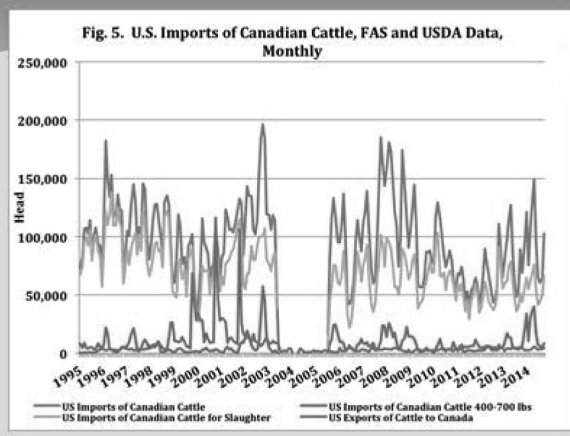
- **Fed cattle price basis went down for most classes, grades and purchase arrangements**
  - An expanded Table is included in the report

Answers to Questions

(based on qualitative and econometric analyses)

- Did the Fed Cattle Price Basis Decline After COOL Was Implemented? **NO**
- Did the Feeder Cattle Price Basis Decline after COOL was Implemented? **NO**
- Did COOL Negatively Impact Imports of Feeder Cattle? **NO**
- Did COOL Negatively Impact Imports of Slaughter Cattle? **Unlikely**
  - Econometric evidence of a significant effect of COOL is weak; results depend on observation period, data source, and model specification
  - Likely omitted variable bias in other studies

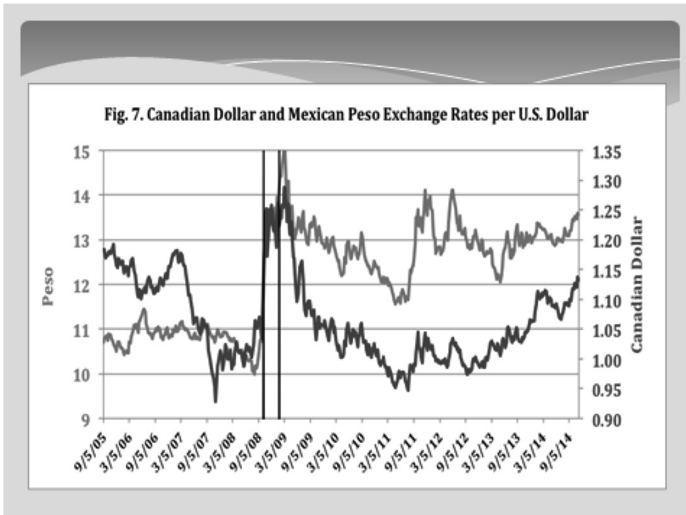
Cattle Trade with Canada



Confounding Economic Effects

(that are difficult if not impossible to capture in an econometric model)

- Events associated with the economic meltdown in 2008, corresponding with implementation of COOL
  - Demand uncertainty
  - Dramatic changes in the Canadian dollar and Mexican Peso exchange rates
- Purchase arrangements for slaughter cattle
  - Domestic acquisitions dominated by formula (marketing agreements) tied to a residual cash market price
  - Import acquisitions dominated by forward contracts, tied to the cattle futures market and/or exchange rate futures
- Fluctuations in Captive Supply

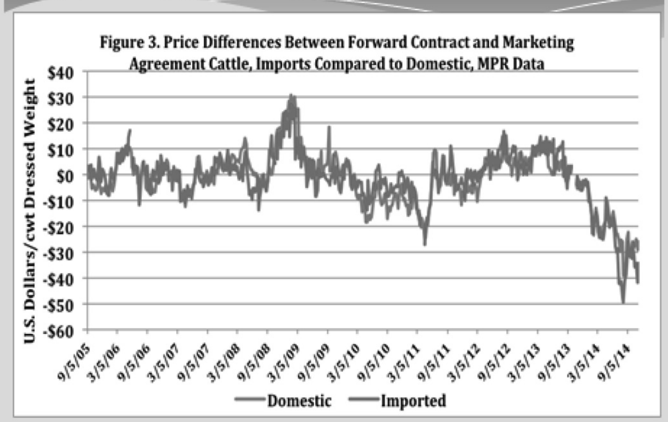


Imported Captive Supply by Purchase Arrangement

Captive Supply as a % of Total Slaughter Cattle, MPR Data			
Time Period	Formula	Forward Contract	Negotiated
Pre-COOL	46%	52%	2%
Post-COOL (through 2014)	21%	55%	23%
Post-COOL (through 2013)	21%	51%	27%
Since Dec. 2013	22%	78%	1%

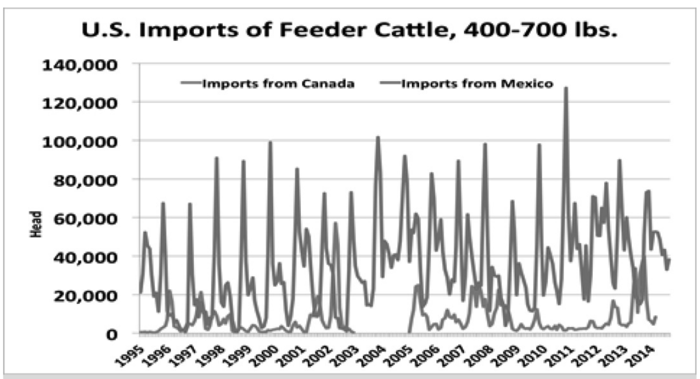
- The cash (negotiated) market for imported slaughter cattle is very thin, and non-existent during some periods
- The extent of the cash market for Canadian cattle slaughtered in Canada is unknown, but CCA collects Canadian captive supply information (unavailable)
- A detailed report by the Canadian NFU in 2008 highlighted problems with Canadian and U.S. captive supply

Extended Periods of Basis Differences in 2008, 2010, and 2014, that are due to Price Differences Under Different Purchase Arrangements, not COOL

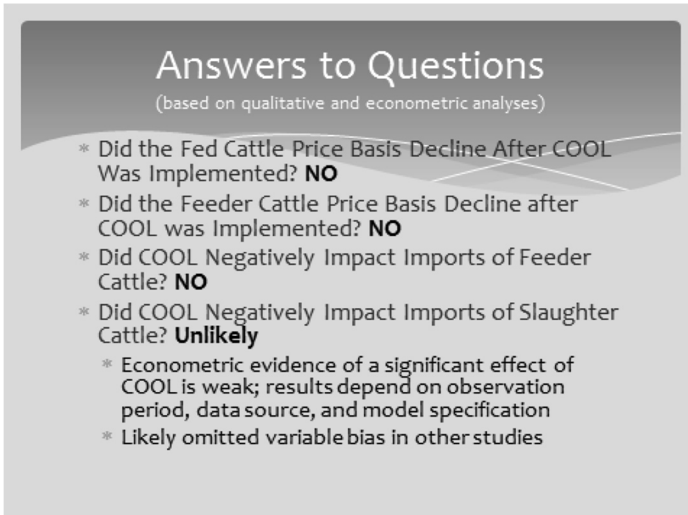


Feeder Cattle Imports

U.S. Imports of 400-700 lb Cattle		
Period	Canada	Mexico
Pre-COOL, pre-BSE (1990-2002)	6,934	25,824
Pre-COOL (but after 9/2005)	10,416	38,794
Post-COOL	7,456	43,458



* The spike in Canadian imports of feeder cattle in 2002 was due to extreme drought
* COOL did not have a statistically significant negative effect on the ratio of imports of Canadian or Mexican feeder cattle to U.S. feedlot placements (based on monthly data)



APPENDIX C

Preliminary Estimates of the Impacts of U.S. Country-of-Origin Labeling (COOL) on Cattle Trade

C. Robert Taylor

January 13, 2015

Summary

The United States Mandatory Country-of-Origin Labeling (COOL) regime has not impaired cattle export market access to the United States. In 2008, the United States enacted and implemented COOL as part of the 2008 Farm Bill to ensure consumers could know the country-of-origin of many meat, fruit, vegetable and nut products that they purchase. This longitudinal multivariate econometric analysis found that COOL did not directly cause the declines in livestock exports to the United States, which largely coincided with a substantial economic downturn that sapped demand for more expensive meat products.

In 2009, Canada and Mexico challenged the COOL provisions related to muscle cuts of beef and pork as an alleged barrier to trade at the World Trade Organization for purportedly compromising their export opportunities and market access to the United States for live cattle and hogs. According to these countries, the cost of implementing COOL discouraged U.S. meatpacking and processing companies from purchasing livestock of non-U.S. origin and, as a result, reduced the prices of these livestock exports. In response to the WTO dispute, University of California-Davis professor Daniel Sumner and, in earlier submissions, with Iowa State University professor Sébastien Pouliot provided analysis bolstering these contentions (referred collectively as SP).

This study uses more robust data sources to assess the impact of COOL on market access and found that COOL has not had a significant negative effect on the price paid for imported slaughter cattle relative to comparable domestic cattle, COOL has not had a statistically significant negative effect on imports of feeder cattle relative to U.S. feeder cattle placements, and COOL has not had a negative impact on imported cattle for immediate slaughter.

This analysis uses the same metrics of cattle exports' market access as the SP analyses (including the difference between Canadian and U.S. cattle prices; the share of imported cattle processed in U.S. slaughterhouses; the share of Canadian feeder cattle placed on U.S. feedlots).[3] Each of these indicators was analyzed quali-

[3] The three factors in the SP analyses are: (a) the price basis, defined to be the price received for imported cattle minus the price of like cattle of domestic origin, (b) the ratio of imported

Continued

tatively and econometrically with weekly Mandatory Price Reporting (MPR) as well as monthly trade statistics. It also addresses several problems with omitted variable bias in the SP analysis, especially the failure to account for comparable cattle purchase arrangement techniques (negotiated purchases, captive supplies and packer-owned cattle) and comparing cattle of similar grades. The study uses data from the U.S. Department of Agriculture (USDA) for Mandatory Price Reporting (MPR) weekly data (from September 2005 to November 2014), USDA monthly data (1995 to 2014), USDA/U.S. Census Bureau trade data (1995 to 2014), monthly CanFax data (of limited availability) and USDA weekly data on Canadian feeder cattle prices (2005 to 2014).

Fed Cattle Price Basis Declined after COOL Went Into Effect: COOL did not increase the price basis for imported slaughter cattle according to a more thorough analysis of MPR data; in fact, the price basis is substantially lower in the 6 years since implementation of COOL than it was the preceding 4 years by class, grade, and purchase arrangement.

COOL Did Not Negatively Impact Imports of Slaughter Cattle: Qualitative and econometric analysis of MPR and monthly trade and price data cast considerable doubt on assertions that COOL negatively affected imports of slaughter cattle. Econometric results are sensitive to model specification, estimation technique, and time period. The SP analyses are subject to omitted variable bias, in part, because it did not recognize the confounding effects of domestic and imported captive supply of slaughter cattle, or macroeconomic and beef demand uncertainty during the time period when COOL was being revised and implemented.

COOL Did Not Significantly Affect Imports of Feeder Cattle: Using a comparable model to the SP model specification estimated with USDA monthly data on imports of 400–700 lb cattle did not show COOL having a significant negative effect of imports of feeder cattle from either Canada or Mexico relative to placements in U.S. feedlots.

The weight of credible economic and qualitative evidence demonstrates that COOL has had no demonstrable impact on the Canadian or Mexican cattle industries. Moreover, the analysis did not find that COOL resulted in substantial costs to beef packers, which would have been seen in lower reported prices. Finally, the robustness of the study provides more conclusive evidence that the SP analysis on behalf of the Canadian livestock and packing industry reached erroneous conclusions due to omitted variable and model specification limitations, and to disregard of the packers' own transaction data as reported under MPR.

Introduction

American consumers overwhelmingly support Country-of-Origin labeling (COOL) to ensure that they know the source of their food. Farmers want to be able to differentiate their products in an increasingly international marketplace. This widespread support led to the enactment and implementation of Mandatory Country-of-Origin Labeling in the 2008 Farm Bill.[4]

Canada and Mexico immediately challenged COOL at the World Trade Organization (WTO) as a barrier to trade and the WTO dispute has continued since late 2008. In 2013, the United States strengthened the consumer disclosure on COOL labels to comply with the original WTO dispute resolution report. It is worth noting that the WTO has consistently ruled in favor of the legitimacy of the goal of COOL labeling and that COOL labels serve their intended purpose of informing U.S. consumers.

Canada and Mexico have contended that the COOL measures (as originally implemented and as strengthened in 2013) unfairly discriminated against livestock imports and gave an advantage to domestic livestock producers and that the compliance costs of COOL effectively create a barrier to export market access (in both volume and price of exported livestock). The Canadian Government continues to allege that the COOL label itself has reduced livestock export market access to the United States by $1.4 billion annually.[5]

Key considerations in determination of whether COOL negatively affected Canada and Mexico's cattle industry are: (a) the price basis, defined to be the price received for imported cattle minus the price of like cattle of domestic origin, (b) the ratio of

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cattle slaughtered in the U.S. to cattle of domestic origin, and (c) the ratio of imported feeder cattle to U.S. placements of feeder cattle in domestic feedlots.

[4] A series of legal and political difficulties have bedeviled implementation of Country-of-Origin Labeling (COOL) of beef and selected other food products since U.S. Congress mandated labeling in the Farm Security Act of 2002 then revised in the Food, Conservation, and Energy Act of 2008.

[5] *See* Tomson, Bill. "Canada's estimate of COOL damages: $1.4B per year." *Politico.* December 24, 2014.

imported cattle slaughtered in the United States to cattle of domestic origin, and (c) the ratio of imported feeder cattle to U.S. placements of feeder cattle in domestic feedlots. This report addresses each of these economic indicators with a more thorough econometric analysis and finds that COOL has not impaired livestock market access to the United States.

In a consulting report done for the Canadian Cattlemen's Association (CCA) and the Canadian government, with Canadian cattle market data provided by CCA, Sumner and Pouliot and Sumner (SP) found "*significant evidence of differential impacts of COOL through widening of the price bases and a decline in ratios of imports to total domestic use for both fed and feeder cattle.*" Veracity of the PS report cannot be determined because much of the Canadian data on which their econometric analyses were based is not publicly available, and public use of the data is controlled by CCA.[6] This study and subsequent studies by Sumner (collectively referred to as SP throughout) that relied on proprietary industry-controlled data were the basis for Canada's WTO challenge to the U.S. COOL measure. Not only is the data inaccessible but it was supplied to the authors by an industry group that is adamantly opposed to COOL and is a plaintiff in a COOL lawsuit against the USDA.[7]

Moreover, SP did not mention, let alone utilize, Mandatory Price Reporting (MPR) data as reported by U.S. beef packers to the Agricultural Marketing Service (AMS) of USDA, instead relying largely on data provided to them by CCA. MPR data are highly detailed, including origin, import or domestic, of cattle slaughtered in the U.S. and is thus a statistically and economically rich and robust data set for analyzing COOL. The time period covered by MPR data covers about 4 years prior to the implementation of the interim final COOL rule on September 29, 2008, and 6 years since, thus spanning the period in which COOL was defined, redefined and implemented and came into full force on March 16, 2009.

Since the MPR information comes directly from the beef packers, the MPR price and basis trends reflect actual operational slaughter costs and can definitively shed light on the beef packers' political rhetoric and repeated public assertions about the costs of COOL to the U.S. packing industry.

The Difference between Canadian and U.S. Slaughter Cattle Prices (the Basis) Narrowed After COOL Implementation

The detailed weekly MPR data show that the price basis was generally lower, not higher, by class, grade, and purchase arrangement after COOL was implemented in late 2008, compared to the 4 previous years. The use of the beef packers' own MPR data belie the claims that the cost of COOL compliance would create substantial segregation costs.[8] If these claims were true, the price basis would increase post-COOL compared to pre-COOL. Instead, the price differential between imported and domestic steers narrowed significantly since COOL went into effect after adjusting for inflation and expressed in U.S. dollars.

Table 1 shows the basis by class, purchase arrangement, and grade before and after COOL, computed as paired[9] averages. As can be seen, the basis declined for most of these categories after COOL was implemented. Categories in which the basis widened accounted for less than 15% of recorded import slaughter. Adjusted for inflation, the post-COOL basis changes shown in *Table 1* would be even smaller compared to pre-COOL averages.

