UNITED STATES CATTLEMEN'S association
web: www.uscattlemen.org ~ email: usca@uscattlemen.org
2414 I St. NW Washington, D.C. 20037 – (202)870-3867

April 11, 2013

Ms. Julie Henderson
Director, COOL Division
Livestock, Poultry, and Seed Program
Agricultural Marketing Service
U.S. Department of Agriculture
STOP 0216
1400 Independence Avenue SW, Room 2620-S
Washington, D.C. 20250-0216

Re: USCA Comments on the Proposed Rule on Country-of-Origin Labeling of Beef and Other Products, Docket No. AMS-LS-13-0004 / RIN 0581-AD29

Dear Ms. Henderson:

The United States Cattlemen's Association (USCA) appreciates this opportunity to submit its views regarding the Department's proposed rule on mandatory country-of-origin labeling (COOL) for beef and other products. This submission responds to the Department's request for comments published in the Federal Register on March 12, 2013.[1] USCA is a national organization that represents an effective voice for the United States cattle industry on issues including mandatory country-of-origin labeling, international trade, market competition, reform of the mandatory beef checkoff, animal health, welfare and identification, and private property rights.

USCA strongly supports the Department's proposal to amend the COOL regulations to increase and improve the information that COOL labels convey to consumers. The amended regulations will bring the United States into compliance with the WTO Appellate Body's ruling on COOL by making the full range of origin information that producers already track under the labeling program available to retail consumers. This will ensure that any impact the program has on producers stems exclusively from legitimate regulatory distinctions – distinctions that exist in order to provide consumers with more accurate information regarding the origin of the food they buy. We therefore urge the Department to adopt the rule changes that have been proposed.

In response to the Department's request for comments on the costs and benefits of the proposed rule change, we provide information on the benefit of COOL to consumers and the cost of

[1] *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts*, 78 Fed. Reg. 15,645 (Mar. 12, 2013) (hereinafter "*COOL Proposed Rule*").

COOL to producers below. Where possible, we focus our comments regarding costs and benefits on the two main aspects of the Department's proposal: 1) specific identification of production steps on the COOL label; and 2) elimination of the commingling exception. Together, we believe these steps will significantly increase the benefit of COOL to consumers while imposing minimal if any additional costs on producers.

I. Background on the WTO Dispute on COOL

In December of 2008, Canada and Mexico challenged the U.S. law and regulations implementing COOL, arguing that, among other things, they violated U.S. obligations under the Agreement on Technical Barriers to Trade ("TBT Agreement"). The WTO Appellate Body ruled that the current COOL program violates the obligations of the United States under Article 2.1 of the TBT Agreement.[2]

Article 2.1 of the TBT Agreement requires WTO Members to ensure that their technical regulations accord imported products "treatment no less favorable" than that accorded to domestic like products. The Appellate Body confirmed the conclusion of the Panel that heard the case in the first instance that COOL modifies the conditions of competition in the U.S. market to the detriment of imported livestock and thus has a detrimental impact on imported livestock.[3] This detrimental impact was based on recordkeeping and verification requirements that cause processors to segregate meat from animals of different origins, making it more costly for processors to handle meat of varying origins than meat of a single origin.[4] The Appellate Body explained, however, that any detrimental impact on imports must also be found to reflect discrimination in order to establish a violation of Article 2.1.[5]

This principle was articulated in the *Clove Cigarettes* case. There, the Appellate Body explained that a detrimental impact on imports, by itself, is not sufficient to establish a violation of Article 2.1 of the TBT Agreement.[6] Article 2.1 of the TBT Agreement "only prohibits *de jure* and *de facto* discrimination against" imports; Article 2.1 does not prohibit a "detrimental impact on competitive opportunities for imports that stems exclusively from legitimate regulatory distinctions."[7] Therefore, even if a measure does change the conditions of competition so as to

---

[2] Appellate Body Report, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R, WT/DS386/AB/R, adopted 23 July 2012 (hereinafter "*COOL AB Report*"), at para. 496(a).

[3] *Id.* at para. 292.

[4] *Id.*

[5] *Id.* at para. 327.

