

# Mandatory COOL: Costly and Unnecessary

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## KEY TAKEAWAYS

On December 18, 2015, Congress repealed harmful legislation that required mandatory country-of-origin labeling for covered beef and pork commodities.

This regulation was a government-mandated marketing program that placed burdensome restrictions on U.S. beef and pork producers and retailers.

Some legislators are trying to bring back this misguided policy—and have even argued that it should be included in the U.S.–Mexico–Canada trade agreement.

On December 18, 2015, Congress repealed harmful legislation that required mandatory country-of-origin labeling (mandatory COOL) for covered beef and pork commodities.<sup>1</sup> Mandatory COOL was a government-mandated marketing program that placed burdensome restrictions on U.S. beef and pork producers and retailers. Those burdensome restrictions were costly to consumers, retailers, meat packers, and agricultural producers. They were also a non-tariff trade barrier that were rightfully opposed by Canada and Mexico—and resulted in the World Trade Organization authorizing costly retaliatory tariffs against the United States.

Now, a small number of legislators and organizations are trying to bring back this misguided policy and have argued that it should be included in the U.S.–Mexico–Canada free trade agreement (USMCA).<sup>2</sup>

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This paper, in its entirety, can be found at <http://report.heritage.org/ib5019>

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This *Issue Brief* provides a brief overview of mandatory COOL. It explains why mandatory COOL was unnecessary, costly, and why Congress was right to repeal it in the first place.

## Overview of Mandatory COOL

Mandatory COOL<sup>3</sup> was originally included as a provision in the fiscal year (FY) 2002 Farm Bill.<sup>4</sup> It required retailers<sup>5</sup> to notify customers of the country of origin of covered beef and pork commodities.

The U.S. Department of Agriculture (USDA) initially issued a final rule<sup>6</sup> to implement mandatory COOL requirements in 2009.<sup>7</sup> In 2013, the USDA issued a revised mandatory COOL final rule.<sup>8</sup>

The revised 2013 final rule required labels on covered beef and pork commodities to include the country of origin for each production step. This means that the label had to expressly list each country where the animal was born, raised, and slaughtered.<sup>9</sup>

Under the revised mandatory COOL rule, the use of multi-country labels (e.g., “product of the United States, Mexico, and Canada”) for covered beef and pork commodities were prohibited. The rule also required that covered commodities from animals that were exclusively born, raised, and slaughtered in the U.S. had to be labeled “born, raised, and slaughtered in the United States.”<sup>10</sup>

Additionally, the rule prohibited the long-standing practice of commingling muscle cut meat with different countries of origin.<sup>11</sup> As a result, processing plants were only allowed to process either domestic meat or foreign meat in a single production day—but could not process both domestic and foreign meat on the same day.<sup>12</sup> This rule also marked the first time in the history of the American meat industry that it was unlawful to have meat with different “born, raised, and slaughtered” combinations in the same package sold by retailers.<sup>13</sup>

To comply with the rule, ranchers had to keep foreign and domestic cattle and swine in separate herds, or pens, for their entire life cycle. Cattle and swine were required to be segregated based first on where the animal was born, and then further segregated based on where they were raised.<sup>14</sup> While this was a more stringent requirement than the already restrictive 2009 mandatory COOL rule, both rules mandated segregation of foreign and domestic cattle or swine to a certain extent.<sup>15</sup>

Mandatory COOL also had a burdensome recordkeeping requirement: It mandated that “any person that prepares, stores, handles, or distributes” covered beef or pork commodities must maintain detailed records

to identify the immediate previous source for the animal, along with the immediate subsequent recipient for the animal.<sup>16</sup> This would have to be done for the entire life and production cycle of the animal.

## Mandatory COOL Will Never Be Cool— Because It Is Unnecessary

Proponents of COOL assert that it was implemented to fill an information gap for American consumers that the market was failing to provide. However, research shows that consumers neither value nor use mandatory COOL.

According to a USDA report, “[t]he infrequency of ‘Made in USA’ labels on food suggests suppliers do not believe domestic origin is an attribute that can attract much consumer interest.”<sup>17</sup> Similarly, a report by the Kansas State University Department of Agricultural Economics stated:

The overriding finding of limited awareness of MCOOL, narrow use of origin information in purchasing decisions, and no evidence of a demand impact following MCOOL implementation is consistent with the argument that voluntary labeling by country of origin would have occurred if it were economically beneficial to do so.<sup>18</sup>

The most striking aspect of the Kansas State University report found that the majority of participants said they *never* look for country-of-origin information when buying covered beef and pork commodities.<sup>19</sup> Those same researchers found that even when mandatory COOL was the law of the land, consumers were unaware of it.<sup>20</sup>

In addition to mandatory COOL not providing information that consumers value, it is also unnecessary for food safety, as proponents claim.<sup>21</sup> Even the USDA has repeatedly stated that mandatory COOL is not a food safety program: Rather, it is a marketing program.<sup>22</sup> The U.S. government already requires imported meat products to meet the same high standards as U.S. meat products. The implementation of mandatory COOL had no effect on those standards.<sup>23</sup> The USDA monitors all beef and pork imports to ensure the safety of the American consumer.