Table 1. Price Basis by Purchase Arrangement, Grade and Class, Paired Comparisons Before and After Full Implementation of COOL, MPR Data, U.S. Dollars/cwt Dressed Weight

Class	Purchase Arrangement	Grade	Before COOL (weeks ending 9/5/2005–10/29/2008)	After COOL (weeks ending 11/6/2008–1/12/2015)
Steer	Formula Net	0–35% Choice	−$2.49	$0.23
		35–65% Choice	−$3.26	−$2.14
		65–80% Choice	−$4.60	−$3.78
		Over 80% Choice	−$7.26	−$6.90

[6] *http://www.canfax.ca/Faqs.aspx.*

[7] *See* United States Court of Appeals for the District of Columbia Circuit. No. 13–5281. *American Meat Institute, et al.* v. *USDA, et al.*

[8] *http://www.meatami.com/ht/a/GetDocumentAction/i/87821.*

[9] Paired comparison means that averages were computed only for weeks in which there was a domestic and an import transaction recorded in a category. There were many weeks in which no negotiated cash transactions were reported for imported slaughter cattle.

Table 1. Price Basis by Purchase Arrangement, Grade and Class, Paired Comparisons Before and After Full Implementation of COOL, MPR Data, U.S. Dollars/cwt Dressed Weight—Continued

Class	Purchase Arrangement	Grade	Before COOL (weeks ending 9/5/2005–10/29/2008)	After COOL (weeks ending 11/6/2008–1/12/2015)
	Forward Contract Net	0–35% Choice	−$2.91	−$2.47
		35–65% Choice	−$3.96	−$3.30
		65–80% Choice	−$4.63	−$3.80
		Over 80% Choice	−$5.47	−$3.01
	Negotiated Grid Net	0–35% Choice	$1.76	−$1.43
		35–65% Choice	$0.57	−$1.03
		65–80% Choice	$0.14	−$1.67
		Over 80% Choice	−$1.54	−$2.71
Heifer	Formula Net	0–35% Choice	−$1.59	−$0.03
		35–65% Choice	−$2.86	−$1.70
		65–80% Choice	−$4.51	−$2.81
		Over 80% Choice	−$6.89	−$4.84
	Forward Contract Net	0–35% Choice	−$4.91	−$1.25
		35–65% Choice	−$1.65	−$4.02
		65–80% Choice	−$2.53	−$5.20
		Over 80% Choice	−$4.07	−$2.27
	Negotiated Grid Net	0–35% Choice	−$4.04	$6.25
		35–65% Choice	−$0.25	−$0.43
		65–80% Choice	$0.41	−$2.47
		Over 80% Choice	$1.82	−$2.39
Mixed Steer & Heifer	Formula Net	0–35% Choice	−$2.74	$0.97
		35–65% Choice	−$2.06	−$2.85
		65–80% Choice	−$3.32	−$2.92
		Over 80% Choice	−$5.06	−$4.85
	Forward Contract Net	0–35% Choice	−$7.04	$3.78
		35–65% Choice	−$1.58	$0.49
		65–80% Choice	−$0.48	$0.79
		Over 80% Choice	−$2.81	$1.47
	Negotiated Grid Net	0–35% Choice	$1.72	$0.55
		35–65% Choice	$1.70	−$0.04
		65–80% Choice	$2.37	−$1.14
		Over 80% Choice	$1.72	−$1.60

This analysis includes the important purchasing arrangement data element that has a significant impact on cattle prices. The omission of purchasing arrangements as a contributing factor to the basis yields analytical and model bias that incorrectly finds that COOL has negatively impacted the basis.

For example, the SP study concluded that "*after controlling for other factors that affect the basis, COOL widened the basis by 30 percent (Model 1) and 90 percent (Model 2).*" Another study done for the packers by Informa Economics, Inc. (previously Sparks Commodities) claimed a cost of $15–$18 per head for USDA's initial proposal [10] and a cost to packers and processors of $10–$18 per head under the final rule. Informa claimed that under the final rule, ". . . *COOL costs . . . (would) have a burdensome and differential cost impact is at the packer/processor level.*" [11] CCA claims even larger impacts, "*The combined impact of the lower prices and the increased cost of transporting livestock greater distances resulted in a loss of about $90 per animal.*" [12]

The SP analyses draw conclusions from a simple econometric analysis that is data dependent, including proprietary data and omitting key variables. But an estimation of the econometric model specification used by SP with MPR weekly average price data rather than the CCA data shows that COOL did not have a significant negative effect on the price basis. This analysis uses the packers' own MPR transaction information which demonstrates that a more thorough model specification and data set reveals that COOL did not increase the basis between domestic and imported slaughter cattle prices, instead the price differential declined after COOL went into effect.

[10] *Comments on Guidelines for Voluntary Country-of-Origin Labeling Program,* SparksCompanies, Inc., April 2003.

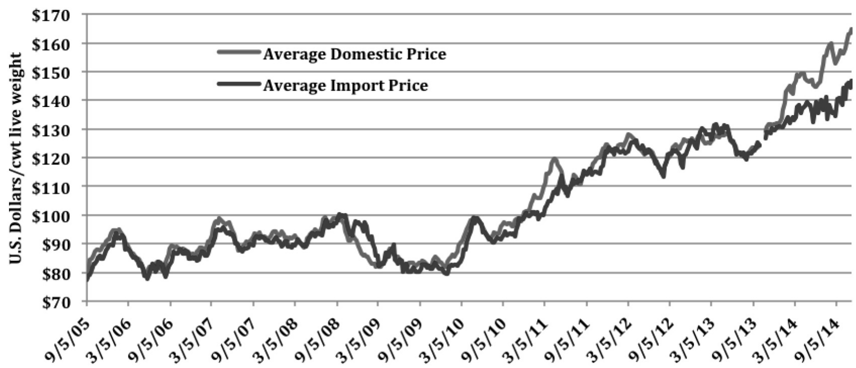
[11] Informa Economics, *Update of Cost Assessments for Country-of-Origin Labeling—Beef & Pork (2009), June 2010.*

[12] *http://www.cattle.ca/market-access/wto-disputes/.*

Basis comparisons must go beyond comparison of average basis, graphically or numerically or econometrically, and distinguish between class, grade and purchase arrangement to avoid invalid conclusions. Forward contracts dominate import slaughter cattle acquisitions, but not domestic acquisitions. There have been extended periods when pricing under forward contracts were both better than, and worse than, average pricing under formula arrangements or the residual cash market.

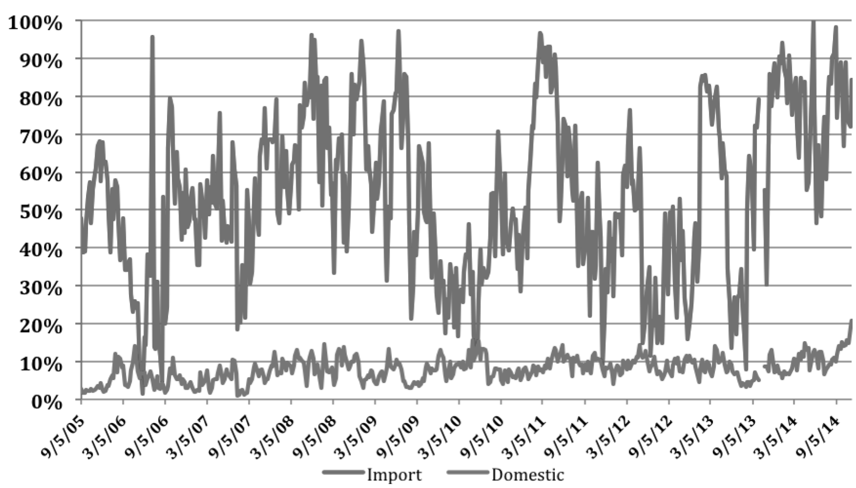
Figure 1 shows the weekly price received for imported and domestic slaughter steers and heifers averaged over all grades and purchase arrangements.

Fig. 1. Average Prices Paid for Slaughter Steers & Heifers of Imported & Domestic Origin, MPR Data



Domestic and imported prices generally moved together, with a small basis, except for notable exceptions in 2014 and 2011 when import price was well below domestic price, and in late 2008 and early 2009 when import price was well above domestic price for an extended period (*Figure 1*). These differences are not due to COOL but to different purchase arrangements dominating domestic compared to import slaughter cattle acquisition. Forward contracts accounted for 54% of imports but only 8% of domestic slaughter over the past 10 years (*Figure 2*).

Fig. 2. Slaughter Steers and Heifers Acquired under Forward Contracts as a % of Total Slaughter by Origin, MPR Data

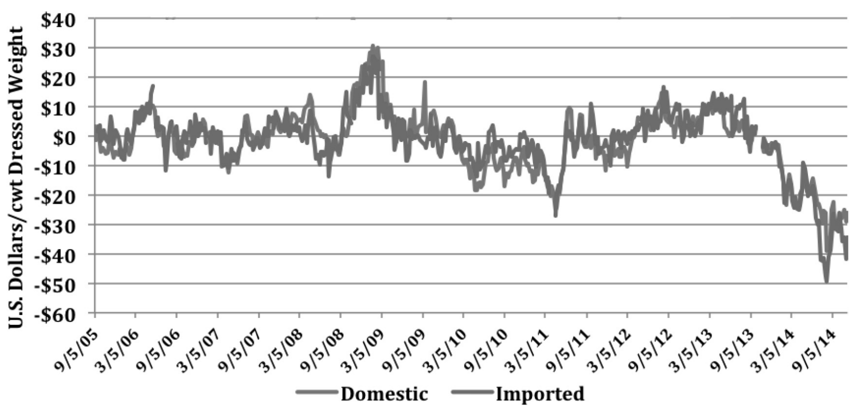


Formula (marketing agreements) and negotiated acquisitions dominate domestic but not import slaughter. Most marketing agreements have a base price tied to a negotiated price, while forward contracts are generally tied to futures market prices for cattle and/or exchange rates. Negotiated prices thus dominate domestic acquisitions, while futures prices dominate import acquisitions. When cash and futures market prices diverge, as they do from time-to-time, the average prices for imported

slaughter cattle can diverge from the average domestic price because of the purchase arrangement between packer and feeder.

Figure 3 compares the difference between average prices received under forward contracts compared to formula arrangements for fed cattle of domestic and import origin. As can be seen, the differences are about the same for imported and domestic slaughter cattle. Thus, a simple comparison of price basis averaged over all purchase arrangements (see *Figure 1*) may give the illusion of a negative effect of COOL on the price basis when, in fact, the differences are affected by price fluctuations in futures markets (forward contracts) relative to the residual cash market [13] and not due to COOL.

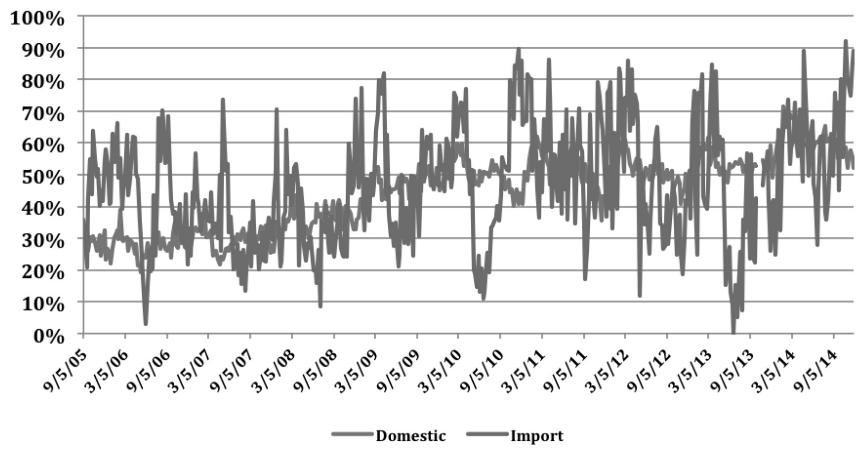
Fig. 3. Price Differences Between Forward Contract and Marketing Agreement Cattle, Imports Compared to Domestic, MPR Data



Quality differences may also be important in explaining changes in cattle trade over time. MPR data reveal that that grade of domestic slaughter steers and heifers has trended upward faster than the grade of imported cattle has improved. *Figure 4* shows the percent of steers and heifers grading at least 65% Choice. Those of domestic origin in this grade category have approximately doubled from 30% to 60%, while those of foreign origin have been quite variable but not trending as strongly as those of domestic origin. To the extent that packers desire to acquire high quality animals, they no longer need to rely on imported cattle to the extent that they did in the era prior to implementation of COOL.

[13] The base price in most marketing agreements is tied in one-way or another to price in the residual cash market for slaughter cattle.

Fig. 4. Percentage of Steer & Heifer Slaughter Grading at Least 65% Choice, All Purchase Arrangements, MPR Data



Thus there is no legitimate empirical evidence, based on actual transaction data as reported by the packers, to support claims that implementation of COOL created substantial segregation costs and caused the price of imported slaughter cattle to decline relative to the price of cattle of domestic origin.

COOL Did Not Lower the Ratio of Imported Slaughter Cattle to Domestic Slaughter

Statistical, econometric and qualitative analyses do not provide strong support to the contention that COOL reduced slaughter of imported cattle. Econometric results are mixed, depending on data set, observation period, and included variables. The more comprehensive data sets analyzed here demonstrate that COOL itself had little if any impact on the share of imported cattle slaughtered by U.S. beef packers.

Figure 5 shows monthly U.S. and Canadian cattle trade for the past 20 years, while *Figure 6* shows slaughter of imported cattle, primarily Canadian, relative to slaughter of steers and heifers of domestic origin, as identified in the weekly MPR data.

Fig. 5. U.S. Imports of Canadian Cattle, FAS and USDA Data, Monthly

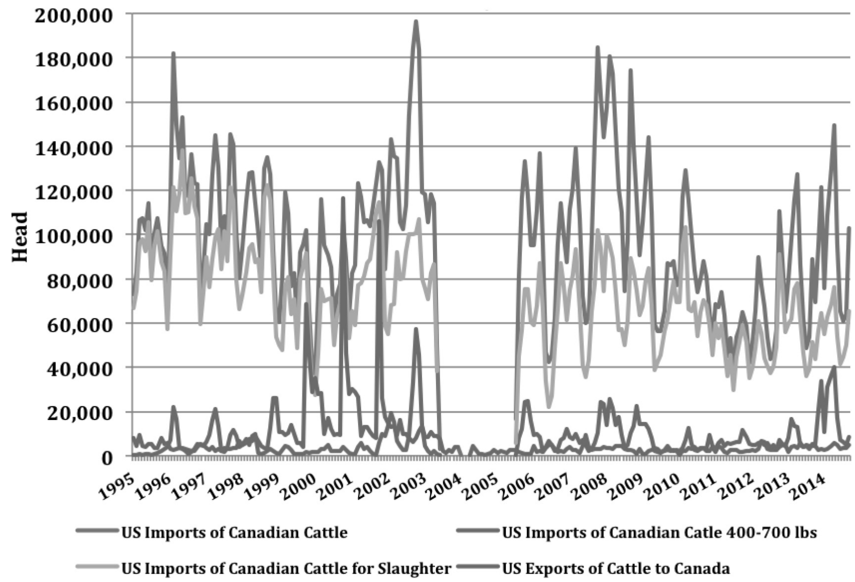
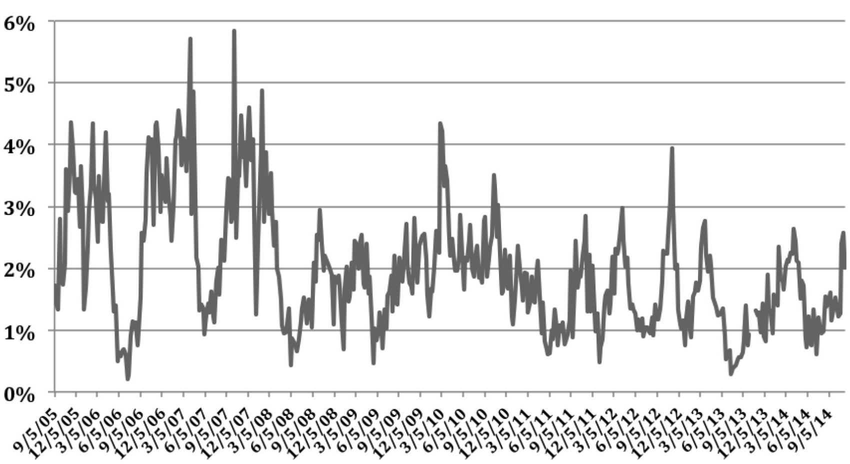


Fig. 6. Imported Slaughter Steers and Heifers as a Percentage of Domestic Slaughter, MPR Data



An SP-like model estimated with MPR data has a significant negative coefficient on the COOL binary variable. However, addition of weekly captive supply (as a % of total slaughter) negates this result. Models estimated with monthly data on the ratio of imports of Canadian slaughter cattle over 700 lbs to total U.S. slaughter are mixed, depending on observation period. Based on monthly data since Sept. 2005, beginning of the observation period used by SP, results show a significant negative coefficient on the COOL binary variable. However, estimating a similar model with observations going back to 1995 and allowing for the ban due to BSE, gives insignificant results.