[6] Appellate Body Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, adopted 24 April 2012 (hereinafter "*Clove Cigarettes AB Report*"), at paras. 174.

[7] *Id.* at paras. 175, 182.

have a detrimental impact on imports, that measure can still comply with Article 2.1 of the TBT Agreement if it "stems exclusively from a legitimate regulatory distinction rather than reflecting discrimination against the group of imported products."[8]

The Appellate Body in the COOL dispute found that the detrimental impact of COOL on imported livestock does not stem exclusively from legitimate regulatory distinctions based on its finding that COOL's recordkeeping and verification requirements, which are the source of detrimental impact on imported livestock, impose a burden on upstream producers and processors that is disproportionate to the level of origin information conveyed to consumers under the program.[9] In other words, because the origin information tracked under COOL is not necessarily conveyed to consumers, any detrimental impact on imports that flows from the burdens of tracking that information cannot be said to stem exclusively from consumer information needs.[10]

The Appellate Body identified a number of deficiencies in the COOL program that deprived consumers of origin information that producers are required to track. One such deficiency identified by the Appellate Body was that the COOL labels do not expressly identify specific production steps, even though producers track where animals are born and raised as part of the labeling program.[11] In addition, the Appellate Body noted that labels B and C (the mixed origin labels) contain confusing or inaccurate origin information, not only because they do not require identification of which production step occurred in which country, but also because they may list countries of origin in any order and because the commingling flexibilities allowed under the program allow meat to be labeled as mixed origin even when it in fact is of exclusively U.S. origin.[12]

As a result of these weaknesses in the COOL labeling program, the Appellate Body concluded that, "the detail and accuracy of the origin information that upstream producers are required to track and transmit … { is } significantly greater than the origin information that retailers of muscle cuts of beef and pork are required to convey to their consumers."[13] Because the Appellate Body could not find any rational basis for this disconnect, it concluded that the manner in which COOL seeks to provide information to consumers is "arbitrary" and the disproportionate recordkeeping and verification requirements imposed on producers are "unjustifiable."[14] As a result, it concluded that the detrimental impact of the COOL measure on

[8] *Id.* at para. 182.

[9] *COOL AB Report* at para. 349.

[10] *Id*.

[11] *Id*. at para. 343.

[12] *Id*.

[13] *Id*. at para. 346.

[14] *Id*. at para. 347.

imports reflects discrimination, does not stem exclusively from legitimate regulatory distinctions, and thus violates Article 2.1 of the TBT Agreement.[15]

II. The Proposed Rule

The proposed rule brings the U.S. into compliance with the WTO decision by correcting the deficiencies in the regulatory program identified by the Appellate Body. In particular, the proposed rule requires that production steps now be identified on meat labels, thus providing the production information that the Appellate Body was concerned is not communicated to consumers.[16] In addition, the proposed rule eliminates the commingling flexibilities that the Appellate Body found undermined the integrity of the labeling program.[17]

As a result of these changes, any segregation that processors undertake to facilitate compliance with the program (and any detrimental impact on imports that may arise from such segregation) will flow exclusively from legitimate regulatory distinctions that are fully reflected in the more accurate and informative labels that consumers see on meat products at the retail level. As explained above, the Appellate Body based its findings under Article 2.1 of the TBT Agreement based on the disproportionality between the origin information producers must track under the program and the information that consumers actually see in the labels on the final product.[18] The proposed rule changes will bring those two sides of the equation into proportion by giving consumers access to the information that producers already track.

We note that the Appellate Body was concerned with a lack of proportionality between the information tracked due to producers' recordkeeping requirements, on the one hand, and the information conveyed to consumers, on the other. The Appellate Body decision was not based on any findings regarding the proportionality (or lack thereof) between the costs imposed on producers and the benefits enjoyed by consumers. The Appellate Body did not impose, and WTO rules would not support the imposition of, any requirement that the U.S. ensure that producer costs are proportional to consumer benefits. Instead, the Appellate Body was only concerned with whether the amount and specificity of the recordkeeping requirements imposed on producers are actually justified by the amount of specificity of information provided to consumers. The Department's proposed rule changes ensure that the recordkeeping requirements are proportional to the consumer information provided, and thus that these requirements are justified by legitimate regulatory distinctions. This is sufficient to bring the U.S. into compliance with the Appellate Body's findings.