As the North American Meat Institute stated, “U.S. meat companies would not buy these products, use them in production, and apply the U.S. company label if they were not confident in the imported product’s safety.”<sup>24</sup> So whether mandatory COOL is called a marketing program or a food safety program, it is still unnecessary for consumers.

Simply put, if U.S. consumers had demanded that the country of origin for covered beef or pork commodities be listed on the label, the market would have responded and retailers would have provided that information voluntarily.

## **Mandatory COOL Will Never Be Cool—Because It Is Costly**

A U.S. Department of Agriculture–sponsored study estimated that mandatory COOL would cost the beef industry at least \$8 billion over 10 years, and the pork industry would suffer losses of at least \$1.3 billion over the same period.<sup>25</sup> As the study explains, industry losses arose from the “increased costs of producing, processing, and marketing food products to comply with COOL without a commensurate measurable increase in consumer demand.”<sup>26</sup>

The report also stated that consumers would suffer an economic welfare loss of at least \$7.96 billion over 10 years.<sup>27</sup> The costs to consumers stemmed from the fact that mandatory COOL caused higher retail prices, along with lower retail quantities of covered beef and pork commodities “due to the costs incurred by producers to implement” mandatory COOL.<sup>28</sup>

Ultimately, these economic losses to producers, packers, retailers, and consumers would lead to a “smaller overall industry with higher consumer prices and less product available.”<sup>29</sup>

## **Mandatory COOL Will Never Be Cool—Because It Violates U.S. Trade Obligations**

Mandatory COOL is simply a protectionist scheme. Trade policy should not be about favoring one U.S. industry or interest group over another. Rather, it should focus on lowering trade barriers. However, proponents of mandatory COOL were transparent about their desire to favor domestic livestock over foreign livestock.<sup>30</sup> Because of the burdensome regulations imposed by mandatory COOL, it achieved those aims.

Mandatory COOL created a competitive advantage for U.S.-born, -raised, and -slaughtered cattle and swine. Canada contended that the competitive advantage arose from “incentives for US industry to use exclusively US-origin animals” in order to avoid substantial costs associated with mandatory COOL requirements.<sup>31</sup> Because mandatory COOL treated imported livestock less favorably than domestic livestock, Canada and Mexico challenged mandatory COOL in the World Trade Organization (WTO) on the grounds that it had a trade-distorting impact by reducing the value and the number of cattle and swine that were shipped to the U.S.

The WTO found that there was “a considerable COOL discount of USD 40–60 per head for imported livestock.”<sup>32</sup> In other words, processors of livestock were paying less for foreign livestock than for domestic livestock, even when the foreign livestock and domestic livestock were identical in every way. This was not the case before the enactment of mandatory COOL. This proved that “major processors are passing on at least some of the additional costs of the COOL measure upstream to suppliers of imported livestock.”<sup>33</sup>

The WTO determined that while mandatory COOL imposed significant costs on the beef and pork industry as a whole, importers faced a disproportionately higher share of the costs. Therefore mandatory COOL amounted to less-favorable treatment for foreign beef and pork covered commodities.<sup>34</sup>

In response to mandatory COOL, the WTO authorized Canada and Mexico to implement retaliatory tariffs against the U.S. and set the retaliation levels at \$781 million for Canada and at \$228 million for Mexico. The list of products that Canada and Mexico would be targeting for retaliation went beyond agricultural goods. The wide-ranging list also targets the U.S. manufacturing sector, along with other consumer goods.<sup>35</sup>

These economically devastating retaliatory tariffs drove Congress to repeal mandatory COOL requirements for beef and pork on December 18, 2015. Several months later, the USDA issued a final rule that removed the mandatory COOL requirements for covered beef and pork commodities.<sup>36</sup>

## Recommendation

Congress made the correct decision in 2015 by repealing mandatory COOL. This policy should never see the light of day again—including in any trade agreement such as the USMCA.

The goal of a trade agreement should be to lower trade barriers. Lower trade barriers mean more free trade so that families pay competitive prices for beef and pork products at the supermarket.<sup>37</sup> Mandatory COOL is the antithesis to this goal.

## Conclusion

Mandatory COOL is just another instance of regulatory protectionism. As a marketing program, mandatory COOL has been a complete failure because consumers do not value, nor use, the information that it provides.

Between its implementation in September 2008 and its eventual repeal in December 2015, the requirements triggered major costs—but little in the way of benefits. For those who want country-of-origin labeling, this still

is possible. Even the WTO ultimately concluded that if consumers truly wanted COOL, the market would supply it through a voluntary program.<sup>38</sup> What is not necessary is a costly government mandate.

