



Country-of-Origin Labeling for Foods

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Summary

Many retail food stores are now required to inform consumers about the country of origin of fresh fruits and vegetables, seafood, peanuts, pecans, macadamia nuts, ginseng, and ground and muscle cuts of beef, pork, lamb, chicken, and goat. The rules are required by the 2002 farm bill (P.L. 107-171) as amended by the 2008 farm bill (P.L. 110-246). Other U.S. laws have required such labeling, but only for imported food products already pre-packaged for consumers.

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

Obama Administration officials announced in February 2009 that they would allow the final rule on COOL, published just before the end of the Bush Administration on January 15, 2009, to take effect as planned on March 16, 2009. However, the Secretary of Agriculture also urged affected industries to adopt—voluntarily—several additional changes that, the Obama Administration asserts, would provide more useful origin information to consumers and also would more closely adhere to the intent of the COOL law.

Retail compliance with COOL requirements appears to have proceeded reasonably well. To address identified labeling problems, observers have called for additional outreach to retailers to help them better understand what is required and the steps they can take to improve compliance.

The most significant issue that has arisen to date is the November 2009 decision by Canada and Mexico to challenge COOL rules and the “voluntary suggestions” using the World Trade Organization's (WTO's) trade dispute resolution process. Both countries argue that COOL has a trade-distorting impact by reducing the shipment of their cattle and hogs to the U.S. market, as U.S. livestock market participants began to make adjustments in anticipation of new meat labeling rules. They also argue that COOL rules violate trade rules that the United States agreed to under the WTO and the North American Free Trade Agreement. Responses to this development reflect the heated debate seen earlier among key players in the livestock sector. U.S. meatpackers and processors support Canada's and Mexico's position that COOL violates U.S. trade obligations. Some cattle producer groups argue that COOL is consistent with U.S. commitments and does not discriminate between imported and domestic beef. Twenty-five Senators have expressed their support for COOL, noting that other countries (including Canada and Mexico) require country-of-origin information to be provided to consumers.

The 111th Congress is considering legislation that would expand COOL labeling requirements to cover more food products. H.R. 2749, the House-passed food safety bill, would expand such labeling to apply to all processed foods and to other agricultural commodities not now covered by the farm bill and other statutory provisions. The Senate-reported companion bill (S. 510) does not include a comparable provision, but pertinent amendments may be offered during floor debate. Separately, S. 1783 would require retailers to implement COOL for dairy products.

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Recent Developments

On June 16, 2010, the European Parliament voted to accept draft food labeling legislation that would expand food country-of-origin labeling (COOL) requirements throughout the European Union (EU). Mandatory COOL is already required for beef, honey, olive oil, and fresh fruits and vegetables. The rules now would also apply to all meat, poultry, dairy products, and other single-ingredient foods. Also, country-of-origin information for meat, poultry, and fish used as an ingredient in a processed food product would need to be shown. The measure will next be considered by the EU's 27 member governments early next year, before returning back to the European Parliament for final consideration. If then adopted, the measure would take effect in three to five years.¹

On May 10, 2010, the World Trade Organization's (WTO) director named three members of the dispute settlement panel that will consider Canada's and Mexico's complaint that the U.S. law and rules on mandatory COOL are inconsistent with its several WTO-related trade commitments that the United States has entered into (see "WTO Case Brought Against COOL by Canada and Mexico").

Half of surveyed consumers reported that COOL is extremely or very important when making decisions to purchase fresh meat, fish, fruits, or vegetables, according to a March 2010 food survey conducted by consulting firm Deloitte. Survey results showing that consumers want to know more about food nutrition, quality, and safety also revealed that 45% would like to learn on a website the country of origin for all ingredients in a packaged or bottled food product.²

Background

Since the 1930s, U.S. tariff law has required almost all imports to carry labels so that the "ultimate purchaser," usually the retail consumer, can determine their country of origin. However, certain products, including a number of agricultural commodities in their "natural" state such as meats, fruits and vegetables, were excluded. For almost as many decades, various farm and consumer groups have pressed Congress to end one or more of these exceptions, arguing that U.S. consumers have a right to know where all of their food comes from and that, given a choice, they would purchase the domestic version. This would strengthen demand and prices for U.S. farmers and ranchers, it was argued.

Opponents of ending these exceptions to country-of-origin labeling (COOL) contended that there was little or no real evidence that consumers want such information and that industry compliance costs would far outweigh any potential benefits to producers or consumers. Such opponents, including other farm and food marketing groups, argued that mandatory COOL for meats, produce, or other agricultural commodities was a form of protectionism that would undermine U.S. efforts to reduce foreign barriers to trade in the global economy. COOL supporters countered that it was unfair to exempt agricultural commodities from the labeling requirements that U.S.

¹ Reuters, "UPDATE 1—EU Lawmakers Demand Stricter Food-Labeling Rules," June 16, 2010; *Food Business News*, "E.U. Votes in Favor of Uniform Food Labeling," July 6, 2010, p.30.

² *Feedstuffs*, "Consumers Seek Food Information," July 5, 2010, p. 7.

importers of almost all other products already must meet, and that major U.S. trading partners impose their own COOL requirements for imported meats, produce, and other foods.

With passage of the 2002 farm bill (P.L. 107-171, § 10816), retail-level COOL was to become mandatory for fresh fruits and vegetables, beef, pork, lamb, seafood, and peanuts, starting September 30, 2004. Continuing controversy over the new requirements within the food and agricultural industry itself led Congress to postpone full implementation. The FY2004 omnibus appropriations act (P.L. 108-199) postponed COOL—except for seafood—until September 30, 2006; the FY2006 agriculture appropriation (P.L. 109-97) further postponed it until September 30, 2008.³

During deliberations on a new omnibus farm bill in 2007 and 2008, those affected by COOL reached consensus on a series of amendments intended to ease what many of them viewed as some of the more onerous provisions of the 2002 COOL law. Modified were provisions dealing with record-keeping requirements, the factors to be considered for labeling U.S. and non-U.S. origin products, and penalties for noncompliance. These amendments were incorporated into the final farm bill (P.L. 110-246, § 11002). The enacted 2008 bill required that COOL take effect on September 30, 2008, and added goat meat, chicken, macadamia nuts, pecans, and ginseng as commodities covered by mandatory COOL.