While we do not believe that a cost/benefit analysis is required or appropriate for the purposes of bringing the COOL program into compliance with the WTO decision, we note the Department

---

[15] *Id*. at para. 349.

[16] *COOL Proposed Rule* at 15,646.

[17] *Id*.

[18] *COOL AB Report* at para. 349.

specifically requested additional information on costs and benefits in its proposal.[19] We therefore provide that information below. In short, we believe this information indicates that any increased costs that may result from the proposed amendments are more than outweighed by the increased benefit to consumers of improved origin information.

A. The Benefits of Conveying Increased Origin Information Are Significant

There have been numerous polls and studies demonstrating that consumers value origin information regarding the food that they buy, including meat. One survey of consumers in Louisiana before COOL was created in 2002 found that 93% of the consumers surveyed supported mandatory origin labeling of fresh and frozen beef in retail stores.[20] A 2002 survey on consumers in Chicago and Denver found that 75% of participants preferred to buy meat products labeled with its country of origin as opposed to unlabeled product, with the preferences being strongest for beef products.[21] A national poll in 2007 found that 94% of those surveyed believe that consumers have a right to know the country of origin of the foods that they purchase, and 85% of consumers say knowing where their food comes from is important.[22]

In addition, it appears that consumers are willing to pay more for a more precise, country-specific label than for a less precise, mixed-origin label. For example, a 2012 survey found that consumers were willing to pay $1.77 more per 12 oz portion for a meat product labeled "Product of United States" compared to an unlabeled product.[23] By contrast, consumers were only willing to pay an additional $1.07 per 12 oz portion for a meat product with a less precise "Product of Canada, Mexico and US" compared to an unlabeled product.[24] As noted by the Appellate Body, this type of mixed-origin label may be affixed to exclusively U.S. origin product due to the commingling flexibilities in the current program. Thus, eliminating the commingling flexibility and ensuring that single-origin product is accurately labeled will benefit consumers who value being able to purchase products with more precise label information. Indeed, they are willing to pay 65% more for a country-specific label than for a mixed-origin label.

---

[19] *COOL Proposed Rule* at 15,647, 15,648.

[20] A. Schupp and J. Gillespie, "Consumer Attitudes Toward Potential Country-of-Origin labeling of Fresh or Frozen Beef," Journal of Food Distribution Research 32(3):34-44 (2001).

[21] Wendy J. Umberger, et al., "Country-of-Origin Labeling of Beef Products: U.S. Consumers' Perceptions," Journal of Food Distribution Research 34(3):103-116 (2003).

[22] Danielle Gunn and C. Wilson Gray, "COOL Finally Arrives!" University of Idaho Extension, Agricultural Economics Extension Series No. 08-06 (Sept. 2008) at 1-2.

[23] Glynn T. Tonsor, Et al., "Consumer Valuation of Alternative Meat Origin Labels," Journal of Agricultural Economics (2012).

[24] *Id*. While the survey also found that consumers were willing to pay more for meat labeled "Product of North America," it appears this finding may reflect consumer confusion as to the definition of "North America" rather than an objective evaluation of the information on the label properly defined.

It also appears that consumers place a greater economic value on labels that cite particular production steps than they do on labels that lack such information. A 2002 survey of consumers in Chicago and Denver, for example, found that consumers were willing to pay an average $0.42/lb for a steak bearing a country of origin label with an unspecified format as opposed to an unlabeled steak.[25] However, when a specific label stating "U.S.A. Guaranteed: Born and Raised in the U.S." was offered, consumers were willing to pay an average $0.81/lb more for the labeled steak than for an unlabeled steak.[26] This indicates that consumers are willing to pay more for more specific origin information and that they place an economic value on information regarding where specific production steps have taken place. Indeed, the label with specific origin steps was perceived as nearly twice as valuable as a general origin label, with respondents willing to pay 93% more for the additional information.

