Written Testimony Of
National Pork Producers Council

On

Country of Origin Labeling

United States House of Representatives
Agriculture Committee
Subcommittee on Livestock and Foreign Agriculture

March 25, 2015

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 a quarter 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

[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

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 five 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) $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

[33] Congressional Research Service Report R40449

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

[5] Congressional Research Service RS22955

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.

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	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	Product of the US, Country X and Country Y (if applicable)

[6] http://www.gpo.gov/fdsys/pkg/FR-2013-05-24/pdf/2013-12366.pdf

	slaughter"	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."	
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, US
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 US, 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/tratop_e/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 labelling 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	1749
Arkansas	130	260
California	828	1657
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	1657
Iowa	598	1197
Kansas	418	837
Kentucky	74	148
Louisiana	598	1197
Maine	34	68
Maryland	135	270
Massachusetts	307	614
Michigan	1473	2945
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	4234	8468
Utah	99	198
Vermont	52	104
Virginia	152	305
Washington	333	666
West Virginia	9	18
Wisconsin	283	565
Wyoming	4	8
Total	17000	34000

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 FY2004 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 FY2006 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,
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.
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 labelling 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 US statutory provisions and implementing regulations setting out the United States' mandatory country of origin labelling 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 recordkeeping 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 recordkeeping 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 labelling

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 labelling 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 fulfilment, 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 recordkeeping 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 recordkeeping 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 labelling and recordkeeping rules could not be explained 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-fulfilment 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.