Final rules to fully implement the COOL requirements were published by the U.S. Department of Agriculture's (USDA's) Agricultural Marketing Service (AMS) during the final days of the Bush Administration in January 2009. Obama Administration officials announced in February 2009 that they would allow the final rules to take effect as planned on March 16, 2009. However, they also urged affected industries to adopt—voluntarily—several additional changes that, the Administration asserts, would provide more specific origin information to consumers and more closely adhere to the intent of the COOL law.

Major U.S. trading partners, including Canada and Mexico, which are challenging COOL using the WTO's dispute settlement process, continue to closely watch implementation developments. So are lawmakers in the 111th Congress, where additional legislation to expand COOL's coverage to include other food products is being considered.

Other Laws with Labeling Provisions

Tariff Act

Under §304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), every imported item must be conspicuously and indelibly marked in English to indicate to the “ultimate purchaser” its country of origin. The U.S. Customs and Border Protection generally defines the “ultimate purchaser” as the last U.S. person to receive the article in the form in which it was imported. So, articles arriving at the U.S. border in retail-ready packages—including food products, such as a can of Danish ham, or a bottle of Italian olive oil—must carry such a mark. However, if the article is destined for a U.S. processor where it will undergo “substantial transformation,” the processor is

³ An interim final rule for seafood COOL was published on October 5, 2004, and took effect April 4, 2005 (69 *Federal Register*, pp. 59708-59750).

considered the ultimate purchaser. Over the years, numerous technical rulings by Customs have determined what is, or is not, considered “substantial transformation,” depending upon the item in question.

The law has authorized exceptions to labeling requirements, including articles on a so-called “J List,” named for §1304(a)(3)(J) of the statute. This empowered the Secretary of the Treasury to exempt classes of items that were “imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin.” Among the items placed on the J List were specified agricultural products including “natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.”⁴ Although J List items themselves have been exempt from the labeling requirements, § 304 of the 1930 act has required that their “immediate container” (essentially, the box they came in) have country-of-origin labels. But, for example, when Mexican tomatoes or Chilean grapes are sold unpackaged at retail in a store bin, country labeling had not been required by the Tariff Act.

Meat and Poultry Products Inspection Acts

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

All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry destined for U.S. plants for further processing, also have had to bear country-of-origin marks. However, once these non-retail items have entered the country, the federal meat inspection law has deemed them to be domestic products. When they are further processed in a domestic, FSIS-inspected meat or poultry establishment—which has been considered the ultimate purchaser for purposes of country-of-origin labeling—FSIS no longer requires such labeling on either the new product or its container. FSIS has considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.

Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules but also with Tariff Act labeling regulations. Because Customs generally requires that imports undergo more extensive changes (i.e., “substantial transformation”) than required by USDA to avoid the need for labeling, a potential for conflict has existed between the two requirements.

⁴ The J list is published in 19 C.F.R. 134.33, available at http://edocket.access.gpo.gov/cfr_2008/aprqr/19cfr134.33.htm.

Federal Food, Drug, and Cosmetic Act

Foods other than meat and poultry are regulated by the U.S. Department of Health and Human Services' Food and Drug Administration (FDA), primarily under the Federal Food, Drug, and Cosmetic Act (FFDCA; 21 U.S.C. 301 et seq.). This act does not expressly require COOL for foods. Section 403(e) of the FFDCA does regard a *packaged* food to be misbranded if it lacks a label containing the name and place of business of the manufacturer, packer, or distributor (among other ways a food can be misbranded). However, this name and place of business is not an indicator of the origin of the product itself. (See "Legislation" for a proposal to amend the FFDCA to penalize sellers if they do not label the country of origin of processed foods and of non-processed foods that are not covered by farm bill provisions.)

Implementation of Farm Bill COOL Requirements

The COOL provisions of the 2002 and 2008 farm bills do not change the requirements of the Tariff Act or the food safety inspection statutes; rather, they amend the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 note). USDA's Agricultural Marketing Service (AMS) administers most AMA-authorized programs, including COOL.⁵ AMS published a final rule to implement COOL for all covered commodities on January 15, 2009, which took effect on March 16, 2009.⁶ This final rule, issued during the closing days of the Bush Administration, replaces both the April 4, 2005, interim final rule for seafood (see footnote 3), and the August 1, 2008, interim final rule for all other covered commodities.⁷

The COOL rule was re-examined in early 2009 by newly confirmed Secretary of Agriculture Tom Vilsack to comply with an Obama White House directive that all agencies review recent regulations issued by the outgoing Administration. After this re-examination, Secretary Vilsack announced, on February 20, 2009, that the regulations would take effect as planned on March 16. However, the Secretary's announcement included two significant provisos. First, he urged affected industries to voluntarily adopt several suggested labeling changes in order to provide more useful information to consumers than the rule itself might imply, and to better meet congressional intent. Second, he stated that USDA would closely monitor industry compliance to determine whether "additional rulemaking may be necessary to provide consumers with adequate information."⁸

The Secretary's "suggestions for voluntary action" were detailed in a February 20, 2009, letter sent to industry representatives. They deal with the treatment of meat products with multiple

⁵ AMS maintains an extensive website on COOL, with links to implementing regulations, cost-benefit analysis, and other materials at <http://www.ams.usda.gov/cool/>.

⁶ USDA, January 12, 2009, "USDA Issues Final Rule On Mandatory Country of Origin Labeling," available at <http://www.usda.gov/wps/portal/usda/usdahome?printable=true&contentidonly=true&contentid=2009/01/0006.xml>; 74 *Federal Register*, January 15, 2009, pp. 2658-2707. An AMS fact sheet on the final rule, including a summary of changes from the interim final rules and estimates on COOL implementation costs, is available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074847>.

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

⁸ USDA, "Vilsack Announces Implementation of Country of Origin Labeling Law," February 20, 2009, available at <http://www.usda.gov/wps/portal/usda/usdahome?printable=true&contentidonly=true&contentid=2009/02/0045.xml>.

countries of origin, exemptions in the rules for processed products, and time allowances provided to ground meat manufacturers regarding their inventory.⁹ These are further detailed below, in the appropriate sections.