The aggregate benefit of providing such labels is likely significant. One recent study, for example, estimated the aggregate economic benefits of labeling beef steak cuts with country of origin, based on a general label whose content was not specified. It is important to note that the value of the label was based on having any label at all – not based on the premium that consumers may pay for more precise information. Using the lowest-bound estimates and the most conservative assumptions, that study estimated that the value to consumers of putting any origin label at all on beef steak cuts was at least $309 million.[27] Correcting that estimate to reflect the higher premiums consumers place on origin information on beef products specifically (as opposed to beef and pork in the aggregate) results in a total value to consumers of any label on beef steak cuts of at least $510 million.[28] If more specific labels like the ones that the Department is proposing are viewed by consumers as 65% to 93% more valuable than a general or mixed origin label, implementing the Department's proposed rule changes could create additional consumer benefits totaling at least $331 to $474 million on top of the base benefits of having any origin label at all.

In short, consumers strongly support labeling food with its country of origin, and they report being willing to pay a premium for such labels. In the couple of studies that permit some

[25] Wendy J. Umberger, et al., "Country-of-Origin Labeling of Beef Products: U.S. Consumers' Perceptions," Journal of Food Distribution Research 34(3):103-116 (2003).

[26] *Id*.

[27] Tyler J. Klain, et al., "Valuing Information: The Case of Country of Origin Labeling" (Nov. 2, 2011). We note that this very conservative figure includes factors that discount for consumers who may not value origin information and for consumption quantity, and that the figure quantifies the benefit only for beef steak cuts. *Id.*

[28] The Klain article uses an adjusted premium based on beef and pork cuts combined to estimate the value of a label just for beef steak cuts. The article notes that the premium just for beef steak cuts is 65% higher than the combined beef and pork premium ($2.26/steak for beef vs. $1.37/steak for beef and pork combined). Thus, the estimate of the total value to consumers of any label at all on beef cuts should be based on the higher premium for beef, not the lower beef and pork combined premium. Adjusting the $309 million estimate upwards by 65% results in $510 million.

comparison among label formats, it appears that consumers are willing to pay more for labels with more specific country information and more for labels with information on specific production steps. Thus, the improved labels proposed by the Department will create significant benefits for meat consumers that value better origin information.

B. The Costs of Conveying Increased Origin Information Are Minimal

As noted by the Department, the proposed rule changes may entail some additional cost to print new labels, but they are not anticipated to result in increased recordkeeping costs.[29] The Department estimates the cost of printing new labels at $33 million, an amount the Department itself admits is likely overstated and is overwhelmingly borne by retailers rather than producers. Because the WTO analysis of detrimental impact on imports was not based on label printing costs, particularly at the retail level, we do not believe these costs, to the extent they may increase under the new rule, would have any additional detrimental impact on imports. As noted above, the detrimental impact that the WTO identified flowed from recordkeeping requirements imposed on processors. Thus, because the Department's proposal does not increase those requirements, it would be expected to have no additional detrimental impact on imports. The Department did, however, request additional information on the extent to which the elimination of the commingling flexibility may impose any additional, non-recordkeeping costs on processors who use the flexibility now.[30] We provide such information below.

As a preliminary matter, we note that the commingling flexibility appears to be used in only the small minority of cases. As noted by the WTO dispute settlement panel, the American Meat Institute has stated that almost 95% of beef and pork produced in the U.S. is eligible for an exclusively U.S. origin label.[31] In addition, the panel noted that major U.S. meatpackers stated their intention to label all or nearly all of their product with the single-origin label rather than the mixed origin label permitted under the commingling flexibility.[32] This is consistent with the fact that, on average over the past thirteen years, about 8% of the U.S. red meat production has been from foreign-born animals.[33] The commingling flexibility is only relevant to those plants that process meat from foreign-born animals, and such meat only accounts for ten percent or less of total domestic production. The highest estimate we are aware of regarding use of the commingling flexibility is from a USDA survey provided by the U.S. to the WTO dispute

[29] *COOL Proposed Rule* at 15,649.

[30] *Id*. at 15,648.

[31] Panel Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/R, WT/DS386/R, adopted 23 July 2012, as modified by Appellate Body Report WT/DS384/AB/R, WT/DS386/AB/R (hereinafter "*COOL Panel Reports*"), at para. 7.365.