In statistical terms, the SP finding that COOL negatively impacted imports of slaughter cattle is not a "robust" result because of confounded results and omitted variable bias.

Aside from econometric games, numerical and visual comparison (*Figures 5* and *6*) of pre and post-COOL imports do not provide compelling evidence to support the

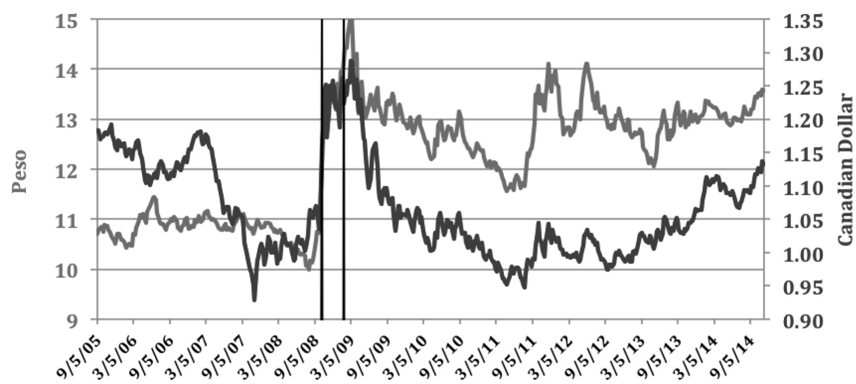
contention that COOL has or will destroy the Canadian cattle industry. For the past several decades, about ⅘ of Canadian cattle have been slaughtered at Canadian beef packers and that has not changed since COOL went into effect. Nor has the share of Canadian slaughter cattle processed at U.S. plants declined significantly. The total Canadian beef cattle exports to the United States has not trended downward, particularly considering the buildup and historically high Canadian cattle herd before the BSE ban [14] relative to the declining U.S. cattle herd during that period.[15]

Annual data on Canadian cattle slaughter reveal that the ratio of exports of slaughter cattle to the U.S. to slaughter in Canadian plants was 21.2% pre-COOL and 20.5% post-COOL, an insignificant decline. Monthly trade data show that imports of Canadian cattle over 700 lbs for slaughter, which includes some cattle put in U.S. feedlots for finishing as well as cattle that go directly to slaughter, fell by a lesser amount, from 3.0% of U.S. slaughter to 2.7%.

MPR data reveal that the ratio of import to domestic steer and heifer slaughter was 2.4% pre-COOL and 1.7% after COOL was implemented.[16] However, it is noteworthy that this was not a slow downward trend but a shift that occurred in early 2008, a year before COOL was fully implemented. This shift may well have been triggered not by impending COOL implementation, but by macro economic conditions translating into beef and cattle demand uncertainty as well as to the Canadian dollar and the Peso weakening by 20–30% relative to the U.S. dollar during the developing world financial crisis.

Figure 7 shows weekly exchange rates for the Canadian dollar and Mexican Peso for the past 10 years. Vertical lines in the chart bracket the period during which interim and final COOL were being implemented. As can be seen, both the Canadian dollar and the Mexican Peso weakened dramatically during this period. Both currencies were at their weakest when COOL went into full force in mid-March of 2009.

Fig. 7. Canadian Dollar and Mexican Peso Exchange Rates per U.S. Dollar



Due to these substantial currency fluctuations, comparison of imported cattle prices in other currencies to domestic prices in U.S. dollars can be deceiving. Moreover, econometric models with price basis in Canadian dollars and the (change in the) currency exchange rate as a potential explanatory variable, as done by SP, may not fully account for currency fluctuations and are inappropriate to the extent that captive supply contracts with Canadian feeders are priced in U.S. dollars.

The contention that imports will make up a smaller share of slaughter capacity because of COOL also suffers from a logical fallacy that is revealed by more thorough analysis. SP's theoretical argument is that COOL reduces the U.S. domestic

[14] Slide 5 at *http://canfax.ca/CFX_forum_2014/pdf/CFX2014_speaker_Perillat.pdf*.

[15] *http://www.beefusa.org/CMDocs/BeefUSA/Resources/Statistics/annualcattlenumbersandbeefproduction774.pdf*

[16] Rather than use the MPR data on the ratio of slaughter cattle imports to domestic slaughter, SP constructed a data series for fed cattle slaughter based, in part, on their "prediction" of feeder imports. Since they did not report their constructed data, or even mean values, the validity and relevance of their analysis is unclear. *Figure 3* in their report apparently charts their constructed data for the fed cattle import ratio. The vertical axis in this chart is not labeled, but assuming that the chart represents percentages, visual inspection suggests and average of 2–4%. This, however, is higher than the actual ratio from MPR data, which has an average of 2.0% for the same time period.

demand for imported slaughter cattle, thus explaining the significant negative coefficient in their econometric model of the import ratio. The corollary to their theory, which they did not consider, is that the demand for slaughter cattle of domestic origin should increase. Thus, one would expect that a COOL binary variable included in an SP-like econometric model of U.S. cattle slaughter would have a significant positive coefficient. But this is not the case, as a SP-like reduced form model with U.S. slaughter of fed cattle as the dependent variable, estimated with MPR data, has a significant negative sign, just like it does in the model estimated with the import ratio as the dependent variable and the same set of independent variables. This inconsistent statistical finding casts doubt on SP's attribution of a significant negative coefficient on their COOL binary variable to COOL, per se. The estimated coefficient may be confounded by a host of variables, omitted or included, and thus not represent any causal net effect of COOL.

Additionally, the use of various marketing arrangements by powerful buyers in the beef packing industry affects cattle prices. Changes in market power confound both statistical and qualitative analyses of COOL. SP assert that ". . . *allowing for market power by U.S. buyers would not impact the results qualitatively.*" At best, this assertion is true only if market power, by U.S. or Canadian buyers, did not change. To the extent that market power changed, and there are compelling reasons supporting a change in buyer power, statistical results based on the SP model specification are subject to omitted variable bias.

Domestic and foreign captive supplies of slaughter cattle are highly plausible variables to include in a model intended to estimate effects of COOL for two reasons. First, study after study has shown that captive supplies have a negative effect on acquisition price and may thus indirectly influence head slaughtered.[17] Second, captive supplies commit packers to future slaughter of cattle and may thus directly affect trade.[18]

Augmenting the SP model specification with captive supply variables negates the negative significance of the COOL binary variable and shows that import captive supply (as a % of total imports) has a highly significant POSITIVE effect on the import head ratio while domestic captive supply (as a % of total domestic slaughter) has a highly significant NEGATIVE effect on the import head ratio.

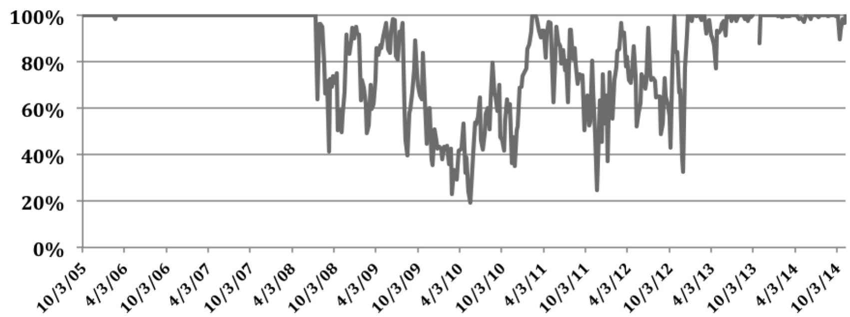
MPR data show that captive supplies of imported slaughter cattle, as a percent of total imports, were near 100% through 2007. Beginning in early 2008, before COOL was implemented, imported captive supplies dropped to an average of about 75% but fluctuated from 20% to 100% through 2012, returning to about 100% in early 2013 (*Figure 8*). The drop in imported captive supplies occurred months before interim COOL was implemented and almost a year before mandatory COOL and may have been triggered by packers' uncertainty over beef demand during turbulent economic times that occurred along with implementation of COOL.[19] Although domestic as well as imported captive supplies vary considerably week to week, a strong upward trend is apparent in domestic captive supply from about 35% 10 years ago to 70% now. However, the trend in domestic captive supply (as a percent) dropped off somewhat during early 2008 at the same time that import captive supply fell sharply.

[17] Some academic studies have argued that the strong negative relationship between captive supplies is correlation, not causation. However, public statements made by the CEO of IBP in 1988 and 1994, that captive supplies gave IBP "leverage" in the residual cash market, and sworn testimony by the Head buyer for IBP/Tyson strongly supports causality. See, Taylor, C.R., "Buyer Power Litigation in Agriculture: *Pickett* v. *Tyson Fresh Meats, Inc.,*" *Antitrust Bulletin,* Vol. 53, No. 2, Summer 2008: 455–474.

[18] As a hypothetical illustration of the potential market and trade distortion of captive supply, suppose that a large domestic packer has a blanket marketing agreement with a large domestic captive feeder, normally acquiring 100 million pounds weekly. The packer also acquires imported slaughter cattle on the cash market, normally accounting for 10 million pounds weekly. The marketing agreement extends indefinitely and guarantees the feeder a buyer, but not a price. Contracts between packers and retailers are not publicly transparent, but are known to dominate the industry. Suppose that the packer has such a long-term contract with a retailer at a stated price, but volume is not specified exactly. The packer normally provides 110 million pounds to the retailer. What happens if demand softens to 100 million pounds? Because of the captive arrangement, the packer must abandon the import market and supply the retailer with cattle only from the large captive domestic feeder. Without these captive arrangements, we would expect the packer to acquire cattle from domestic as well as foreign feeders, say 95 million pounds domestically and 5 million pounds from imported suppliers. Thus, captive arrangements can distort trade and confound interpretation of binary variables in econometric models that do not account for captive supplies, domestic and imported.

[19] Lack of consistent time-series data on plausible macro economic variables to include in a model for import or domestic slaughter, particularly proxies for "uncertainty," unfortunately limits how far one can go with statistical and econometric analyses.

Fig. 8. Captive Supply Percent of Canadian Imports of Slaughter Steers & Heifers, MPR Data



Expectations that beef demand would be lower due to macro economic events during the period when COOL was being implemented may have triggered packers' cutbacks in aggregate captive commitments.[20]

Public data are not available on the extent of captive supplies of Canadian cattle that are slaughtered in Canada. These arrangements for slaughter in Canada may also affect trade and confound interpretation of coefficients in a SP-like econometric model.

A detailed analysis in 2008 by the Canadian National Farmers Union (CNFU) points to captive supply problems on both sides of the border, concluding that ". . . *dramatically increased levels of captive supply in both Canada and the U.S. have had price-depressing effects in both countries.*" How fluctuations in Canadian and U.S. captive supply arrangements affect price and trade cannot be determined without reliable data. One study reports that captive supplies in Alberta accounted for 50–60% of slaughter in Alberta in 2006,[21] while more recent news reports mention that Canadian captive supply is "large."[22] Canadian captive supply data are maintained by the CCA based on packers voluntary reporting, but such data are not publicly available.

Tyson's sale of their Canadian Lakeside cattle feeding and slaughtering operations also confound interpretation of econometric results.[23] Their exit reduced the number of meaningful buyers in Canada from three to two, which may have also affected prices (including the Alberta-Nebraska feeder price differential) and trade. The shift from three to two buyers is well beyond levels of market concentration that raise antitrust concern.

The 2008 CNFU report raises concerns about exertion of increased market power with Tyson's sale to an existing Canadian packer.

Fundamental "generational" change is also occurring in both the U.S. and Canadian cattle industry, change that cannot be accounted for in econometric models without meaningful and consistent time series data on quite complex socioeconomic factors responsible for such changes.

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[20] Economic theory suggests that beef packers would not fully integrate vertically by ownership or through captive arrangements in the face of demand uncertainty. We can expect them to integrate for demand that they expect to occur with high probability, but not necessarily to integrate for demand that may be highly uncertain. If a packer is fully integrated vertically and the uncertain demand is not realized, the packer is nevertheless legally committed to slaughter the captive animals, thus resulting in financial losses to the packer. With partial vertical integration, the packer can meet contracted retail commitments in the presence of low demand, but walk away from the cash market for slaughter animals. Thus we can expect packers to reduce captive commitments during periods of relatively high demand uncertainty to the extent permitted by contract terms. Such a reduction is expected to occur not instantly, but over a period of weeks or months.

[21] *http://ageconsearch.umn.edu/bitstream/46435/2/ward28-1%5B1%5D.pdf.*

[22] *http://www.cattlenetwork.com/cattle-news/Canada-cattle-report-Packers-cushioned-by-large-captive-supplies-168180546.html.*

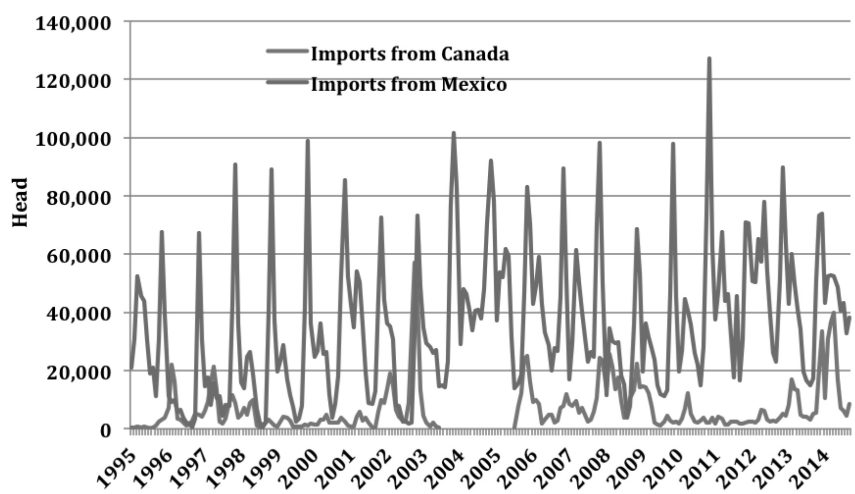
[23] Tyson claims that they sold their Canadian cattle business because of COOL, but this appears to be pretext. Instead, Tyson appears to have shed its Canadian subsidiaries because of business considerations. Statements in Tyson's SEC filings leading up to their sale indicate financial losses on their Lakeside packing and cattle feeding operations. U.S. cattle feeders suffered huge losses beginning in late 2007 and extending through 2009, so Tyson likely also suffered huge losses on their Lakeside feedlots that accounted for about 20% of their Canadian slaughter. More recently, Tyson's motive in announcing (October of 2013) that they would no longer buy Canadian slaughter cattle but would continue to buy Canadian born animals sent to U.S. feedlots is unclear.

In summary, econometric and qualitative analyses do not strongly support the contention that COOL has negatively impacted imported slaughter cattle relative to slaughter of cattle of domestic origin. At best, the econometric evidence is weak and lacks robustness.