During FY2009, state agencies conducted about 12,000 surveillance reviews (compared to 2,000 in FY2008) to ensure retail compliance with COOL requirements. The significant increase reflects the expansion of COOL's coverage from only fish and shellfish to include more commodities (see list below in "Key Provisions"). Agencies of all 50 states now perform this function under cooperative agreements signed with the AMS, which included participating in training sessions on their enforcement responsibilities. AMS also has developed educational and outreach activities for state cooperators, retailers, suppliers, and other interested parties. During FY2010, AMS plans to develop an expanded real-time database to track the findings of federal-state retail reviews, enforcement actions taken, and other information viewed as critical to COOL operations.¹⁰

Audits to gauge retail store efforts to meet COOL rules for vegetables and fruit have found the absence of any label to be the main noncompliance issue. Other issues discovered include non-specific labeling (e.g., not identifying the origin of "locally grown" produce) and conflicting or inaccurate declarations as to the origin of the produce displayed. Industry representatives suggest that these issues can be resolved by helping retailers better understand the details laid out in COOL regulations, and encouraging them to be more diligent in labeling local produce. AMS currently is focused on using additional store reviews to look for possible differences between states in compliance levels, and analyzing whether supermarket chains operate differently than single-store retailers in meeting COOL rules.¹¹

Key Provisions

Mandatory country-of-origin labeling:

- *applies* to ground and muscle cuts of beef, lamb, and pork, farm-raised and wild fish and shellfish, peanuts, "perishable agricultural commodities" as defined by the Perishable Agricultural Commodities Act (PACA, i.e., fresh and frozen fruits and vegetables), goat meat, chicken, pecans, macadamia nuts, and ginseng (these are referred to as "covered commodities").¹²
- *exempts* these items if they are an ingredient in a processed food.
- *covers* only PACA-regulated retailers (those purchasing at least \$230,000 a year in fresh fruits and vegetables), and requires them to inform consumers of origin

⁹ This letter is available at http://www.usda.gov/documents/0220_IndustryLetterCOOL.pdf.

¹⁰ USDA, FY2011 Budget Explanatory Notes for Committee on Appropriations for Agricultural Marketing Service, pp. 19-9, 19g-9, and 19-47, available at <http://www.obpa.usda.gov/19ams2011notes.pdf>.

¹¹ *Supermarket News*, "Simply COOL," May 24, 2010.

¹² A slightly different COOL requirement applies to packaged honey if it bears any official USDA certificate, mark, or statement with respect to quality and grade. It was added by Section 10402 of the 2008 farm bill (P.L. 110-246) to the Agricultural Marketing Act, and took effect on October 6, 2009. For more information, see <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?startIndex=1&startIndex=2&startIndex=1&startIndex=2&template=TemplateN&navID=ProcessedFVUpdates&rightNav1=&topNav=&leftNav=&page=ProcessedFVUpdates&resultType=&acct=procsdgrdcert>.

“by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale.”

- *exempts* from these labeling requirements such “food service establishments” as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public.

Defining Origin

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

- *permits* the U.S. origin label to be used only on items from animals that were exclusively born, raised, and slaughtered in the United States, with an exception for those animals present here before July 15, 2008;
- *permits* meats or chicken with multiple countries of origin to be labeled as being from all of the countries in which the animals may have been born, raised, or slaughtered;
- *requires* meat or chicken from animals imported for immediate U.S. slaughter to be labeled as from both the country the animal came from and the United States;
- *requires* products from animals not born, raised, or slaughtered in the United States to be labeled with their correct country(ies) of origin; and
- *requires*, for ground meat and chicken products, that the label list all countries of origin, or all “reasonably possible” countries of origin.

The meat labeling requirements have proven to be among the most complex and controversial areas of rulemaking, in large part because of the steps that U.S. feeding operations and packing plants must adopt to segregate, hold, and slaughter foreign-origin livestock from U.S. livestock. After issuance of the interim rules in August 2008, many retailers and meat processors reportedly had planned to use the “catch-all” label (see second bullet, above) on as much meat as possible—even products that would qualify for the U.S.-only label, because it was both permitted and the easiest requirement to meet. COOL supporters objected that the label would be overused, undermining the whole intent of COOL (i.e., to distinguish between U.S. and non-U.S. meats).¹³ In an effort to balance the concerns of both sides, USDA issued a statement attempting to clarify its August 2008 interim rule, stating that meats derived from both U.S.- and non-U.S.-origin animals may carry a mixed-origin claim (e.g., “Product of U.S., Canada, and Mexico”), but that the mixed-origin label cannot be used if only U.S.-origin meat was produced on a production day.¹⁴

¹³ *Cattle Buyers Weekly*, August 4, 2008; and *Food Chemical News*, September 15, 2008.

¹⁴ “Country of Origin Labeling (COOL) Frequently Asked Questions,” September 26, 2008. Virtually all foreign live meat animals now come from either Canada or Mexico (see “North American Livestock Trade”).

The final (January 2009) rule attempts to further clarify the “multiple countries of origin” language. For example, muscle cut products of exclusively U.S. origin along with those from foreign-born animals, if commingled on a single production day, can continue to qualify for a combined U.S. and non-U.S. label. “It was never the intent of the Agency [AMS] for the majority of product eligible to bear a U.S. origin declaration to bear a multiple origin destination. The Agency made additional modifications for clarity,” AMS stated in material accompanying the rule.¹⁵

The clarifying change failed to mollify some producer groups, who have continued to view this portion of the rule as a “loophole that would allow meat packers to use a multiple countries, or NAFTA [North American Free Trade Agreement] label, rather than labeling U.S. products as products of the United States. This is misleading to consumers,” stated National Farmers Union (NFU) President Tom Buis.¹⁶

In his February 20, 2009 letter, Secretary Vilsack asked industry representatives to voluntarily provide additional information. He stated that:

processors should voluntarily include information about what production step occurred in each country when multiple countries appear on the label. For example, animals born and raised in Country X and slaughtered in Country Y might be labeled as “Born and Raised in Country X and Slaughtered in Country Y.” Animals born in Country X but raised and slaughtered in Country Y might be labeled as “Born in Country X and Raised and Slaughtered in Country Y.”