[32] *Id*. at para. 7.361.

[33] Michael J. McConnell, et al., "US red meat production from Foreign-born animals," Agricultural Sciences 3 (2012):201-207.

settlement panel – that survey apparently found that 22% of the beef sold in the U.S. is derived from commingled meat.[34]

Moreover, even for those plants that do currently take advantage of the commingling flexibility, eliminating that flexibility is unlikely to impose significant new costs. As noted by the USDA in the 2009 notice of the final rule, even those processors and packers that do use the flexibility can only mix sources "as long as accurate records are kept."[35] Indeed, as noted above, it was the fact that the commingling flexibility deprives consumers of origin information that processors are already tracking that caused the Appellate Body to identify the flexibility as one of the deficiencies in the COOL program.[36] The fact that commingling processors are already tracking origin is further confirmed by the Department's statement that no additional recordkeeping will be required under the proposed rule.[37]

Finally, the only other possible cost that elimination of the commingling flexibility may entail would be slight changes in operations to ensure that meat of different origins is properly labeled. As noted above, commingling processors already track origin to ensure that meat from animals of different origins is actually processed during the same day in order to qualify for the mixed-origin label. The only additional step they will need to take when commingling is eliminated is to continue to track that origin through the production process or change production schedules to process different origin meat at different times.

As noted in the final 2009 rule, segregating animals by origin can be accomplished through processes that are essentially the same as those that firms already use to sort animals by weight, grade, and other factors.[38] All together, USDA estimated that adding origin to the criteria upon which animals are sorted would cost the beef packing industry $373 million, or an average of $0.015/lb.[39] Assuming this estimate was discounted somewhat due to the existence of the commingling flexibility, eliminating the flexibility would be expected to add about 10% in costs (based on the fact that about 90% of meat is already from domestic animals) or at most 22% (based on the USDA survey). Thus, it is reasonable to expect that, to the extent eliminating the flexibility introduces any additional costs, they are likely to be very limited, totaling 10 to 22% at most of the total industry segregation costs estimated in 2009, or $37 to $82 million for the industry overall. Even this amount is likely significantly over-estimated, as commingling producers already track origin sufficiently to ensure animals of different origins are being processed during the same production day.

---

[34] *COOL AB Report* at para. 296. The study is apparently not statistically reliable. *Id*. at para. 298.

[35] *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts; Final Rule*, 74 Fed. Reg. 2658, 2670 (Jan. 15, 2009) (hereinafter "*2009 COOL Rule*").

[36] *COOL AB Report* at para. 343.

[37] *COOL Proposed Rule* at 15, 649.

[38] *2009 COOL Rule* at 2689.

[39] *Id*. at 2687.

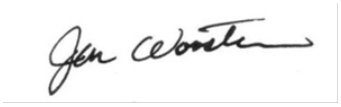
III. Conclusion

In conclusion, USCA welcomes the proposed amendments to the COOL regulations and urges the Department to adopt them as proposed. These changes will bring the U.S. into compliance with the Appellate Body ruling on COOL by ensuring that consumers receive the origin information that producers are required to track, thus bringing the recordkeeping and consumer information requirements into proportion and ensuring that the recordkeeping requirements stem exclusively from the legitimate consumer information objectives of the labeling program.

In addition, we note that the additional benefit to consumers of better information is likely to be significant, adding $331 to $474 million in value to the current labeling program for consumers, based on conservative estimates. By contrast, any new costs of the program are likely to be minimal. There will be no additional recordkeeping requirements as a result of the rule, and any additional labeling costs are concentrated almost entirely at the retail level. Those few producers that currently make use of the commingling flexibility are already required to maintain accurate origin records and will face few if any costs in adjusting their processing schedules – based on the cost estimates in the 2009 COOL rule, an upper bound estimate of additional cost is $37 to $82 million. Thus, the additional value consumers will enjoy as a result of the Department's proposed rule changes is at least four to twelve times greater than any additional costs the changes may impose on processors.

Thank you for the opportunity to comment on the Department's proposed changes to COOL regulations. Please contact the undersigned should you have any questions regarding this submission.

Sincerely,



Jon Wooster
President, U.S. Cattlemen's Association