COOL Did Not Affect the Ratio of Imported Feeder Cattle to Domestic Feedlot Placements

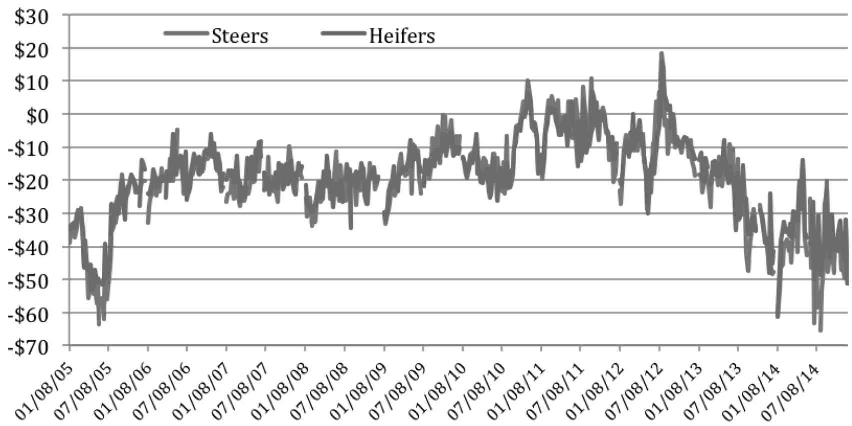
COOL did not have a significant negative effect on either Canadian or Mexican feeder cattle imports. Feeder cattle placements are especially responsive to weather, economic and cattle cycle variability. Numerical comparison of imports of feeder cattle from Canada is sensitive to the time period chosen. A severe drought in Alberta and other parts of Canada that spanned 2 years, 2001–02, resulted in a spike of feeder cattle moving to the U.S. During September–November of 2002, Canada exported over eight times more feeder cattle than in the same months in 2001, and over 16 times more than in 2000. In the 3 years prior to full implementation of COOL, an average of 10,416 feeders were imported monthly, which fell to 7,456 feeders since. However, the average over 1990–2003 was 7,047, slightly lower than post-COOL. Imports of feeder cattle from Mexico have continued to rise (*Figure 9*).

Fig. 9. U.S. Imports of Feeder Cattle from Canada and Mexico, 400–700 lbs., FAS and USDA Monthly Data



SP's econometric analysis did not show a significant negative effect of COOL on the feeder cattle price basis. A similar model estimated with USDA data shown in *Figure 10* did not show a significant negative effect of COOL on the feeder cattle price basis. Exchange rates, transportation costs, and seasonality econometrically explain most of the variation in the feeder cattle price basis.

Fig. 10. U.S. Price Basis for Alberta Feeder Steers & Heifers Relative to Nebraska Feeders, 500–600 lbs., U.S. Dollar/cwt, USDA Data



SP did report a significant negative effect of COOL in their model purporting to represent Canadian feeder cattle imports, however, this finding is compromised because their constructed data for the ratio of Canadian feeder cattle imports appears to include other cattle. SP's *Figure 3* shows the feeder import ratio fluctuating between about 0.5% and 9.0%, averaging roughly above 2%. Yet, USDA data show the ratio of imported Canadian 400–700 lb cattle to U.S. feedlot placements to average only 0.4% over the time period used for the PS chart.

SP-like econometric models estimated monthly USDA data with the dependent variable defined to the imports of 400–700 lb cattle divided by U.S. feedlot placements does not show a significant negative effect of COOL on either Canadian or Mexican feeder cattle imports. In fact, U.S. imports of Canadian feeder cattle in 2013–14 are the highest they have been in the past 20 years (*Figure 9*), excluding the period in 2001–02 when extreme drought in Canada caused a spike in imports.

[APPENDIX D]

Table 1. Price Basis by Purchase Arrangement, Grade and Class, Paired Comparisons Before and After Full Implementation of COOL, MPR Data, U.S. Dollars/cwt Dressed Weight

Class	Purchase Arrangement	Grade	Before COOL (weeks ending 9/5/2005–10/29/2008)	After COOL (weeks ending 11/6/2008–1/12/2015)
Steer	Formula Net	0–35% Choice	−$2.49	$0.23
		35–65% Choice	−$3.26	−$2.14
		65–80% Choice	−$4.60	−$3.78
		Over 80% Choice	−$7.26	−$6.90
	Forward Contract Net	0–35% Choice	−$2.91	−$2.47
		35–65% Choice	−$3.96	−$3.30
		65–80% Choice	−$4.63	−$3.80
		Over 80% Choice	−$5.47	−$3.01
	Negotiated Grid Net	0–35% Choice	$1.76	−$1.43
		35–65% Choice	$0.57	−$1.03
		65–80% Choice	$0.14	−$1.67
		Over 80% Choice	−$1.54	−$2.71
Heifer	Formula Net	0–35% Choice	−$1.59	−$0.03
		35–65% Choice	−$2.86	−$1.70
		65–80% Choice	−$4.51	−$2.81
		Over 80% Choice	−$6.89	−$4.84
	Forward Contract Net	0–35% Choice	−$4.91	−$1.25
		35–65% Choice	−$1.65	−$4.02
		65–80% Choice	−$2.53	−$5.20
		Over 80% Choice	−$4.07	−$2.27
	Negotiated Grid Net	0–35% Choice	−$4.04	$6.25
		35–65% Choice	−$0.25	−$0.43

Table 1. Price Basis by Purchase Arrangement, Grade and Class, Paired Comparisons Before and After Full Implementation of COOL, MPR Data, U.S. Dollars/cwt Dressed Weight—Continued

Class	Purchase Arrangement	Grade	Before COOL (weeks ending 9/5/2005–10/29/2008)	After COOL (weeks ending 11/6/2008–1/12/2015)
		65–80% Choice	$0.41	−$2.47
		Over 80% Choice	$1.82	−$2.39
Mixed Steer & Heifer	Formula Net	0–35% Choice	−$2.74	$0.97
		35–65% Choice	−$2.06	−$2.85
		65–80% Choice	−$3.32	−$2.92
		Over 80% Choice	−$5.06	−$4.85
	Forward Contract Net	0–35% Choice	−$7.04	$3.78
		35–65% Choice	−$1.58	$0.49
		65–80% Choice	−$0.48	$0.79
		Over 80% Choice	−$2.81	$1.47
	Negotiated Grid Net	0–35% Choice	$1.72	$0.55
		35–65% Choice	$1.70	−$0.04
		65–80% Choice	$2.37	−$1.14
		Over 80% Choice	$1.72	−$1.60

The CHAIRMAN. Ms. Dempsey.

STATEMENT OF LINDA M. DEMPSEY, VICE PRESIDENT OF INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, D.C.

Ms. DEMPSEY. Chairman Rouzer, Members of the Subcommittee, thank you for the opportunity to be here on behalf of the National Association of Manufacturers; the nation's largest industrial association, representing over 14,000 manufacturers in every state in the country.

Last year, U.S. manufacturing output reached a record of $2.1 trillion, supported over 12 million jobs, and, of course, relies substantially on inputs from our nation's farmers and agriculture producers for many of our food and beverage products.

I am also appearing today as co-chair of the COOL Reform Coalition, along with my colleague, Mr. Wenk, from the U.S. Chamber.

Let me focus on five points. First, trade and U.S. manufactured exports are a critical source of growth for U.S. manufacturing and other industries in America. U.S. manufactured exports reached a record level last year of $1.4 trillion, supporting millions of jobs. That growth has been supported by decades of—since the creation of the World Trade Organization and other market-opening trade agreements under which the United States and other nations agree to play by a basic set of rules. Second, Canada and Mexico are by far the nation's largest export markets for our nation's manufacturers. Last year alone, they purchased $485 billion in manufactured goods from the United States. Third, the United States' continued failure to bring the COOL rule for meat into compliance with its WTO obligation is threatening substantial quantities of manufacturing goods exports to our two closest trading partners. There is wide expectation that the WTO will, in fact, rule again that this rule is out of compliance with the basic rules.

They have been found out of compliance not just once already, but three times. Canada has put forth a proposed retaliatory list, which includes many manufactured products such as steel pipes,

heating appliances, office furniture, and mattresses. Mexico has not set forth what products it would put on its list, but manufacturers have already witnessed firsthand Mexican retaliation in the trucking case, where Mexico imposed tariffs as high as 45 percent on many products, resulting in lost sales and lost jobs. Manufactured goods were listed on Mexico's trucking retaliation list, including office equipment and a wide range of home appliances. Fourth, to be successful globally, manufacturers needed a respected and enforced global trading system. The United States led the world in writing these rules, including the creation of the WTO in 1995, where binding dispute settlement was a primary U.S. objective. Enforcement of the rules-based trading system has already helped American workers, farmers, and manufacturers secure access to overseas markets, and grow our exports and jobs here in the United States. If countries including the United States do not live up to their obligations, the system will be weakened, and our businesses and our workers will face the penalty. Fifth, and finally, time is running out. It is imperative that Congress act quickly, or else put at risk very substantial levels, some believe billions, in U.S. exports to Canada and Mexico, and the industries and jobs of tens of thousands of workers that produce those goods.

With the threat of retaliation looming for our nation's manufacturers, the NAM and the COOL Reform Coalition urge Congress to bring the United States back into compliance with its WTO obligations fully and quickly through the repeal of these WTO inconsistent meat labeling provisions.

Thank you for the opportunity to testify today. I look forward to working with the Committee to resolve this important issue.

[The prepared statement of Ms. Dempsey follows:]

PREPARED STATEMENT OF LINDA M. DEMPSEY, VICE PRESIDENT OF INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, D.C.

Chairmen Rouzer, Ranking Member Costa, and Members of the Subcommittee on Livestock and Foreign Agriculture, thank you for the opportunity to testify on behalf of the National Association of Manufacturers.

My name is Linda Dempsey, and I am the Vice President of International Economic Affairs for the National Association of Manufacturers (NAM). The NAM is the nation's largest industrial association and voice for more than 12 million women and men who make things in America. Manufacturing in the U.S. supports more than 17 million jobs, and in 2014, U.S. manufacturing output reached a record of nearly $2.1 trillion. It is the engine that drives the U.S. economy by creating jobs, opportunity and prosperity. The NAM is committed to achieving a policy agenda that helps manufacturers grow and create jobs.

I am also appearing today as co-chair of the COOL Reform Coalition,[1] along with the U.S. Chamber of Commerce. Launched a year ago, the COOL Reform Coalition includes companies and associations from across the U.S. economy, including a variety of manufacturing sectors, that advocate for U.S. compliance with the international obligations it has undertaken in the World Trade Organization (WTO) agreements relating to the topic of this hearing.

U.S. manufactured exports are a critical source of growth for manufacturing and other industries throughout all 50 states. U.S. manufactured goods exports reached their highest level ever last year, totaling $1.4 trillion, which supports millions of U.S. jobs. That growth has been supported over the past decades by the creation of the WTO and other market opening trade agreements, under which the United States and other nations agreed to reduce tariff and non-tariff barriers.

The United States' continued failure to bring the Country-of-Origin Labeling (COOL) rules for muscle cuts of meat into compliance with its WTO obligations is

[1] *www.COOLReform.com*.

threatening U.S. manufactured goods exports to our two largest trading partners, Canada and Mexico. The COOL rules, which were put in place more than 6 years ago, have already been found out of compliance with the WTO obligations that the United States itself helped create—not just once, but three times. With the threat of retaliation looming for our nation's manufacturers, we and the COOL Reform Coalition urge that Congress move quickly to eliminate these WTO-inconsistent provisions.

I. Background on the COOL Dispute

The challenge before us today is not a new one. Indeed, it has been more than 6 years in the making, with attempts to impose COOL rules on muscle cuts of meat found to be out of compliance with international rules time and again.

The 2002 Farm Bill, subsequently amended by the 2008 Farm Bill, established U.S. Mandatory COOL rules that require most retailers to provide country of labeling for fresh fruits and vegetables, fish, nuts, meat and poultry, among other products. These provisions were implemented through an Interim Final Rule of the U.S. Department of Agriculture on July 28, 2008.

Less than 5 months later, Canada challenged the rule for muscle cuts of meat at the 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. Mexico joined the complaint soon thereafter.

In November 2011, the WTO dispute settlement panel established to review the complaint found that the COOL rule violated U.S. commitments under the WTO Technical Barriers to Trade (TBT) Agreement because the rule treats imported Canadian cattle and hogs, and imported Mexican cattle, less favorably than domestic livestock. The United States appealed this ruling in March 2012 to the WTO Appellate Body. The WTO Appellate Body ruled in June 2012 and also found that the COOL rule violated U.S. obligations not to discriminate in its technical regulations.

The United States requested a reasonable period of time to bring the rule into international compliance and the U.S. Department of Agriculture published revised rules nearly a year after the WTO Appellate Body ruling in May 2013. The Canadian and Mexican governments objected to the revised rules, and in August 2013 sought yet another review—a so-called compliance panel—to determine whether the revised COOL rule was WTO compliant.

In October 2014, the WTO compliance panel report found the United States to be in continued violation of its WTO obligations under the TBT Agreement, but also in violation of the basic GATT 1994 agreement for discriminating against products imported into the United States. In fact, the WTO compliance panel found that the revised rule was even more discriminatory than the earlier version by requiring additional segregation. The United States appealed the decision in December, and a final WTO decision is expected this spring.

Given the earlier findings, including the most recent finding that the revised rule is more discriminatory, it is widely expected that the WTO Appellate Body will find that these rules discriminate against imports from Canada and Mexico. As a result, both Canada and Mexico will be authorized to retaliate against billions of dollars of U.S. exports.

II. Impact of Retaliation on U.S. Exports, Industries and Jobs

This past year, the NAM and U.S. Chamber of Commerce joined with other broad industry groups and individual companies to form the COOL Reform Coalition to urge action to avoid WTO-authorized retaliation on a wide variety of U.S. non-agricultural exporting industries.

Canada and Mexico are by far the United States' largest export markets, and purchased a record $485 billion in manufactured goods in 2014. Those exports support millions of U.S. jobs. WTO-authorized retaliation by two of the largest U.S. trading partners could result in billions in tariffs affecting multiple sectors of the U.S. economy, threatening the livelihoods of American families.

Canada has put forward a proposed retaliatory list. The list includes agricultural products such as beef, pork, cheese and fresh fruit. But the impact would be much broader: steel pipes, heating appliances, office furniture and mattresses are among the manufacturing products on the proposed list.

Mexico has not set forth what products could be included on its list. But the impact on U.S. companies is expected to be severe, if history serves as our guide. Mexico imposed tariffs as high as 45 percent on 99 U.S. products after a North American Free Trade Agreement (NAFTA) dispute settlement panel sided with Mexico on a dispute over cross-border trucking in March 2009. More than $2.5 billion of U.S. exports to Mexico were affected, resulting in lost sales and lost jobs. Agricultural and manufactured goods were both listed on Mexico's trucking retaliation list,

ranging from potatoes, pork, cheese and red wine to office equipment and home appliances (refrigerators, dish washers, washing machines). Many companies reported that once they lost sales to Mexico because of the retaliatory tariffs, they lost that customer for the foreseeable future. Those lost sales were devastating to businesses, workers and their communities across the U.S. economy.

As well, there are broader systemic concerns. The dispute is also about U.S. international leadership and whether the United States will meet the international obligations that it has voluntarily undertaken—and indeed created—as a founding member of the WTO.

Since the WTO was created in 1995, there have been about 490 complaints. The United States has brought over 113 complaints, most of which it has won or favorably settled. The United States has been the respondent in over 140 cases, of which it has been found out of compliance in about ⅓ of the cases.[2]

It is very much in the long-term economic interests of the United States to live by the rules of the international trading system and to ensure that other countries do the same. We led the world in writing these rules first in the General Agreement on Tariffs and Trade (or GATT) in 1947 and then with the creation of the WTO in 1995, where binding dispute settlement was a primary U.S. objective.

Enforcement of the rules-based trading system has helped American workers, farmers, and manufacturing companies secure access to overseas markets and grow exports and jobs in the United States. From barriers to grain in the European Union, shelf life restrictions in Korea to automotive restrictions, discriminatory taxes, and raw material and rare earth export restrictions in China, the WTO dispute settlement system is vital to America's access to world markets.

As explained in the NAM's recent report, ***Trading up with TPA,***[3] growing U.S. manufacturing exports to win more of the nearly $12 trillion in annual world trade in manufactured goods will provide substantial new opportunities to our nation's manufacturers and help sustain and grow American jobs. To be successful globally, our exporters need a respected and enforced global trade system. If countries, including the United States, do not live up to their obligations, the system will be weakened and our exporters will face even more onerous barriers.