The Vilsack letter also noted that the final rule allows a label for ground meat to bear the name of a country even if the meat from that country was not present in a processor’s inventory in the preceding 60-day period. Noting that this allows for labeling this product “in a way that does not clearly indicate [its] country of origin,” the Secretary asked processors to reduce this time allowance to 10 days, stating that this “would enhance the credibility of the label.” The Vilsack letter is widely viewed as an effort to address the concerns of COOL adherents without reopening the rule and thereby attracting renewed criticism from the meat industry and U.S. trading partners.

For perishable agricultural commodities, ginseng, peanuts, pecans, and macadamia nuts, retailers may only claim U.S. origin if they were exclusively produced in the United States. However, a U.S. state, region, or locality designation is a sufficient U.S. identifier (e.g., Idaho potatoes). For farm-raised fish and shellfish, a U.S.-labeled product must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States; wild fish and shellfish must be derived exclusively from those either harvested in U.S. waters or by a U.S. flagged vessel, and processed in the United States or on a U.S. vessel. Also, labels must differentiate between wild and farm-raised seafood.

¹⁵ USDA, AMS, January 12, 2009, fact sheet on the mandatory COOL final rule, available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074847>.

¹⁶ “NFU Statement: USDA Issues Final Rule for COOL,” January 12, 2009, available at <http://nfu.org/news/2009/01/12/nfu-statement-usda-issues-final-rule-for-cool.html>.

Coverage

Consumers may not find country-of-origin labels on much more of the food they buy, due to COOL's statutory and regulatory exemptions. First, as noted, all restaurants and other food service providers are exempt, as are all retail grocery stores that buy less than \$230,000 a year in fresh fruits and vegetables. Second, "processed food items" derived from the covered commodities are exempt, and USDA, in its final rule, defined this term broadly (at 7 C.F.R. § 65.220). Essentially, any time a covered commodity is subjected to a change that alters its basic character, it is considered to be processed. Although adding salt, water, or sugar do not, under USDA's definition, change the basic character, virtually any sort of cooking, curing, or mixing apparently does. For example, roasting a peanut or pecan, mixing peas with carrots, or breading a piece of meat or chicken, all count as processing. As a result, only about 30% of the U.S. beef supply, 11% of all pork, 39% of chicken, and 40% of all fruit and vegetable supplies may be covered by COOL requirements at the retail level.¹⁷ Whole peanuts are almost always purchased in roasted form, which will not have to be labeled. Some critics are arguing that AMS overstepped its authority, and congressional intent, by excepting such minimally processed commodities.

AMS had countered that in fact many imported items still must carry COOL under provisions of the Tariff Act of 1930. "For example, while a bag of frozen peas and carrots is considered a processed food item under the COOL final rule, if the peas and carrots are of foreign origin, the Tariff Act requires that the country of origin be marked on the bag," AMS argued, citing similar regulatory situations for roasted nuts and for a variety of seafood items.¹⁸

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

Record-Keeping, Verification, and Penalties

The COOL law prohibits USDA from using a mandatory animal identification (ID) system,¹⁹ but the original 2002 version stated that the Secretary "may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable record-keeping audit trail that will permit the Secretary to verify compliance." Verification immediately became one of the most contentious issues, particularly for livestock producers, in part because of the potential complications and costs to affected industries of tracking animals and their products from birth through retail sale. Producers of the plant-based commodities, as well as food retailers and others, also expressed concern about the cost and difficulty of maintaining records for commodities that are highly fungible and often widely sourced. The 2008 law eased these requirements somewhat by stating that USDA "may conduct an audit of any person that prepares, stores, handles, or distributes a covered commodity" in order to verify compliance. Such persons

¹⁷ Percentages calculated by CRS based upon USDA estimates of retail-level COOL coverage in pounds, divided by total annual supply (USDA data on domestic production plus imports).

¹⁸ USDA, AMS, "Frequently Asked Questions," January 12, 2009, available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074846>.

¹⁹ For information on this related issue, see CRS Report R40832, *Animal Identification and Traceability: Overview and Issues*, by Randy Schnepf.

must provide verification, but USDA may not ask for any additional records beyond those maintained “in the course of the normal conduct of business.”

In its final rule, AMS stated that covered persons generally would have to keep records for one year that can identify both the immediate previous source and the immediate subsequent recipient of a covered commodity; certain exceptions are provided for pre-labeled products. Also, a slaughter facility can accept a producer affidavit as sufficient evidence for animal origin claims.

Also, potential fines for willful noncompliance are set for retailers and other persons at no more than \$1,000 per violation. The 2002 law had set the fine at no more than \$10,000 (and for retailers only), but the 2008 farm bill lowered this amount.

Economic and Trade Issues

Costs and Benefits

COOL supporters argue that a number of studies show that consumers want country-of-origin labeling and would pay extra for it. Analysis accompanying USDA’s interim and final rules concluded that, while benefits are difficult to quantify, it appears they will be small and accrue mainly to consumers who desire such information. A Colorado State University economist suggested that consumers might be willing to pay a premium for “COOL meat” from the United States, but only if they perceive U.S. meat to be safer and of higher quality than foreign meat.²⁰ USDA earlier had estimated that purchases of (i.e., demand for) covered commodities would have to increase by between 1% and 5% for benefits to cover COOL costs, but added that such increases were not anticipated. Data from several economic modeling studies of COOL impacts appear to fall within this range.²¹ Another research paper found that demand for domestic apples would need to increase by a range of 3% to 7% and for domestic tomatoes by 8% to 22% for COOL to increase total economic welfare in these markets.²²

Critics of mandatory COOL have argued that large compliance costs will more than offset any consumer benefits. USDA’s analysis of its final rule estimates that first-year implementation costs to be approximately \$2.6 billion for those affected. Of the total, each commodity producer would bear an average estimated cost of \$370, intermediary firms (such as wholesalers or processors) \$48,219 each, and retailers \$254,685 each. The USDA analysis also includes estimates of record-keeping costs and of food sector economic losses due to the rule.

²⁰ Wendy J. Umberger, “Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?” *Choices*, 4th quarter 2004, available online at <http://www.choicesmagazine.org/2004-4/cool/2004-4-04.htm>.

²¹ Gary W. Brewster et al., “Who Will Bear the Costs of Country-of-Origin Labeling?” (<http://www.choicesmagazine.org/2004-4/cool/2004-4-02.htm>); and Daniel D. Hanselka et al., “Demand Shifts in Beef Associated with Country-of-Origin Labeling to Minimize Losses in Social Welfare” (<http://www.choicesmagazine.org/2004-4/cool/2004-4-03.htm>), *Choices*, 4th quarter 2004.

²² Alejandro Plastina and Konstantinos Giannakis, “Market and Welfare Effects of Mandatory Country-of-Origin Labeling in the U.S. Specialty Crops Sector,” Selected Paper, American Agricultural Economics Association Annual Meeting, Portland, Oregon, 2007.

North American Livestock Trade

Overview

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

For background, the animal products industries have become increasingly integrated across all three North American countries over the last two decades, particularly after NAFTA took effect in 1994 and, before that, the Canada-U.S. Free Trade Agreement in 1988. These agreements, along with the global Uruguay Round Agreements under the WTO, by helping to reduce tariff and nontariff barriers to trade, have enabled animals or their products to move across borders more freely, based on market demands. For example, in the pork industry, the Canadians tended toward breeding and farrowing small pigs, which in turn were shipped to the United States, where access to large supplies of grain made it more economical to feed them to slaughter weight.²³

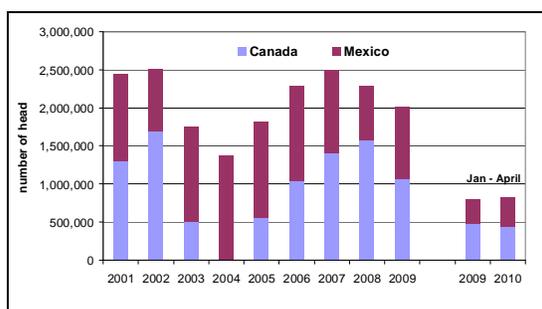
However, a number of animal health and other incidents have disrupted this market integration from time to time. The most significant event was the discovery of *bovine spongiform encephalopathy* (BSE) in 2003, first in Canada and later in the United States, which halted most cross-border movement of cattle from Canada to the United States from mid-2003 through mid-2005. The predominance of BSE (mad cow) cases in Canada rather than in the United States may have contributed to wider support for the mandatory COOL law, some analysts believe, although government officials assert that both countries now have strong, scientifically defensible safeguards in place to ensure that BSE is controlled and that its infectious agent does not enter the human food supply.

U.S. Livestock Imports

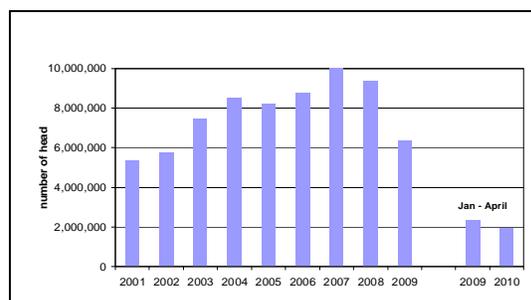
Almost all U.S. live cattle imports come from Canada and Mexico; all live hog imports come from Canada. After U.S. cattle and beef markets adjusted to the discovery of BSE in Canada's cattle herds in mid-2003, total cattle imports from both countries rose steadily each year from 2004 through 2007, reaching almost 2.5 million head (**Figure 1**). Similarly, annual hog imports from Canada almost doubled over the last several years, from 5.3 million head in 2001 to 10.0 million in 2007 (**Figure 2**).²⁴

²³ See for example, USDA, Economic Research Service (ERS), *Market Integration of the North American Animal Products Complex* (LDP-M-131-01), May 2005.

²⁴ USDA, ERS, Livestock and Meat Trade Data series, available at <http://www.ers.usda.gov/data/meattrade/>.

Figure 1. U.S. Cattle Imports from Canada and Mexico

Source: USDA, Economic Research Service (ERS), "Livestock and Meat Trade Data – Cattle"

Figure 2. U.S. Hog Imports from Canada

Source: USDA, ERS, "Livestock and Meat Trade Data – Hogs"

Cattle

U.S. imports of feeder cattle (those destined for feedlots) and of slaughter-ready cattle (steers and heifers) from both Canada and Mexico declined on average 10% each year from 2007 to 2009. Imports totaled 2.0 million head in 2009, compared to 2.5 million head in 2007 (**Figure 1**). About 80% of the cattle imported from Canada are immediately slaughtered; all Mexican cattle enter to be grazed or fed. According to USDA, these imports have accounted for an estimated 10% of the U.S. cattle supply in recent years.

From July 2008 through June 2009, the period during which the U.S. beef sector began to prepare for and to implement COOL, U.S. cattle imports from both countries totaled almost 2.3 million head. This was 25% below the 3.0 million head imported during the same period in 2007/2008.

Some analyses attribute the import decline in the first several months of this period to COOL but differ on the extent that currency exchange rates may have contributed to this development. CattleFax, an industry-funded data and analysis service based in Colorado, observed that the 2008 decline in cattle imports were due to mandatory COOL regulations, and that imports would "face a big wild card in 2009" for the same reason.²⁵ Livestock sector analysts with the Chicago Mercantile Exchange (CME), examining cattle import trends through year-end 2008, commented that the COOL law "has been quite effective, if you measure effectiveness by the degree to which it has been able to stifle cattle trade in North America." They wrote that reductions in imports from both Mexico and Canada "came at a time when a significant devaluation in the value of the Peso and Canadian dollar normally would have been conducive of increased imports from these two countries. Under normal circumstances, one would expect cattle imports to actually increase rather than be cut by almost 40%."²⁶

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

coincided with the rapid depreciation of the Canadian dollar, making Canadian cattle relatively cheaper in U.S. dollar terms, but also making Canadian beef more competitive on the export