III. Action to Repeal WTO-Inconsistent COOL Provisions is Needed Now to Avoid Retaliation

Our nation's exporters are running out of time. Once a final WTO decision is announced, retaliation by Canada and Mexico could be authorized as soon as 60 days thereafter.

Even before retaliation is in place, U.S. exporters will lose sales, as we did during the cross-border trucking dispute with Mexico. Just as in the United States, customers oftentimes plan months in advance and once a decision is made will seek to import from countries that are not targeted for retaliation. As a result, America's exporters will start losing sales immediately even if we allow a brief period of noncompliance after final adjudication.

Failure to act quickly to bring the United States into compliance will put at risk billions of dollars of U.S. exports to Canada and Mexico and the industries and the jobs of tens of thousands of workers that produce those goods.

IV. Conclusion

The NAM's primary objective, as a co-chair of the COOL Reform Coalition, has always been to avoid retaliation by Canada and Mexico and to prevent a loss of export sales by our nation's manufacturers. In that capacity, we have urged Congress to create a process to be able to quickly bring the U.S. into compliance with its international obligations by a final ruling. Congress has not acted.

With the threat of retaliation looming for our nation's manufacturers, time has run out. The NAM and the COOL Reform Coalition urge Congress to bring the United States back into compliance with its WTO obligations fully and quickly through the repeal of these WTO-inconsistent provisions.

Thank you for the opportunity to appear today. I look forward to working with the Committee to resolve this important issue.

The CHAIRMAN. Mr. LaFaille.

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[2] See Office of the United States Trade Representative (USTR), "Snapshot of WTO Cases Involving the United States" (May 22, 2014), *https://ustr.gov/sites/default/files/Snapshot%20May.pdf.*

[3] NAM, *Trading up with TPA: Manufacturers Need New Trade Agreements for Jobs, Growth and Competitiveness* (February 2015), *http://www.nam.org/Data-and-Reports/Reports/Trading-Up-With-TPA-(Full-Report).pdf.*

STATEMENT OF TOM LaFAILLE, VICE PRESIDENT AND INTERNATIONAL TRADE COUNSEL, WINE INSTITUTE, WASHINGTON, D.C.

Mr. LaFAILLE. Mr. Chairman, Ranking Member Costa, and Members of the Subcommittee, my name is Tom LaFaille with the California Wine Institute. We represent 1,000 California wineries and related businesses. We appreciate your leadership on this important issue.

COOL represents an enormous threat to California exports and U.S. exports of wine. Whether you are a wine consumer or not, there is a winery in every state in the United States, including the Chairman's home State of North Carolina, with Biltmore Estate Winery that exports. We have estimated that it is a $120 billion industry, which created over 800,000 jobs, largely in rural areas. So wineries represent an important economic factor around the country.

Globally, U.S. exports of wine reached $1.5 billion last year. It was slightly down due to the strong dollar and the West Coast port shutdown. Retaliatory tariff, whether by Mexico or Canada, would represent a significant additional challenge on top of the challenges we face. Wine Institute works to fight—to work against tariff trade barriers, tariff barriers, as well as non-tariff barriers, but it is a country's tariff that is the most significant factor in determining a market's export potential.

We estimate that COOL-related damages to the U.S. wine industry could reach upwards of $500 million. We know that retailers will soon begin buying elsewhere, price-sensitive consumers will shop elsewhere, and it will take years to gain back the current market share that we have.

We learned this the hard way with Mexico's two previous tariff retaliations. In 2007, we had sales of $22 million in exports to Mexico. After the retaliation, they quickly dropped to $11 million. That is a 50 percent drop in 1 year. And even after the tariffs were eliminated in 2011, it took another 3 years, to this year, before our exports finally reached the 2007 levels. So we know that retaliation will cause enormous loss of sales and U.S. jobs. So we urge Congress to act quickly once the WTO's decision is made, in order to prevent retaliation.

Thank you for your leadership and your efforts to grow U.S. exports.

[The prepared statement of Mr. LaFaille follows:]

PREPARED STATEMENT OF TOM LaFAILLE, VICE PRESIDENT AND INTERNATIONAL TRADE COUNSEL, WINE INSTITUTE, WASHINGTON, D.C.

Chairman Rouzer, Ranking Member Costa, Members of the Subcommittee:

Thank you for the opportunity to share our views on the important topic of Country-of-Origin Labeling (COOL) and the ramifications of Canada and Mexico imposing retaliatory tariffs on American wine exports.

Wine Institute is the premier organization of 1,000 wineries and businesses in the United States (U.S.) and around the world. California wine represents 90% of U.S. wine production, 90% of U.S. exports and contributes over $120 billion annually to the U.S. economy.

Wine Institute conducts a comprehensive export marketing campaign that communicates California as an aspirational place with beautiful landscapes, iconic lifestyle, great wine and food and as an environmental leader. With U.S. wine exported

to more than 125 countries, Wine Institute's work in 25 countries, supported by the U.S. Department of Agriculture's (USDA) *Market Access Program* (MAP), conveys these messages across the globe through a full slate of activities including international trade shows and trade missions, retail and on-premise tastings for trade, media and consumers and a global social media campaign and consumer site *DiscoverCaliforniaWines.com*.

We also work closely with other U.S. industry groups, the U.S. government and the international wine community—including the Canadian and Mexican Governments and their winemakers in the World Wine Trade Group and the Asia-Pacific Economic Cooperation Wine Regulatory Forum—to lower tariff and non-tariff trade barriers and to grow exports for our mostly small and medium sized, family run businesses.

WWTG

In light of the U.S.'s collaborative work with Canada to reduce barriers to trade and create a level playing field, it is most unfortunate that Canada has now chosen to involve wine and other products in an unrelated trade dispute. Wine Institute strongly opposes retaliatory tariff increases on any country's wines in response to a dispute, such as COOL, that does not involve wine.

In fact, wine producers in the World Wine Trade Group (WWTG), a multinational organization that includes government and industry representatives of the U.S. and Canada have undertaken to follow the principle that wine should not be used for retaliation in trade disputes relating to other products. Wine Institute urges Canada to abide by the principles to which its own industry agreed in WWTG.

U.S. Wine Exports

With Canada the No. 1 and Mexico the No. 6 market for U.S. wine exports, COOL-related retaliatory tariffs would have an enormously negative economic impact on our winemakers and grapegrowers. Sales of U.S. wines to Canada have grown steadily in recent years. Globally, 2014 U.S. wine exports totaled $1.49 billion in revenues, the second highest dollar value for U.S. wine exports and a 64% increase from 5 years ago. Our exports did suffer a slight decline last year because of the strong U.S. dollar and the West Coast port slowdown. Combined with those two challenges, a significant tariff increase in Canada would be another tough challenge for U.S. winemakers.

Last year in Canada, U.S. wine exports reached $487 million, a 7% increase over 2013. California sales have experienced strong growth in all the major markets across Canada over the past few years. Retail sales now exceed a record six million cases and $1 billion with the strongest increases in the provinces of Quebec and Alberta. Canadian consumers have confidence in the quality and value offered by California and our wines are successful in all price segments.

U.S. wineries are also experiencing similar success in Mexico, our sixth largest export market. In 2014, U.S. wine exports to Mexico totaled $24 million, a 13% increase over 2013.

COOL

Canada's preliminary retaliation list targets a broad spectrum of commodities that will affect every state in the country, potentially delivering a paralyzing blow to U.S. winemakers, other farm and food economies and rural households. Under World Trade Organization (WTO) rules, retaliatory tariffs would likely be placed on the value of the products as entered into the retaliation country.

Canada calls it a surtax on imports, which would mean that a bottle of wine entering into Canada with an import value of $10 would be hit with a $10 surtax. The resulting doubling of price for our wine in Canada will, no doubt, drive a large percentage of our customers away. In fact, we believe that if this cloud of uncertainty concerning a dramatic increase in the price of U.S. wine is allowed to persist, Canadian and Mexican wine buyers will soon begin looking elsewhere to stock their grocery and liquor store shelves.

A Canadian tariff of this nature could cut off the vast majority of U.S. wine exports to Canada and cost U.S. winemakers hundreds of millions of dollars in lost sales. Adding to this harm, our market share will take many years to gain back. Consequently, the cost of winning back shelf space and market share over the years following the end of retaliatory tariffs will also be substantial.

A difficult but important lesson can be drawn from Mexico's previous retaliatory tariffs. In two past trade disputes with the U.S., Mexico retaliated against U.S. products costing the U.S. millions of dollars in lost sales and lost market share. In 2009, Mexico imposed a 20% tariff on wine due to the trucking dispute. This was the second retaliation imposed by Mexico on U.S. wine in 7 years, the first con-

cerning a WTO dispute over the Byrd Steel Dumping Amendment, which the U.S. repealed in 2007.

In 2007, U.S. wine exports to Mexico reached a high of $24 million in revenues to wineries. Following Mexico's retaliatory tariffs, U.S. wine exports dropped to $18 million in 2010, a 25% loss in sales. While Mexico eliminated its retaliatory tariffs in 2011, it took another 3 years to 2014 before U.S. wine exports returned to just the level where they were in 2007.

From this experience, it is certain that:

1. Retaliatory tariffs dramatically harm U.S. wine exports; and
2. It will take U.S. wineries many years, if not decades, to recover from another country's retaliatory tariffs.

Conclusion

In closing, COOL-related retaliatory tariffs will result in an enormous loss of sales for U.S. wineries, estimated to be in the hundreds of millions of dollars. Since the strong growth of U.S. wine exports to Canada and Mexico over the past decade has in part been due to USDA's Market Access Program, it would be most unfortunate now for Congress to allow another U.S. law such as COOL to undo these hard-fought export gains.

For these reasons, Wine Institute respectfully requests that Congress act quickly to address this critical matter. Thank you very much for your continued leadership and efforts to resolve this dispute and to grow U.S. exports.

TOM LAFAILLE,
Vice President and International Trade Counsel,
Wine Institute.

The CHAIRMAN. Thank you very much.

I am going to yield about 15, 20 seconds to Mr. Costa here to introduce Mr. Smith.

Mr. COSTA. Thank you very much, Mr. Chairman, for that privilege.

It is indeed my honor to introduce Mr. Smith of Harris Farms. I have worked with Harris Farms Company for decades. They have developed a reputation not only in California but across the country as one of the premiere producers of beef, from the grazing, to the feedlot, to the processing, and to the value-added. They export a great deal of beef products, and have pioneered opening new markets in Asia and elsewhere, and it is indeed our honor to have Mr. Smith, representing Harris Farms, here this morning. Thank you, Mr. Smith.

STATEMENT OF MICHAEL T. SMITH, SPECIAL PROJECTS MANAGER, HARRIS RANCH COMPANY, SELMA, CA

Mr. SMITH. No, Congressman, thank you.

Last year, I had the privilege to be asked to testify before this Subcommittee on the state of the beef industry, and at that time, I identified Mandatory Country-of-Origin Labeling as a critical issue for the beef industry, and one that really needed Congress to act upon. Now, 1 year later, I find myself here at this Subcommittee again, asking one more time that Congress take up this legislation, which, in its simplest form, is a solution looking for a problem, but in reality, it is just bad public policy. And I don't think I need to remind you that the clock is ticking.

COOL has plagued our industry for years. Its supporters point to surveys showing that Americans want to know where their beef comes from, but most surveys fail to provide an accurate measure of how consumers actually vote, which is with their pocketbook.

As a family-owned, functionally-integrated cattle feeder and beef processor, Harris Ranch has experienced firsthand the cost associ-

ated with implementing COOL. From burdensome record-keeping of live animals, to sorting and segregating of carcasses in the coolers, to operating dedicated fabrication sets to separate the myriad of beef products generated from each and every carcass. Cattle producers are currently experiencing discounts ranging from $35 to $60 per head. They were applied for no other reason than Country-of-Origin Labeling. These discounts are hitting U.S. cattlemen, cattle feeders and processors that purchase cattle of Canadian and Mexican origin.

In the southern tier States of California, Arizona, New Mexico, and Texas, cattle producers often purchase feeder cattle from Mexico to graze on pastures, or place them in feedlots to finish in the United States. Mexican-origin cattle are extremely important to the southern tier states because they provide production efficiencies associated with keeping cattle pens full, bunk space occupied, and quite frankly, blood on the floor. They provide a consistent supply of fed cattle for beef processing facilities, and especially those that are located near the border.

I would turn to the fundamental question at hand. Why do we have COOL? I think everybody would agree, that question is especially important when you consider the WTO case. If Canada and Mexico win the most recent appeal, which we honestly believe they will, they will be allowed to retaliate not only against our industry, but many others as well, some of whom you have heard from today.

Cattle: Canada and Mexico are two of the beef industry's top export markets, worth roughly $1 billion a piece. That is big money for any industry. In fact, it equates to roughly ⅓ of our total beef export value. If we lose access to those markets, it will have a profoundly negative impact on all U.S. beef producers. All of our current global market access equates to approximately $350 per fed steer and heifer marketed today. If we lose ⅓ of that, roughly $115 will be taken directly out of the pocket of every cattleman in the United States.

But the monetary losses are not all of the problem. The vigorous defense of COOL by our government sends an antitrade signal to the international community. The WTO keeps telling us that COOL violates our trade commitments, but our government keeps saying no, it does not. Future trading partners will look at this issue closely, and use it before they ink any trade deals with us. I am certain we would do the same if we saw similar behavior from our trading partners.

Finally, I wonder why our government wants to hurt an industry for a simple marketing program, and that is really what it is. The vast majority of the industry does not want it, and consumers don't use it. COOL is about marketing, has nothing to do with food safety. Those who use that argument, it is basically a red herring because they just want to keep on to hold their position. At the end of the day, COOL is an experiment that has failed. We agree with Secretary Vilsack that Congress must act to fix COOL, but the only way to fix it and ensure that there won't be future WTO cases is to repeal it.

Thank you.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF MICHAEL T. SMITH, SPECIAL PROJECTS MANAGER, HARRIS RANCH COMPANY, SELMA, CA

Mr. Chairman, Ranking Member Costa, thank you for the opportunity to be here today to continue the discussion of mandatory, government-run country-of-origin labeling better known as COOL.

The COOL debate has plagued our industry for almost 2 decades. Proponents of COOL have long said that mandatory labeling would cause the U.S. consumer to actively seek out and pay more for U.S. beef. Over 6 years of implementation, however, has proven this is not the case. Kansas State University published a study titled "Mandatory Country-of-Origin Labeling: Consumer Demand Impact" in November of 2012. Their study utilized multiple methods to gauge consumer perception and use of COOL, and came away with several findings which did not surprise those of us in the beef industry. The study discovered that demand for covered meat products has not been impacted by mandatory country-of-origin labeling (MCOOL) implementation. In addition, typical U.S. consumers are unaware of MCOOL and do not look for meat origin labeling.

While proponents of COOL say they have surveys that show Americans want to know where their beef comes from, the K-State study actually measured how Americans vote. Americans vote with their pocketbook by purchasing beef, and as stated above, the vast majority don't consider COOL in their purchasing decision. Why then would we incur the costs of a program that the consumer is not demanding? As a cattle feeder and packer, Harris Ranch has experienced the costs associated with implementing COOL. From burdensome record-keeping, to line sorting and segregation, and to the actual label itself, we have been paying the costs of COOL since it went into effect in October of 2008. All segments of the U.S. beef industry have been impacted by COOL.

Feeders and packers across the country, and of all sizes, are experiencing the same issues with compliance costs and discounts. As a result of the costs associated with the implementation of COOL, we have seen discounts paid on cattle which originate in either Canada or Mexico. Those discounts have ranged from $35 to $60 per head. These discounts are incurred for no other reason than COOL. The cattle can have the same quality characteristics as a similar animal of domestic origin, but will be discounted because of COOL. The discounts are not just borne by Canadian and Mexican producers. U.S. cattle producers and feeders are incurring these discounts as well.

In states such as California, Arizona, New Mexico and Texas, cattle producers will bring in feeder cattle from Mexico and finish them in the United States. This takes place on U.S. ranches and feedlots utilizing U.S. labor and U.S. grown feed. This production method is seen in other states and is the primary way many cow/calf producers and cattle feeders are feeling the brunt of COOL. Again, these discounts are being realized by American beef producers thanks to a program that proponents said would help them.