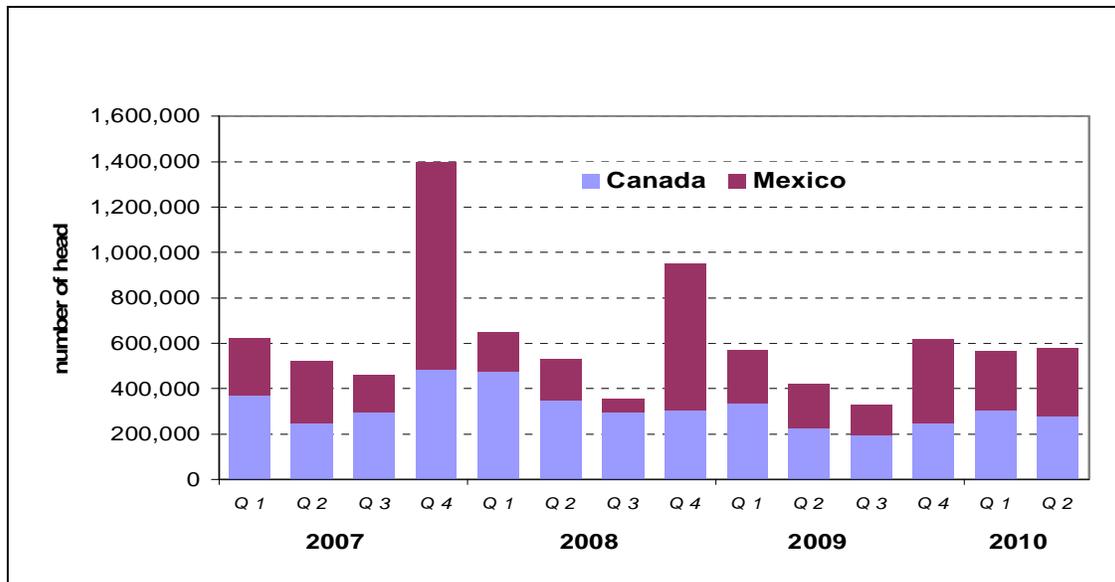
²⁵ CME, "CattleFax Long Term Outlook Special Edition," December 12, 2008, p. 3.

²⁶ *CME Daily Livestock Report*, January 7, 2009.

market. Feeder cattle have been remaining in Canada. ... Imports of slaughter steers and heifers from Canada also declined dramatically in September, driven by the same exchange rate conditions affecting feeder cattle. Additionally, the past increase in Canadian exports of feeder cattle would reduce the current supply of fed cattle in Canada to be marketed or exported, lowering the number of Canadian cattle sent to the United States for slaughter.²⁷

Other factors also have contributed to the decline in cattle imports since mid-2008. The drop in Mexican cattle shipments to the United States in the fourth quarter of 2008 compared to the same period a year earlier was due to good pasture conditions in Mexico and ranchers' decisions to hold on longer to their herds. The year-on-year fall in cattle imports from both countries during 2009 reflected less demand for cattle to slaughter, as processors adjusted to reduced domestic and foreign consumer demand for U.S. beef due to the economic recession (**Figure 3**).

Figure 3. U.S. Cattle Imports from Canada and Mexico
(quarterly, 2007 to mid-2010)



Source: Derived by CRS from USDA, Agricultural Marketing Service (AMS) published reports

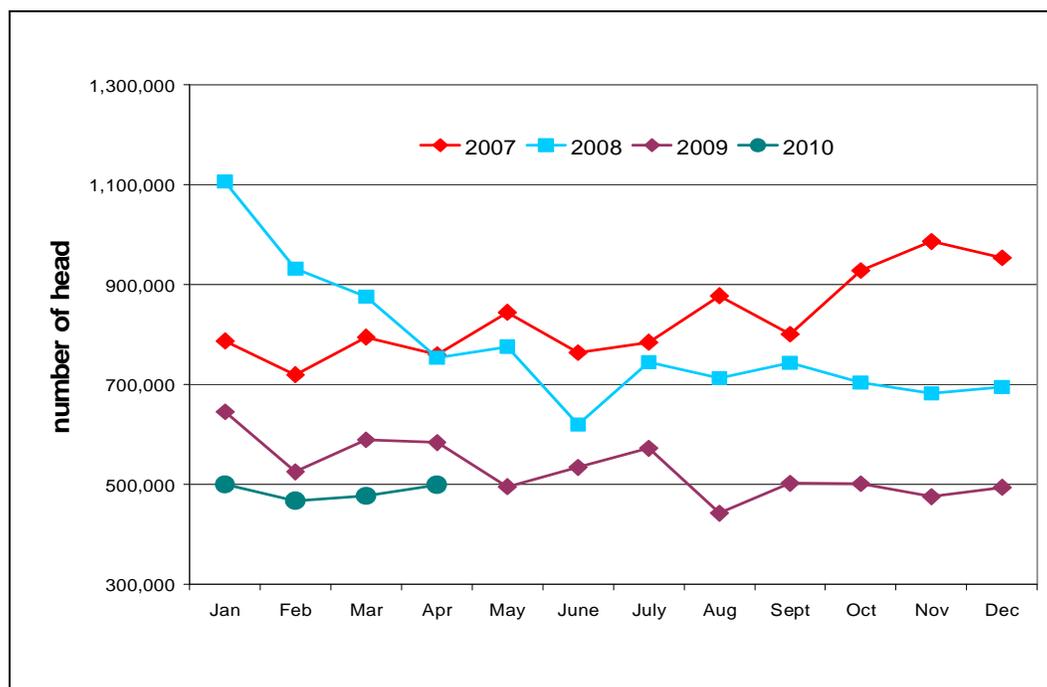
Hogs

U.S. imports of Canadian hogs (feeder pigs and hogs ready for slaughter) fell slightly in 2008 and more noticeably in 2009 (**Figure 2**). From July 2008 through June 2009 (the 12-month period that coincided with initial steps taken by U.S. hog producers and pork processors to prepare for COOL implementation), hog imports from Canada of almost 7.2 million head were 31% below the same period in 2007/2008 (10.5 million head).²⁸ Monthly hog imports have been lower on a year over year basis since mid-2008 (**Figure 4**).