Given all I've stated above, I again have to ask the question "why do we still have COOL?" That question is especially relevant when you look at the World Trade Organization (WTO) case filed by Canada and Mexico against our mandatory, government-run COOL program. The WTO has ruled against the U.S. COOL program three times, most recently in October of 2014. The U.S. Government, however, has appealed this decision. We expect the WTO to rule on the current appeal on, or about, May 18th. If Canada and Mexico win their appeal for a fourth time, which we believe they will, they will be allowed to retaliate against our industry and many other industries across the United States.

Canada and Mexico have consistently been two of our top five markets for the export of U.S. beef. In 2014, Canada imported over $1 billion in U.S. beef and Mexico imported almost $1.2 billion. That is big money for our industry. In fact, it equates to approximately ⅓ of our total beef export value. If we lose access to those markets, or have tariffs placed on them, it will have a negative impact on U.S. producers. All of our current global market access equates to approximately $350 per marketed head. If we lose ⅓ of that, roughly $115 per head will be taken out of the pocket of every U.S. cattle producer. That is a cost in addition to all we have incurred with compliance.

As I mentioned above, we have been paying the costs of COOL since 2008. Retaliation would only make our losses worse. The monetary losses are not all, though. The vigorous defense of COOL by our government does not send a pro-trade signal to the international community. The WTO keeps telling us that COOL violates our trade commitments, but our government keeps saying it doesn't, even though the very entity regulated does not support the program. Future trading partners will look at this closely and use it before they ink any trade deals with us. We would

do the same if we saw that behavior from any of our trade partners. This anti-trade stance is contrary to the very pro-TPA rhetoric we are hearing from this Administration. So, just who are they trying to protect with COOL?

Why would our own government want to hurt our industry for a simple marketing program that the vast majority of the industry does not want and that the consumer does not use? COOL is all about marketing and has absolutely nothing to do with food safety. Those who use that argument know nothing about the food safety protocols in this country. This is a red herring used by COOL proponents in a desperate attempt to hold on to their position. COOL is a farce and its proponents obviously have no idea how modem beef production in the United States actually works. They have a simple and short-sighted view which is already costing our industry money.

COOL is a failed experiment. It has added costs to the production of beef and resulted in discounts borne by American ranchers; the U.S. has been found out of compliance with our WTO trade obligations three times, and soon to be a fourth; and our two closest trading partners are potentially months away from instituting retaliatory tariffs against multiple industries, damaging our economy and costing jobs. All of these negative consequences result from a program that the typical consumer does not even look for when buying their steaks or ground beef.

After the WTO ruled against the U.S. in 2012, USDA took NFU's advice and revised the COOL regulations. Today, we're seeing the result: a more burdensome COOL program for the meat industry; more steps in the WTO case taking us to the brink of retaliation; uncertainty for U.S. exporters in multiple industries; and a label even less useful or meaningful to the consumer. This must stop. The Secretary of Agriculture has made several public comments over the past few months, most recently at the NFU convention, that there is nothing else he can do to bring COOL into compliance and that Congress must act. On that point, we agree. We must ensure that we are not sitting here again in 2 years, facing another potential loss at the WTO. The solution is for Congress to repeal COOL now. Half-measures or other alterations to COOL will only bring more uncertainty and possible WTO challenges. That is unacceptable to the meat industry, as well as to the other industries forced to look over their shoulders, worried about potential retaliatory tariffs from Canada and Mexico. We encourage you to work with Chairman Conaway to repeal COOL before retaliation is implemented.

Mr. Chairman, thanks for the opportunity to be here today.

The CHAIRMAN. Ms. Bodor.

STATEMENT OF ALISON BODOR, EXECUTIVE VICE PRESIDENT, NATIONAL CONFECTIONERS ASSOCIATION, WASHINGTON, D.C.

Ms. BODOR. Good morning. I am Alison Bodor, Executive Vice President of the National Confectioners Association, and I appreciate this opportunity to testify on behalf of America's confectionary companies that manufacture and market the vast majority of chocolate, gum, candy, and mints sold in the United States.

NCA also represents the companies that supply those manufacturers, and companies who serve as brokers. More than ⅔ of NCA's 290 members are small businesses. Many of the industry's manufacturers are now fourth and fifth generation family-owned companies, started by immigrants before the turn of the century. The industry supports 70,000 jobs across the United States, and if you add in supplier and distribution networks, that number easily triples.

NCA members have long supported free trade. This is despite the fact that our companies are disadvantaged in our own domestic marketplace by U.S. agriculture subsidies that increase the price of sugar, one of our key ingredients, in the U.S. compared to the world price that our global competitors enjoy. Confectionary manufacturers are major users of U.S.-grown commodities, including sugar, corn sweeteners, dairy products, peanuts, almonds, and other nuts. These industries, of course, benefit also from U.S. exports of confections.

In 2014, U.S. confectioners exported more than $2 billion worth of candy, chocolate, gum, and mints, and bulk chocolate products around the world. Not surprisingly, Mexico and Canada are our most important trading partners. Forty percent of U.S. confectionary exports are to Canada, $900 million worth, while 15 percent are to Mexico. These two markets together total over 50 percent of U.S. confectionary exports. We are deeply concerned that retaliatory duties from both countries will target our industry.

Let me talk about Canada. Currently, four confectionary-related tariff codes are on Canada's proposed retaliatory duty list. These codes capture U.S.-made bulk chocolate preparations, finished chocolate confections, and sugar-free sweeteners. Together, these confectionary products represented $615 million of confectionary exports to Canada last year. U.S. confectioners have worked hard to grow the presence of U.S. confections and intermediate products in Canada, and our efforts are paying off. Exports of finished chocolate grew by almost $45 million in just the last 2 years, while exports of bulk chocolate grew by almost $12 million. Those years of investment will quickly be diminished if the retaliations from Canada are implemented. For all of these products; chocolate, bulk chocolate, wafers, biscuits, and sweeteners, there are Canadian and global competitors. Many American-made chocolates will disappear from Canadian shelves. Manufacturers in Canada that source critical raw materials from U.S.-based suppliers will shift supply chains outside of the United States. That loss of business will impact U.S. confectionary companies, their workers, and importantly, also their communities.

The Government of Mexico has not yet declared the products upon which they intend to levy duties if WTO grants retaliation, but U.S. confectioners are very troubled that our industry will again be targeted, as they were several years ago during the U.S.-Mexico cross-border trucking dispute. At that time, Mexico implemented a 20 percent duty on confectionary products. That resulted in a 50 percent drop in U.S. confectionary exports.

The longer these disputes are unresolved, the greater the consequences to the U.S. confectionary industry, and the communities in which those companies reside. U.S. confectioners urge Congress and the affected industries to find a resolution that ensures U.S. compliance with international trade obligations, and avoids retaliatory actions against our exports to the north, and possible retaliation for our exports to the south.

Thank you very much.

[The prepared statement of Ms. Bodor follows:]

PREPARED STATEMENT OF ALISON BODOR, EXECUTIVE VICE PRESIDENT, NATIONAL CONFECTIONERS ASSOCIATION, WASHINGTON, D.C.

Impact of the Trade Dispute Over Country-of-Origin Labeling on the U.S. Chocolate and Confectionery Industry

I appreciate this opportunity to testify on behalf of America's confectionery companies before this Subcommittee. NCA has been representing companies that manufacture candy, one of life's little pleasures, since 1884. Today, NCA represents 290 companies that manufacture and market the vast majority of chocolate confectionery, sugar confectionery, gum and mints sold in the United States, 260 companies who supply those manufacturers and 135 companies who serve as third-party sales agents for manufacturers, known as brokers.

More than ⅔ of NCA's members are small businesses. Many of the industry's manufacturers are now fourth and fifth generation family-owned companies, started by immigrants before the turn of the century. There are confectionery manufacturers in all 50 states, with a particular concentration in Pennsylvania, New York, New Jersey, Illinois, Ohio and California.

According to the U.S. Department of Labor, in 2009 (the latest data available) there were about 70,000 Americans directly employed by the confectionery industry. When you count the related number of sales and distribution jobs associated with the industry, that number triples. Confectionery workers are represented by the Bakery, Confectionery, Tobacco, and Grain Millers; United Food and Commercial Workers International; and the Teamsters Unions.

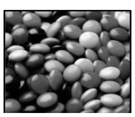
Confectionery manufacturers are major users of U.S.-grown commodities including sugar, corn sweeteners, dairy products, peanuts, almonds and other nuts. These industries, of course, benefit also from U.S. exports of confections.

NCA members have long supported free trade.

NCA companies have actively engaged in the President's National Export Initiative. In 2014, U.S. confectioners exported more than $2 billion worth of candy, chocolate, gum, mints and bulk chocolate products around the world. Not surprisingly, Mexico and Canada are our most important trading partners. Forty percent of U.S. confectionery exports are to Canada ($900 million) while 15 percent (more than $300 million) are to Mexico. These two markets together total over 50 percent of U.S. confectionery exports. We are deeply concerned that retaliatory duties from both countries will target our industry.

Let me tell you more about how U.S. confectioners will be impacted if Canada proceeds with retaliatory duties. Currently, four confectionery related tariff codes are on Canada's proposed retaliatory duty list. These codes capture U.S.-made bulk chocolate, finished chocolate confections and sugar-free sweeteners. Together, these confectionery products represented $615 million of U.S. exports to Canada last year.

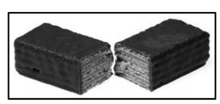
Tariff code 1806.90 covers chocolate and chocolate confectionery. Included here are chocolates in varied forms, such as buttons, coins, drops, hearts, animals, and other shapes along with assorted boxes of chocolate and hot cocoa mixes. U.S. confectioners supply more than 50 percent of Canada's total imports in this category. Examples of typical chocolate products classified under 1806.90 are pictured below.






Sweet biscuits and waffles/wafers are covered under tariff code 1905.31 and 1905.32. Forty-two percent of Canada's total imports of sweet biscuits and ⅔ (68 percent) of Canada's total imports of waffles/wafers are sourced from the U.S. Some of NCA's members manufacture chocolate-covered or chocolate-containing sweet biscuits, waffles and wafers. Examples to illustrate such finished products are pictured below.

Example of chocolate-covered sweet biscuits (1905.31)




Examples of chocolate-covered waffles and wafers (1905.32)

Tariff code 1806.20 covers bulk chocolate preparations. These include chocolate crumb, liquid chocolate and chocolate slurries, all of which are used in the manufacture of chocolate and chocolate-containing products. U.S. chocolate makers supply more than 75 percent of Canada's total import demand of bulk chocolate preparations.

Certain sugar substitutes including sorbitol and xylitol are included in Tariff Code 2940.00. More than ¼ (28 percent) of Canada's total imports of sweeteners of 2940.00 are sourced from the U.S. As the sugar-free market continues to grow, sugar substitute inputs sourced from the U.S. continue to grow to support manufacturing of sugar-free gum and confectionery.

U.S confectioners have worked hard to grow the presence of U.S. confections and intermediates in Canada and our efforts are paying off. Exports of finished chocolate grew by almost $45 million in just the last 2 years, while exports of bulk chocolate

grew by almost $12 million. Those years of investment will quickly be diminished if the retaliations are implemented. For all of these products—chocolate, bulk chocolate, wafers/biscuits and sweeteners—there are Canadian and global competitors. Many American-made chocolate products will disappear from Canadian shelves. Manufacturers in Canada that source critical raw materials from U.S.-based suppliers will shift supply chains outside of the United States. We are aware already of Canadian companies using the threat of the retaliation to lure manufacturers to new and more secure supply sources. The loss of business will impact U.S. confectionery companies and their workers, also their communities.

The Government of Mexico has not yet declared the products upon which they intend to levy duties if WTO grants retaliation, but U.S. confectioners are very troubled that our industry will again be targeted as they were several years ago during the U.S.-Mexico cross-border trucking dispute.

The longer these disputes are unresolved, the greater the consequences to the U.S. confectionery industry.

U.S. confectioners urge Congress and the affected industries to find a resolution that ensures U.S. compliance with international trade obligations and avoids retaliatory actions against our exports to the north, and possible retaliation for our exports to the south.

The CHAIRMAN. I would like to thank each of the witnesses for your testimony today.

We will now move into a period of questions by our Members. I need to note that given the time constraint we are under due to the Joint Session of Congress, in fact, we need to be out of this hearing room by around 10:20, 10:25. I ask unanimous consent that Members limit their questioning to 3½ minutes. Without objection, so ordered.

I now recognize myself for 3½ minutes.

My question is directed to Mr. Wenk and Ms. Dempsey. As I mentioned in my opening statement, when countries impose non-tariff trade barriers on U.S. agriculture products, and encourage other nations to adopt similarly protectionist policies, we would certainly all expect the United States Government to fight vigorously against those policies. I also understand that to criticize other nations for imposing protectionist barriers to our products means that we must likewise be critical of our own policies that do the same.

Now, do both the U.S. Chamber of Commerce and the National Association of Manufacturers consider Country-of-Origin Labeling a non-tariff trade barrier?

Ms. DEMPSEY. Yes, the NAM believes that the barrier is, in fact, a non-tariff trade barrier.

The CHAIRMAN. Mr. Wenk?

Mr. WENK. Yes, we do.

The CHAIRMAN. Thank you very much.

I now recognize Mr. Costa for any questions he may have.

Mr. COSTA. Thank you very much, Mr. Chairman.

Mr. Smith, you did accounting of the costs that your own company incurred in trying to comply with it. What was the timeline in trying to put that together to ensure that you were in compliance?

Mr. SMITH. The timeline for putting the program together, Mr. Costa?

Mr. COSTA. Yes.

Mr. SMITH. Okay. When COOL was first implemented, obviously, we were fortunate in that USDA met with industry, and sat down and came up effectively with a means by which we weren't going to dramatically reduce the speed at which commerce would occur

in terms of selling live animals to one another. As a company, obviously, you try to plan ahead, you try to expect what some of these difficulties are going to be. You put together programs, procedures, so that you make certain that livestock are segregated accordingly, you identify specific days upon which those cattle will move into your processing facility, not only what day but what hours of certain shifts.

Mr. COSTA. And you run two shifts there at your operation.

Mr. SMITH. Actually, just one, Congressman Costa. We run two shifts in ground beef production, but the actual harvest and processing of the carcasses is just one 8 hour shift.

Mr. COSTA. But I noted that you export to Asia. Are you currently exporting any product to Mexico?

Mr. SMITH. We are, sir.

Mr. COSTA. Or Canada?

Mr. SMITH. And it amounts to roughly $1.5 million in value as far as sales to Mexico.

Mr. COSTA. So you are concerned about retaliatory effects would possibly occur immediately then.

Mr. SMITH. Very much so, sir.

Mr. COSTA. Yes. I assume you consider this a non-tariff barrier if enacted?

Mr. SMITH. Yes, we do.

Mr. COSTA. Mr. LaFaille, you consider it the same?

Mr. LAFAILLE. Absolutely, Mr. Costa.

Mr. COSTA. When we talk about the impact to the wine industry, that has tried very hard to penetrate foreign markets, with some success, what potential fallout do you see in the event that Congress doesn't act if we get the adverse ruling we are expecting by the end of this year?

Mr. LAFAILLE. Well, we know that retailers will start to look at other countries' wines and—rather than ours, even before retaliatory tariffs will hit. At the same time, once they hit, consumers, who are definitely price-sensitive, are going to be looking to less expensive products, and so we know that this is exactly what happened in Mexico, and it took 7 years to recover.

Mr. COSTA. All right. Have we gotten any clarification with the U.S. Office of Trade Representative as to whether or not this is a 4 to 6 month process, instead of the 60 days that some are anticipating?

Mr. LAFAILLE. I am not certain of that.

Mr. COSTA. Anyone else care to opine?

Mr. JOHNSON. I would only point out that history would indicate that almost every WTO deadline that they lay out is not met by some long period of time. They generally are very late because they are very overworked.

Mr. COSTA. Okay.

All right, my time has expired, Mr. Chairman. Thank you. I will wait until the next round, if there is one.

The CHAIRMAN. Thank you, Mr. Costa.

I now recognize Mr. Emmer.

Mr. EMMER. Thank you, Mr. Chairman.