²⁷ USDA, ERS. *Livestock, Dairy, and Poultry Outlook*, December 18, 2008, p. 8. ERS analysts point out that prior to 2008, the United States was easing the BSE-related restrictions on Canadian cattle imports; in November 2007, cattle over 30 months of age were again permitted to enter from Canada.

²⁸ Derived by CRS from AMS marketing report "Canadian Live Animal Imports by Destination," selected issues in 2008 and 2009.

Figure 4. Monthly U.S. Hog Imports from Canada
(2007 to April 2010)



Source: USDA, ERS, "Livestock and Meat Trade Data – Hogs"

Though developments in Canada's hog sector account in part for this drop, an early 2009 USDA analysis suggested that COOL's implementation likely "made U.S. swine finishers reluctant to import Canadian finishing animals, in light of some major U.S. packers' stated unwillingness to process Canadian-origin animals."²⁹ Another report suggested that COOL was affecting the U.S. hog sector, particularly in Iowa, as packers moved to process only U.S.-born hogs. With many Iowa producers operating finishing operations that source feeder pigs from Canada, a USDA document on COOL implementation cited that some producers' barns are "empty because of a lack of an assured outlet for slaughter hogs of mixed country of origin" (i.e., Product of Canada and United States). USDA also reported that some lenders were not extending credit to operations that finish mixed-origin pigs, and that lower prices at times were "being paid for mixed origin slaughter hogs compared to hogs of exclusively U.S. origin."³⁰

WTO Case Brought Against COOL by Canada and Mexico

Canada and Mexico are major suppliers of live cattle and hogs that are fed in U.S. facilities and/or processed into beef and pork in U.S. meat packing plants. As the U.S. meat processing sector geared up to implement COOL in mid-2008, Canadian and Mexican cattle and Canadian hog exports to the U.S. market initially declined. Both countries expressed concern about the adverse impacts this development had on their livestock sectors. Not satisfied with the outcome

²⁹ USDA, ERS, *Livestock, Dairy, and Poultry Outlook*, April 16, 2009, p. 4.

³⁰ CattleBuyers Weekly, "MCOOL Hurts Iowa Hog Finishers," April 27, 2009.

of two sets of consultations held with U.S. officials on their concerns (December 2008 and June 2009), both Canada and Mexico in November 2009 requested the establishment of a WTO dispute resolution panel to consider their case.

Both the Canadian and Mexican governments, in their requests for a panel, assert that COOL is inconsistent with several WTO-related trade commitments, including those providing that imports must be treated no less favorably than products of domestic origin; that laws on marks of origin should not damage imports, reduce their value, or unreasonably increase their cost; and that laws, rules, and procedures on country of origin should not “themselves” create or disrupt international trade, among other things.

In proceeding with a WTO case, Canadian officials stated that the COOL requirements are “so onerous” that when they were implemented, Canadian exporters of cattle and hogs were discriminated against in the U.S. market. The Canadian beef and pork industries, led by the Canadian Cattlemen’s Association (CCA) and the Canadian Pork Council, actively pushed their government to initiate a WTO challenge. The CCA argued that COOL cost its producers C\$92 million (Canadian dollars) in losses over the two months following the publication of the interim rule in July 2008, and could cost C\$500 million per year. CCA estimated that slaughter steers and heifers were losing C\$90 per head, because U.S. meat establishments did not want to assume the increased costs of complying with new labeling requirements by segregating, holding, and then slaughtering Canadian cattle separately from U.S. cattle. The losses included lower prices for all Canadian cattle due to decreased U.S. demand, as well as the cost of shipping those that are sold further distances, to the fewer number of U.S. plants willing to take them. Canadian pork producers expressed similar concerns.³¹

U.S. officials regretted that the consultations did not resolve Canada’s concerns, and stated their belief that U.S. implementation of COOL provides consumers with information that is consistent with WTO commitments. They noted that countries had agreed that COOL was legitimate policy long before the WTO was created, and that other countries also require goods to be labeled with their origin.³²

In December 2009, 25 senators wrote to Obama Administration officials to express their support for implementing COOL according to congressional intent, stating that the program is nondiscriminatory in its requirements that both domestic and imported goods be labeled with their origin. They also noted that 45 other countries (including Canada and Mexico) implement programs that provide country of origin information to consumers.³³

USTR’s request for public comment on this pending WTO case generated responses that reflected the heated debate on mandatory COOL seen earlier among key players in the livestock sector. The

³¹ Various trade publication reports, including *Cattle Buyers Weekly*, “MCOOL Has Cost Canadian Producers C\$92M,” December 8, 2008; *Agri-Pulse*, “COOL regulations create heartburn for Canadians,” December 3, 2008; and *Washington Trade Daily*, December 2, 2008, pp. 3-4.

³² U.S. Trade Representative, “Vilsack, Kirk Comment on Canadian Panel Request Regarding Country-of-Origin Labeling,” October 7, 2009, available at <http://www.ustr.gov/about-us/press-office/press-releases/2009/october/vilsack-kirk-comment-canadian-panel-request-regard>.

³³ Office of Senator Tim Johnson, “Johnson, Enzi Lead the Fight to Keep Congressional Intent on COOL as WTO Dispute Moves Forward,” December 21, 2009, available at http://johnson.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=c48ed4be-eebd-43da-95a1-2b079437819a&ContentType_id=c3d73cfe-c14b-4676-96ed-43a65aea57c0&Group_id=6ae28060-e7a2-46ba-bbab-cc51bb5cb91&MonthDisplay=12&YearDisplay=2009.

American Meat Institute (AMI), representing U.S. meat processors and packers, stated that the U.S. law, in addition to violating WTO commitments, also violates NAFTA commitments. AMI argued that COOL discriminates against imports in favor of domestic meat.³⁴

In opposition, the U.S. Cattlemen's Association (USCA) and the National Farmers Union argued that COOL is "fully consistent" with the General Agreement on Tariffs and Trade and the Agreement on Technical Barriers of Trade (key WTO commitments). Both stated that this U.S. law "does not discriminate between domestic and imported beef ... [and] operates neutrally in the market place," and noted that COOL does not impose any domestic content requirements (i.e., does not stipulate what share of value or quantity determines country of origin).³⁵

Earlier, the National Cattlemen's Beef Association (NCBA) expressed concern that Canada's decision to pursue its case against U.S. COOL rules has the potential for retaliatory action to be taken against U.S. beef. It noted that "COOL has damaged critically important trading relationships [i.e., the import of Canadian and Mexican livestock, the value added as they pass through U.S. feedlots and are processed into meat, and the export of finished meat products back to Mexican and Canadian consumers], and is not putting additional money into the pockets of cattlemen."³⁶ The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA), presented similar comments.³⁷

The scope of the case that the WTO is now considering is not specific to livestock and their products. Presumably other covered commodities could be affected if the dispute panel rules against the U.S. COOL law.