As you know, I come from Minnesota, and when I arrived here to Congress, some of the advice I received was focus on an area

that is not only in your wheelhouse but it is important to your state, as opposed to getting involved in everything. Minnesota is still home to 19 Fortune 500 companies, and our two biggest private economic drivers are agriculture and manufacturing. Our state is all about trade, including trade with Canada and Mexico. In fact, Canada is Minnesota's top export market, and it is our number one export market for agriculture and agrifood.

The questions that I have, and I will try to keep them brief, is first, many of you have talked about the effects of retaliation to your producers or members, but what would these retaliations look like to the average person buying a pound of ground beef at the grocery store, or an office chair at Office Depot? Can you give me an idea what that will look like to the consumer?

Ms. DEMPSEY. Let me start. I mean trade is absolutely vital not just to produce jobs in industries and agriculture and services and certainly manufacturing, but it helps give consumers in the United States choice of quality products, choice over price. The loss of new opportunities and existing opportunities in Canada and Mexico that we see resulting from the retaliatory tariffs that we fully expect Canada and Mexico to impose, and very likely in 2 months, it will be a short time, they have waited years on this to resolve this dispute, that will result in lost opportunities, less efficiency, less innovation both in our manufacturing sector and others.

Mr. EMMER. It would be great, Mr. Smith, if you could give me an idea——

Mr. SMITH. I don't know if I can necessarily give you a dollar figure, Congressman, in terms of what the net impact financially will be to the consumer, but I know that there will be lost opportunity there in terms of being able to purchase value-added products.

As a company, this retaliation, and I just want to go on record to state that it would be more than just potentially the increased tariffs on beef products that we would market, but as a large farming operation as well, it will have negative impacts. I know that on their list the Canadians have identified cherries, oranges——

Mr. EMMER. Right.

Mr. SMITH.—tomato paste, three of the commodities that we are very big in producing as well.

Mr. EMMER. And I appreciate that. I just was going back to Mr. Weber's original testimony, and he has a figure in there that shows Minnesota could lose depending on $2 to $4 billion in retaliation, somewhere between 250 and 500 jobs. Since we have short time, the question I want to ask, the last one, to all of you is, *in lieu of* the conflicting data that surrounds the cost and benefits of COOL, does anyone see a solution that would be satisfactory to all parties involved, and perhaps maybe not you, Mr. Smith, based on your testimony, but a solution that would be satisfactory to everyone and WTO compliant?

Mr. JOHNSON. Mr. Chairman, if I could take the first crack at that. It gets to part of your previous question too. There is no right to retaliate unless there is proven economic damages. The only evidence introduced to the WTO at this point is based on proprietary pricing data provided by the CCA in Canada, and it has been overwhelmingly refuted by publicly available data in the Taylor study that I referenced.

[Submitted information in response to Mr. Emmer's question and it is located on p. 71.]

Mr. EMMER. Thank you, Mr. Chairman. That is not really helpful to me. I was looking for a solution as opposed to an argument.

So I yield back, Mr. Chairman. And thank I the witnesses for their time.

The CHAIRMAN. The gentleman's time has expired.

Mr. Yoho, 3½ minutes.

Mr. YOHO. Thank you, Mr. Chairman. I appreciate the opportunity. I appreciate your testimony.

COOL started in 2002, and it was implemented in 2009. Since that time, we have had this disgruntlement, the disruption of the market, the lawsuits and all that, and when I look at the responsibility of the USDA, is it the responsibility of the USDA and the government to illustrate the origin of the meat that the U.S. consumer eats, like Canada and Mexico, or is it a trade issue?

Mr. Smith, let me ask you first.

Mr. SMITH. I am sorry, Congressman, I didn't understand your question.

Mr. YOHO. Is it the responsibility of the USDA to demand, or require Country-of-Origin Labeling, or should that be negotiated in the trade issues like with NAFTA, when NAFTA came out, should that have been put in there and not after the fact when NAFTA was negotiated?

Mr. SMITH. Right now, USDA has oversight over those labeling requirements.

Mr. YOHO. I understand that, but should that have been negotiated in NAFTA when it first happened, instead of after the fact?

Mr. SMITH. Perhaps in hindsight, yes.

Mr. YOHO. All right. My other question is, the COOL label doesn't make a product safer.

Mr. SMITH. That is correct.

Mr. YOHO. It doesn't add to the traceability of a product. The USDA has sole responsibility of saying a product is wholesome, healthy and good for the consumer or marketable. And I don't see the benefit of the COOL labeling, and you guys have brought it up for the majority of the panel that it has added a burden to the U.S. producer, it has put us in trade retaliation. And let us see, probably the best way to go in this is looking at the complete repeal of that, and I hope out of this Committee, and with your recommendation, that is the smartest way to go, and have these things negotiated in trade agreements. As I said, the labeling doesn't make the product any safer for the consumer. It doesn't increase the traceability. In addition, it adds $2 billion to the cost of meat, which is ultimately paid for by us, the consumer, and it affects the people at the lower income levels higher.

So with that, we will listen to your recommendations, and I look forward to working on that so that we can move beyond this and not have retaliation from our trading partners. And coming from the State of Florida, I was born in Minnesota like Mr. Emmer, but my parents had the good sense to move to Florida. And Canada is Florida's largest trading partner also, and it would be tough for us. We ship a lot of citrus up there. And I look forward to working

through this so that we build those alliances with our trading partners stronger so that we keep agriculture a strong trading tool.

I am going to yield back, Mr. Chairman. And I appreciate it, and congratulations.

The CHAIRMAN. Thank you very much.

The gentleman from Washington, Mr. Newhouse.

Mr. NEWHOUSE. Thank you very much, Mr. Chairman, and you are doing a great job this morning. Thank you all for being here and helping us understand the implications of this very important issue.

Let me take the brief time I have to ask a couple of questions real quickly. First of all to Mr. Weber and Mr. Smith, you have talked about the cost of COOL and the implications that it has had on our industries. Since its enactment, can you point to anything of benefit, increased sales, any kinds of an upside to this at all? I am trying to understand if there is a flipside to this as well.

Mr. SMITH. No, sir, we have seen none. And you would think that as a branded beef company, one of the first branded beef companies in the U.S., if we saw an economic benefit associated with being able to identify products coming from a specific entity, whether it be product of the U.S., we would have, on our own fruition, approached the USDA, because companies can do this, and asked to make label claims. We saw no benefit in the marketplace. We did demographic studies, we asked some of our customers do you think the end consumer would like to see this type of information, and almost to a man, they have said no. So to answer your question, Congressman, we see no benefit whatsoever, no, sir.

Mr. NEWHOUSE. Mr. Weber, any thoughts?

Mr. WEBER. Yes, Congressman. I think I would agree with that statement. It is very hard to measure any type of economic benefit from Country-of-Origin Labeling, much more difficult than it is to label the cost of having to comply with Country-of-Origin Labeling. The difficulty it presents for packers, processors, producers, clear down to the retail level, there is added cost involved and it is hard to pinpoint that in any one sector, but from an economic benefit, it would be extremely difficult to say that consumers are benefiting from Country-of-Origin Labeling.

Mr. NEWHOUSE. Okay, thank you. Mr. Wenk and Ms. Dempsey, can you tell me if the potential retaliation is having any impact on our industries already, just the existence of the potential?

Mr. WENK. Well, thanks, Congressman. This is a dark cloud that is forming over U.S. exporters right now, and that is very much why this hearing today is very timely. And as I said in my testimony, we believe that the way forward right now is for Congress to move forward on legislation to repeal the COOL rule for muscle cuts of meat. And just in Washington, sir, if you look at our website, *www.COOLReform.com,* you will see that there are several products in your state that could be impacted by retaliatory tariffs; apples, cherries, pears, potatoes, video game consoles, to name a few. So this is a very urgent topic, sir, and it is having an impact, and it is a dark cloud that is forming over our exporters right now.

Mr. NEWHOUSE. Thank you.

Ms. DEMPSEY. I agree with Mr. Wenk, and would just add that just as in the United States, customers overseas oftentimes plan months in advance, and once a decision is made——

Mr. NEWHOUSE. Yes, right.

Ms. DEMPSEY.—to purchase, they are going to make that purchase. And so this looming threat of retaliation, which we believe will be very substantial given the disruption in Canadian and Mexican trade in this area, will have, and will have not an effect just on that one sale, but could, as we saw in the Mexico trucking case, it could affect sales to those customers for years to come because once you lose that customer, you are not going to get them back very quickly again.

Mr. NEWHOUSE. Right. Well, thank you very much.

And, Mr. Chairman, I have gone over. Thank you for your indulgence.

The CHAIRMAN. Thank you very much.

I will now recognize the gentlewoman from Missouri, or perhaps for the benefit of the other ½ of the population of that great state, perhaps I should say Missouri, Mrs. Hartzler.

Mrs. HARTZLER. Either one works, but I am proud to be a lifelong farmer and glad to be here today in this very, very important issue. I appreciate your testimony.

I wanted to start with Mr. Weber and Mr. Smith. Secretary Vilsack recently stated that if we lose the appeal of the WTO, Congress essentially has two options; come up with some sort of generic label, or repeal the current law. So I was just wondering, has the Secretary approached either of your organizations to discuss possible alternatives to a full repeal of COOL?

Mr. WEBER. I am not aware that he has approached our organization as far as a solution to COOL. I think, from our position, due to the urgency that we have, and I guess I would like to maybe address Congressman Costa's previous question, it is 60 days by rule, and we are staring this in our eyes, this threat of retaliation. The Canadians and the Mexicans are both ready to move, so I don't think we have much other option other than repeal of the statute that is causing the problem here.

Mrs. HARTZLER. Mr. Smith?

Mr. SMITH. I would concur with those remarks. To my knowledge, the Secretary has not reached out to the beef industry to ask for their input regarding any potential fix. I would rely back to my testimony. This is a failed experiment. In our opinion, it just needs to be repealed. We need to get rid of it.

Mrs. HARTZLER. So if we repeal COOL and the President signs the legislation into law, do you believe that would immediately end the threat of retaliation? Everybody.

Ms. DEMPSEY. Yes. So then Canada and Mexico would not be WTO authorized to retaliate.

Mrs. HARTZLER. Right. Good. Okay, so back to Mr. Wenk and Mr. Smith. From the outset, many of us had concerns that a Country-of-Origin Labeling requirement would add cost to the processing and marketing of meat products, and it seemed that USDA shared those concerns, and in the 2009 final rule implementing COOL, USDA estimated that the first year implementation cost for growers, producers, processors, wholesalers and retailers would be \$2.6

billion, and this was their original estimate. The rule also stated that the estimated economic benefits associated with the rule were "likely to be small." So they saw this coming.

So to what extent have cattlemen and pork producers borne this cost?

Mr. SMITH. If you don't mind, I could start. I mean as a feeder and a packer, I will tell you that most of those costs right now are being borne within those two segments of the industry. Now, that is not to say that there are not additional costs associated with paperwork that occurs back at the ranch level, but the majority of those costs, in my opinion, have been absorbed in those two segments of the industry. And it is primarily just because of the sorting within pens, coolers, separate, as I mentioned, fabrication sets, labeling requirements, *et cetera*.

Mrs. HARTZLER. Is that passed on to the consumer? Have costs been passed on to the consumer as a result of this rule?

Mr. SMITH. A portion of those have, yes, ma'am. Some of them have been sent backwards, back through the production channel, and that is the reason that the Mexican Government and the Canadian Government are angry, because that negative economic signal is being sent to them in one direction in those direct costs, but then the indirect costs, the lack of production efficiencies because some of the difficulties we have, and some of the decisions our customers have made regarding whether they will carry two separate labels in their retail stores, those are indirect costs that the consumer bears.

Mrs. HARTZLER. Clearly, there is no upside to this. It is not good for America, it is not good for the producers, the processors, and it is not good for the mom that goes to the grocery stores having to pay more for products. And so we really do need to repeal it.

Mr. WEBER. I would pretty much agree with Mr. Smith's comments on that. If you just picture our industry. We have the processor in the middle that is really caught in the endgame in this thing, and they work on a margin, and I guarantee you they are going to pass those margins forward, and as much as they can, back to us as producers on the farm. And that is why I mentioned it is hard to actually know exactly what it is costing because that is exactly what happens; it spreads out through the economy. But there is no question that there is added cost with segregation of the product and distribution of the product. It becomes almost an impossible situation for them, and that is what has been passed down to us as producers. And so there are many costs involved.

Mrs. HARTZLER. Thank you.

The CHAIRMAN. The gentlewoman's time has expired.

We are within our time constraints, so we will move into round two. I have a question for you, Mr. Weber.

The U.S. has imported millions of feeder pigs from Canada. These feeder pigs have been essential to help fully utilize pork producing capacity in the United States. For the record has, Mandatory Country-of-Origin Labeling had an effect on the availability of those feeder pigs?

Mr. WEBER. The feeder pigs are available, but the number of pigs willing to come into this country has been affected, and that is clearly the case that Canada—one of the topics that Canada has.

I have fellow producers in my state that have been impacted by this because they haven't got a market for the Canadian pigs, and that occurred early on. So it is not a matter—to me it isn't an issue of availability. The pigs are available, there are still approximately 75,000 feeder pigs a week coming into this country, high-quality pigs. The issue at hand here is the retaliation that our industry is facing. We absolutely have to avoid retaliation. We have come through a very difficult marketing period in the pork industry. Obviously, with PED we had some high prices. Those prices are less than ½ of that today. We are negotiating a major free trade agreement and we want to be represented as a country that lives up to its trade agreements, and so we just need to avoid this retaliation by WTO—or by Canada and Mexico.

The CHAIRMAN. Thank you, Mr. Weber.

Mr. Costa.

Mr. COSTA. Thank you again, Mr. Chairman.

Both Mr. Smith and Mr. Weber, I believe, testified earlier that in the event of the adverse ruling that we have discussed, and retaliatory action is taken by Canada and Mexico, that the solution to this issue would be to repeal the law. With the exception of Mr. Johnson, do the other witnesses concur with Mr. Smith and Mr. Weber? You can nod your head.

VOICE. Absolutely, sir.

Mr. COSTA. Yes. There has been some discussion as an alternative, and I would like to get your reaction to it, if those course of events take place that we develop a North American label. And I would like to get your reaction to a North American label, and maybe we can begin with Mr. Johnson since I am certain you don't favor repealing it.

Mr. JOHNSON. Thank you, Congressman. You are correct, we do not favor repealing it. We think actually that the best way to deal with this is to get the decision from the WTO——

Mr. COSTA. No, I understand that——

Mr. JOHNSON.—and then——

Mr. COSTA.—but I am talking about in the event of an adverse decision——

Mr. JOHNSON. Yes.

Mr. COSTA.—what is your thought on a North American label?

Mr. JOHNSON. Well, we would initially be inclined to oppose a North American label, but——

Mr. COSTA. Okay.

Mr. JOHNSON.—it is very important that you look at the actual decision, because we believe that there can be a very narrow fix that can be applied. Every WTO decision that has been made, there have now been three of them, has been narrower than the one before it.

Mr. COSTA. Okay.

Mr. JOHNSON. We have every expectation the same thing would happen this time.

Mr. COSTA. Mr. Smith, would you care—Mr. Weber, or any other of the witnesses, to react to a North American label?

Ms. DEMPSEY. I would just say that it is critical from our perspective and that of the COOL Reform Coalition that we eliminate the possibility of retaliation immediately. And so if we put our-

selves in a situation of developing yet another legislative mandate that is viewed as WTO inconsistent, and until one sees the details of such a rule it is very difficult to expect that Canada and Mexico are going to wait in terms of the retaliation. First and foremost, and as Mr. Wenk testified, our coalition has looked for lots of other alternatives along the way to try to promote resolution of this, but at this point, time has run out——

Mr. COSTA. Mr. Wenk?

Ms. DEMPSEY.—and so we need to see the——

Mr. COSTA. Yes.

Ms. DEMPSEY.—repeal of this rule, and then if there is work that needs to be done with Canada and Mexico to figure out another solution, then so be it.

Mr. COSTA. Yes.

Mr. WEBER. I would agree with Ms. Dempsey fully in her comments that it——

Mr. COSTA. Mr. Smith, Mr. Wenk, do you care to comment?

Mr. SMITH. Congressman Costa, I would agree wholeheartedly as well, yes. I mean I don't think we have the luxury to propose another potential fix. We have tried that twice now. It has not worked. As I mentioned, the clock is ticking. Let us repeal it.

Mr. WENK. I completely concur. The reality is that we don't have a lot of time, Congressman, we are not in the driver's seat right now. We are days away from a final WTO ruling, so that is why it is urgent that Congress acts.

Mr. COSTA. All right. Thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. I see we are now 10 minutes after 10:00, so we have about 10 minutes here.

Mr. Newhouse, have any follow-up?

Mr. NEWHOUSE. Thank you, Mr. Chairman. Just one line of questioning perhaps we haven't explored yet.

Certainly, we have talked about some of the negative impacts of retaliation, but are there other consequences of the U.S. being out of compliance with its trade obligations? And being out of compliance with WTO obligations, what does that do to the development of other opportunities perhaps in the marketplace internationally?

Mr. SMITH. I would offer just briefly. I mean that concept to do as I say, not as I do won't fly very well. It will pose astronomical challenges moving ahead, trying to negotiate any further trade agreement with any other countries.

Ms. DEMPSEY. I would just say from the manufacturing perspective, we already face a lot of trade barriers overseas on which we are trying to get resolution. There is over $12 trillion traded in manufactured goods worldwide, and the United States has nine percent of that. That world trade in manufactured goods is about three times the size of all consumption of manufactured goods in the United States. So if we are going to grow our economy, we need to do more. And so putting the United States out of its traditional leadership role in the world economy to make us a bad actor will tell the rest of the world that they can go ahead and impose additional barriers. And in a time that we are negotiating two big trade agreements to try to level the playing field, to try to have fair trade so we can get better access to the world's markets, this type of ac-

tion and our continued lack of compliance with WTO rules is really costing our leadership.

Mr. WEBER. I would fully agree with those comments. We have to be portrayed as a respectable trading partner in these negotiations. And believe me, we are all aware of it in this room here, that market access is extremely difficult, and world trade is extremely competitive, and we have to be portrayed as a respectable trading partner.

Mr. WENK. I would just——

Ms. BODOR. I would——

Mr. WENK.—add to what Ms. Dempsey said. We helped write the rules of the World Trade Organization, so we ignore those rules at our own peril. And it just doesn't make sense for us to ask other countries to follow the rules and that we don't have to follow those rules. And, there are many instances where we have brought cases against other countries for discriminatory practices they have brought against us, and most recently India, we brought a case against India in the WTO in terms of agriculture products. So if we expect other countries to abide by these rules, we need to do the same.

Mr. NEWHOUSE. Yes.

Ms. BODOR. I would also add from a small business perspective, it increases the lack of confidence in putting forth the investment that it takes to open up these markets. So companies need to be sure that when they make that investment, that it is going to stay for the long-term. Now, for the confectionary industry, we are facing the second set of retaliatory duties in 10 years, and that makes it difficult for companies to go the next step to make the investment that is necessary if they don't believe that the marketplace will last.

Mr. NEWHOUSE. Okay.

Mr. JOHNSON. If I could, I would argue that we also need to defend our position here. In the WTO proceedings, it was pointed out that some 70 countries who are members of the WTO have very similar Country-of-Origin Labeling rules. The WTO has never found against the law; they have found against how it was implemented. And so we ought to be precise about how we come into compliance, not simply throw out the law.

Mr. NEWHOUSE. Yes. I appreciate all your testimonies today.

And again, thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mrs. Hartzler.

Mrs. HARTZLER. Thank you, Mr. Chairman.

Mr. Smith, I wanted to explore some other implications. We talked about economic cost, but in your opinion, do you believe that Mandatory Country-of-Origin Labeling has had an effect on consolidation within the beef cattle industry?

Mr. SMITH. That is a touchy issue, and I will need to tread lightly. I mean intuitively, it would suggest that it does have an impact on further consolidation. I mean let us be honest with one another, it is the large companies that have the economic wherewithal to implement procedures, purchase equipment, to come in compliance with some of these additional burdens that are placed on them, and smaller companies don't necessarily have that luxury. There is an

indirect impact on consolidation as a result of some of these rules, yes, ma'am.

Mrs. HARTZLER. Makes sense. How has Country Origin of Labeling impacted the demand for Canadian cattle, and how could this impact the level of retaliation the U.S. will face if we lose the WTO appeal?

Mr. SMITH. Unfortunately, I don't have a lot of experience with Canadian cattle. We don't purchase Canadian cattle, but the symbolism would be the same and we do purchase quite a few cattle of Mexican origin.

Mrs. HARTZLER. Yes.

Mr. SMITH. So it will pose some challenges. I mean if those retaliations go into play, it could make it more difficult to be able to source the live animals that are necessary to be brought into the production system.

Mrs. HARTZLER. Okay. Ms. Bodor, we share your concerns if the U.S. loses its appeal, Canada and Mexico may take retaliatory actions against confectionary exports. So do you have an estimate of the economic damage this could cause your industry if we fail to repeal Mandatory Country-of-Origin Labeling for meat?

Ms. BODOR. For confectionary on the tariff codes that Canada has already identified, we believe we will lose those exports. At 100 percent duty, we cannot export those products into Canada.

As I mentioned earlier, when we faced a 20 percent duty on these products in Mexico, we lost 50 percent of our exports. So 100 percent is really unlikely that we would be able to recover. And then we would also—because there are competitors who are willing to jump in from Europe and from China, from other marketplaces—we would be put in the position of having to crawl back and try and regain that market share, and that takes a long time.

Mrs. HARTZLER. Okay. Years.

Ms. BODOR. Yes.

Mrs. HARTZLER. Very serious. Thank you very much.

I yield back, Mr. Chairman.

The CHAIRMAN. Thank you. I want to thank each of our witnesses for appearing today, and I appreciate your testimony very much.

Just a closing comment from myself. I have observed over a long period of time that our trade agreements are incredibly important to growing the economy here in the United States, particularly important for agriculture, our poultry and pork industries specifically as it relates to my district. And it is also my experience that in all these trade negotiations, past, present and future, everybody around the world has an axe to grind, no use in giving them another axe.

And with that, let me adjourn the hearing. Under the rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material, and supplementary written responses from the witnesses to any question posed by a Member.

This Subcommittee on Livestock and Foreign Agriculture hearing is now adjourned.

[Whereupon, at 10:17 a.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUPPLEMENTARY MATERIAL SUBMITTED BY ROGER JOHNSON, PRESIDENT, NATIONAL FARMERS UNION

Many of my colleagues on the panel testified in favor of repealing the Country-of-Origin Labeling (COOL) law. Canadian Minister of Agriculture and Agri-Food Gerry Ritz has called for full repeal of the law, as have several Members of Congress and interest groups.

Repealing the law would remove origin labels from ground and muscle cuts of beef, lamb, and pork. It would also remove origin labels from fish and shellfish, peanuts, fresh and frozen fruits and vegetables, goat meat, chicken, pecans, macadamia nuts, and ginseng. Beyond the ground and muscle cuts of beef, lamb, and pork, all other covered commodities are beyond the scope of the World Trade Organization (WTO) dispute. The WTO dispute only applies to muscle cuts of beef, lamb, and pork. Full repeal of the COOL law would remove an important piece of information that consumers have time and time again indicated they want to know—the country-of-origin. National Farmers Union would also oppose removing beef, pork, and lamb from the scope of the law. These labels have been around since the 1890s in one form or another. Consumers have the ability to determine where every piece of their automobile originated or where their T-shirt was made. As consumers become more and more interested in the food system and where and how their food was produced, it only makes sense to affix an origin label on food. The labels are common sense and applied throughout every industry.

Because the WTO has narrowed the scope of noncompliance of the regulations with each subsequent ruling, Congress should wait to see what the WTO Appellate Body reports before suggesting any changes to the law. The Appellate Body may find the U.S. is compliant or it may identify a very simple fix to the type of label or labels that would give Congress direction should any legislative change be required.

SUBMITTED STATEMENT BY HON. ROD BLUM, A REPRESENTATIVE IN CONGRESS FROM IOWA

I wish to thank the House Committee on Agriculture, particularly, Chairman Conaway and Ranking Member Peterson, as well as Livestock and Foreign Agriculture Subcommittee Chairman Rouzer and Ranking Member Costa for permitting me the opportunity to submit these remarks and express my ongoing concerns on behalf of my constituents in the First District of Iowa. I appreciate the willingness of the Committee to explore legislative solutions for the issues that implementation of the mandatory Country-of-Origin Labeling (COOL) presents to agriculture.

As the Committee is aware, COOL is a product from the 2002 Farm Bill which requires labeling of fresh beef, pork, and lamb but exempts processed meats and food items. However, this provision has been challenged by Canada under the authority of the World Trade Organization (WTO), which was subsequently appealed by the U.S.

Unfortunately, the WTO is likely to rule against our appeal of their decision that implementation of COOL constitutes a trade barrier for our closest trading partners, Canada and Mexico. This decision permits our friends and partners to institute retaliatory tariffs on U.S. products.

I feel this outcome is most unfortunate. The First District of Iowa is home to a great number of agricultural producers that are either directly affected by COOL, or used as ingredients in the expanded list of products that are threatened with these tariffs. Implementation of these measures would have a severe negative impact on producers, their livelihoods, the employees, and directly and indirectly related businesses.

Additionally, to date, only Canada has made public their intentions regarding the WTO decision. Mexico has yet to release a retaliatory tariff list, so this terrible situation might be of even a greater magnitude than the industry anticipates.

I commend the Committee for beginning the legislative process in order to properly address these concerns before these tariffs begin to negatively affect producers in my district and across the country. I remain hopeful that Congress, along with consultation from U.S. Secretary of Agriculture Vilsack, can come to an agreement on legislation that satisfies the requirements of the WTO and avoid disruptions to the economic trade between the U.S., Canada, and Mexico.

SUBMITTED LETTER BY BRAD FIGEL, VICE PRESIDENT, PUBLIC AFFAIRS, MARS, INCORPORATED

March 25, 2015

Hon. K. MICHAEL CONAWAY,
Chairman,
House Committee on Agriculture,
Washington, D.C.

RE: Subcommittee on Livestock and Foreign Agriculture's hearing to examine the implications of potential retaliatory measures taken against the United States in response to meat labeling requirements

Dear Chairman Conaway:

On behalf of Mars, Incorporated ("Mars"), we appreciate the opportunity to submit comments to the House Agriculture Subcommittee on Livestock and Foreign Agriculture's hearing to examine the implications of potential retaliatory measures taken against the United States in response to meat labeling requirements.

As a U.S.-based company with international operations, it is very important to Mars that Congress immediately resolve the issue of the current U.S. country-of-origin labeling ("COOL") requirements in dispute in the World Trade Organization ("WTO"), as the United States has less than 60 days to take action before the WTO makes its final decision on whether these measures are in violation of international trade rules. If this matter is not resolved, we are deeply concerned about the prospect of impending retaliation by Canada and Mexico. Retaliation will have a devastating, broad economic effect on American families and a wide range of companies, including ours.

We are extremely proud that Mars is a family-owned, U.S.-based company that has invested in our economy and communities since 1911. As a leading food company, we have more than 26,000 associates in the United States and more than 75,000 Associates worldwide. Our company includes six business segments: Petcare, Chocolate, Wrigley, Food, Drinks, and Mars Symbioscience, and we generate more than $33 billion in annual revenue.

Mars is very concerned about the possible retaliatory actions of Canada and Mexico because we anticipate that they will have a direct economic impact on our business. On its draft retaliation list, Canada included finished products and agricultural commodities and materials relevant to our business. Mexico has not yet announced its retaliation list, which has caused greater uncertainty with respect to our cross-border operations.

To avoid retaliatory actions by Mexico and Canada, Mars has been a constructive player and leader in seeking a resolution to resolve this issue. We continue to be a highly active member of the COOL Reform Coalition, which has worked since last year to ensure that the United States complies with its WTO obligations. In fact, the Coalition proposed and advocated for several approaches to resolve this issue.

Given the United States' position as a global leader and a major exporter, including of agricultural goods, it is critically important that we remain a good actor in complying with our WTO obligations. U.S. food and agricultural producers depend on exports, and agricultural exports support over one million U.S. jobs on and off the farm. If the United States does not demonstrate its commitment to international trade rules by adhering to them, how can we expect other countries, whose markets we depend on for our exports, to comply with the rules? For Mars and other companies that support U.S. jobs by manufacturing in and exporting from the United States, access to other markets often depends on our trading partners' compliance with WTO rules.

Further, the United States' credibility on global trade issues carries particular significance when we are actively negotiating new, far-reaching agreements—the Trans-Pacific Partnership and Trans-Atlantic Trade and Investment Partnership agreements—and at the same time, seeking to reauthorize Trade Promotion Authority. We cannot afford to send a message that the United States will not abide by and implement its international trade obligations.

The United States also has a responsibility to protect its important trading relationship with Canada and Mexico. Many businesses, including ours, rely on the open market that the North American Free Trade Agreement created for U.S. exports. We can and should avoid retaliatory tariffs by fully complying with the panel and Appellate Body reports through the repeal of the current COOL requirements for muscle cuts of meat. Therefore, we support prompt Congressional action that brings

the United States into compliance with its WTO obligations related to COOL. Once again, we thank you for the opportunity to comment.

Sincerely,

BRAD FIGEL,
Vice President, Public Affairs,
Mars, Incorporated.

SUBMITTED LETTER BY BEN MOSELY, VICE PRESIDENT, GOVERNMENT AFFAIRS, USA RICE FEDERATION

March 25, 2015

Hon. DAVID ROUZER,
United States House of Representatives,
Washington, D.C.

Dear Congressman Rouzer:

The USA Rice Federation appreciates the opportunity to submit a written statement regarding today's Livestock and Foreign Agriculture Subcommittee's hearing on Meat Labeling Requirements. USA Rice is the global advocate for all segments of the U.S. rice industry with a mission to promote and protect the interests of producers, millers, merchants and allied businesses. USA Rice is made up of the USA Rice Producers' Group, the USA Rice Millers' Association, the USA Rice Council and the USA Rice Merchants' Association.

USA Rice members and our customers in Canada and Mexico—two of the top five export markets for U.S. rice—are vitally concerned over possible retaliation against exports of U.S. rice if the United States is found, once again, to be out of compliance with its international obligations in the World Trade Organization (WTO). USA Rice is a strong supporter of WTO compliance and requests that Congress and the Administration take steps necessary to reform the Country-of-Origin Labeling (COOL) rule, thereby avoiding massive retaliation threatened against our industry by Canada and Mexico.

The Country-of-Origin Labeling rule pertains to mandatory labeling on muscle cuts of meat, detailing the country in which the animal was born, raised, and slaughtered on all meat sold in the United States. Canada and Mexico have consistently opposed this rule, stating that it unfairly discriminates against meat originating or being processed within their borders. After filing a dispute claim with the WTO in 2012, and then again in 2013, WTO panels have time and again agreed that the COOL rule violates the U.S.'s international trade obligations.

Canada and Mexico are planning to retaliate against COOL by introducing tariffs on a number of goods produced in the United States. Canada has released its retaliation list, and it heavily penalizes U.S. agriculture, including a 100 percent import tariff on rice. While Mexico, which is the United States' number one rice export market, has not released a retaliation list, there is every reason to believe that rice will make an appearance there as well. Import tariffs on U.S. rice would seriously threaten the U.S. dominant market share in these two vital export markets.

Losing two markets among the top five for U.S. rice would cause serious economic harm in the six rice producing states: Arkansas, Louisiana, Texas, Missouri, Mississippi and California. On average, the U.S. rice industry exports $350 million in product to Mexico and $177 million to Canada yearly. This accounts for a full quarter of our exports to world markets. With final adjudication due out this spring, Canada and Mexico may be allowed to retaliate as early as later this year. The longer we remain out of compliance, however, the longer we are threatening real commercial harm to U.S. exports. Keeping the COOL rule on the books as it is and allowing this retaliation to occur will result in reported damages to U.S. exports of an estimated $1 billion to over $2 billion.

The USA Rice Federation strongly supports coming into compliance with our WTO obligations. We do not have a position on the future construction of a COOL regulation, only that such regulation be compliant with our international obligations, and not have a negative impact on our and other agricultural industries' exports.

We appreciate the opportunity to have our statements entered into the record. Please have your staff contact me at [**Redacted**] or [**Redacted**] for any additional assistance.

Sincerely,

BEN MOSELY,
Vice President, Government Affairs.