Legislation

A number of lawmakers appear to agree with some industry groups' criticisms of mandatory COOL and could offer legislation to limit its scope and impacts. Other lawmakers remain strongly supportive of the new law and likely would oppose any significant rollback. Still others seek to bring more commodities under the scope of mandatory country-of-origin labeling. Observers point out that the 2008 farm bill changes were intended to balance the concerns of both sides and, in effect, settle the longstanding controversy over requiring COOL. However, unfolding trade and market developments, including the WTO challenge initiated by Canada and Mexico and changes in import patterns, could alter the dynamics of any COOL debate in the 111th Congress and later.

³⁴ AMI, "American Meat Institute Tells U.S. Trade Representative that Mandatory Country-of-Origin Labeling Violates International Trade Obligations," January 8, 2010, available at <http://www.meatami.com/ht/display/ReleaseDetails/i/56358>.

³⁵ USCA, "USCA and Farmers Union Urge Vigorous COOL Defense," January 12, 2010, available at http://www.uscattlemen.org/TheNewsRoom/2010_News/1-12COOLdefense.htm.

³⁶ NCBA, "NCBA Statement on Canadian WTO Complaint against U.S. COOL Law," October 7, 2009, available at <http://www.beefusa.org/NEWSNCBAStatementonCanadianWTOComplaintagainstUSCOOLLaw39616.aspx>.

³⁷ R-CALF USA, "Canada, Mexico Have No Standing to Bring Complaint Against U.S. COOL Law," July 2, 2009, available at http://www.r-calfusa.com/news_releases/2009/090702-canada.htm.

Expansion of COOL in Food Safety Measures

Provisions in one major food safety bill (H.R. 2749) would expand the scope of country-of-origin labeling to apply to all processed foods and other agricultural commodities not now covered under other statutory authorities. Earlier, during the 2008 debate over the safety of imported foods due in part to the scare over melamine in imports from China, some suggested that COOL be extended to additional products—a proposal included in an FDA reform bill and subsequent food safety measures.

Section 202 of H.R. 2749 (the House-passed food safety measure) would, by amending the Federal Food, Drug, and Cosmetic Act (FFDCA), significantly expand the country-of-origin food labeling requirement to apply to all processed foods, and to all non-processed foods not covered by the 2002 and 2008 farm bill provisions. As noted earlier, the FFDCA does not contain express COOL requirements for foods (or drugs). Failure to meet either of the following labeling requirements would be cause for FDA to deem such an incident a “misbranding” of the product, which would result in the imposition of fines and/or other penalties on the seller.³⁸ Specifically, a *processed food* would be “misbranded” if its label did not identify the country where final processing occurred. Relatedly, a *non-processed* food would be “misbranded” if its label failed to identify the country of origin. These requirements would take effect two years after enactment. Acknowledging that other federal laws already require COOL for food, this provision would direct FDA to develop its regulations to account for the labeling requirements already mandated by U.S. Customs and Border Protection for processed foods (see “Tariff Act”) and by the Agricultural Marketing Service for non-processed foods (see “Key Provisions”). No comparable provision is in the Senate’s food safety bill (S. 510) as reported by the Health, Education, Labor, and Pensions (HELP) Committee. Amendments to require COOL for additional products might be offered during Senate floor debate. An earlier version of the House bill (Section 133 of H.R. 759, 110th Congress) also would have required a manufacturer of a processed food to identify the country or countries of origin for each ingredient in the product, and an original packer of non-processed food to identify its country of origin, on their respective websites.

COOL for Dairy Products

Separately, S. 1783 would amend the Agricultural Marketing Act of 1946 to provide for country-of-origin labeling for dairy products (fluid milk, cheese, yogurt, ice cream, butter, and other dairy products). Each retailer of dairy products would be required to designate the product’s origin as (1) each country in which or from which the one or more dairy ingredients were produced or originated, and each country in which the product was processed; and (2) if a U.S.-produced dairy product, the state, region, or locality where the product was produced. Proponents argue that this “tool” would give consumers information to “quickly and easily identify” U.S.-made dairy products from milk that meets U.S. “high safety standards,” in light of the 2008 discovery of melamine in Chinese dairy products.³⁹

³⁸ The concept of misbranding is one of the basic components of the FFDCA, and persons who violate its prohibitions are subject to criminal and civil penalties, as well as injunctions and seizures of the misbranded product.

³⁹ Office of Senator Al Franken, “Franken, Feingold, and Brown Introduce Dairy COOL Act,” October 14, 2009, http://franken.senate.gov/?p=press_release&id=563.

The National Milk Producers Federation, the largest trade association representing dairy producers, in late 2008 stated that it “does not desire to extend any COOL regulations to milk and milk products.” It has not taken a position on this measure.⁴⁰ Observers point out that imports of fluid milk, cottage cheese, yogurt, and ice cream are minimal and that most imported cheeses and butter already are labeled with country of origin under other federal authority (see “Tariff Act”). The International Dairy Foods Association, a trade association representing dairy processors, opposes the bill. It argues that mandating COOL for dairy products and not for other processed foods “will reduce demand for [them] and encourage food manufacturers to substitute vegetable-based or other protein ingredients” instead.⁴¹

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⁴⁰ NMPF, “Comments on USDA’s Interim Final Rule on Mandatory COOL,” September 29, 2008, available at <http://www.nmpf.org/files/file/NMPF%20COOL%20comments%2009-29-08.pdf>; E-mail communication from Dana Brooks, NMPF, July 8, 2010.

⁴¹ *Supermarket News*, “Dairy Group Opposes COOL Law,” October 29, 2009, p. 19.