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## Endnotes

1. U.S. Senate, “Chairman Roberts: ‘Retaliation Is Becoming a Realization,’” Committee on Agriculture, Nutrition, and Forestry, December 7, 2015, <https://www.agriculture.senate.gov/newsroom/press/release/chairman-roberts-retaliation-is-becoming-a-realization> (accessed December 6, 2019). As defined in the fiscal year (FY) 2002 Farm Bill, the term “covered commodity” includes unadulterated muscle cuts of beef and pork, along with unadulterated ground beef and pork. While the FY 2002 Farm Bill, later expanded by the FY 2008 Farm Bill, covered other commodities beyond beef and pork, it is generally understood when referencing mandatory COOL that it is referring to beef and pork covered commodities. It should be noted that when some of the studies cited in this paper refer to mandatory COOL, or mandatory COOL commodities, they are referring to *all* of the covered commodities as a group, of which, beef and pork covered commodities are still a subset.
2. On June 25, 2019, 27 House Democrats sent a letter to United States Trade Representative Robert Lighthizer to demand that a COOL provision covering beef and pork be included in the United States–Mexico–Canada Agreement. Andy Levin et al., “Ambassador Robert E. Lighthizer,” June 25, 2019, <https://plus.cq.com/pdf/5581350.pdf?2> (accessed December 6, 2019). R-CALF USA sent a letter to Speaker Nancy Pelosi (D–CA) and Minority Leader Kevin McCarthy (R–CA) asking that their approval of the new USMCA be contingent upon the restoration of mandatory COOL for beef. “R-CALF USA Asks House Leaders to Restore Meat Labeling in USMCA,” R-CALF USA, July 15, 2019, <https://www.r-calfusa.com/r-calf-usa-asks-house-leaders-to-restore-cool-in-usmca/> (accessed December 6, 2019). The National Farmers Union Board stated it will not support the USMCA until it includes mandatory COOL. National Farmers Union, “Farmers Union Board Calls on Administration to Strengthen Agricultural Markets,” September 9, 2019, <https://nfu.org/2019/09/09/farmers-union-board-calls-on-administration-to-strengthen-agricultural-markets/> (accessed December 6, 2019).
3. Before mandatory COOL was implemented, there was a narrow requirement that all individual, retail-ready packages of imported meat products had to include the country of origin on the label. For example, this included products such as canned ham or packages of salami. (The FSIS requires imported meat and poultry products to bear the name of the country of origin, preceded by the words “product of.” See 9 Code of Federal Regulations § 327.14.15 (2013). This narrow requirement did not apply to any animals brought in to be processed in the U.S., nor did it apply to any imported bulk products (e.g., carcasses or carcass parts) that were destined for U.S. plants for further processing. The USDA considered even minimal processing (e.g., cutting a larger piece of meat into smaller pieces) as enough of a transformation that it was now considered a product of the U.S. See Joel L. Greene, “Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling,” Congressional Research Service *Report for Congress*, December 8, 2015, <https://fas.org/sgp/crs/misc/RS22955.pdf> (accessed December 6, 2019).
4. Farm Security and Rural Investment Act of 2002, Public Law No. 107–171, § 10816.
5. Only retailers, as defined by the Perishable Agricultural Commodities Act of 1930 (7 U.S. Code § 499a et. seq.), that annually purchase at least \$230,000 of perishable agricultural commodities were required to comply with mandatory COOL.
6. *Federal Register*, Vol. 74, No. 10 (January 15, 2009), pp. 2657–2707.
7. It is important to recognize that the 2009 final rule had stringent labeling, records keeping, and segregation requirements, albeit in a different form, and to a different (but still objectionable) extent than the 2013 final rule.
8. *Federal Register*, Vol. 78, No. 101 (May 24, 2013), pp. 31367–31385.
9. Under the revised 2013 mandatory COOL rule, the use of multi-country labels (e.g., “product of the United States, Mexico, and Canada”) for covered beef and pork commodities was prohibited. The rule had also required that covered commodities from animals that were exclusively born, raised, and slaughtered in the U.S. had to be labeled “born, raised, and slaughtered in the United States.” Greene, “Country-of-Origin Labeling for Foods.”
10. *Ibid.*
11. *American Meat Institute et al. v. USDA*, 746 F.3d 1065 (D.C. Cir. 2014), Complaint for Declaratory and Injunctive Relief, <https://www.meatinstitute.org/index.php?ht=a/GetDocumentAction/i/92223> (accessed December 6, 2019).
12. World Trade Organization, *United States: Country of Origin Labeling (COOL) Requirements*, WT/DS384/RWT/DS386/R 1, November 18, 2011, p. 74, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/386R-01.pdf> (accessed December 6, 2019).
13. *American Meat Institute et al. v. USDA*, Complaint for Declaratory and Injunctive Relief.
14. *Ibid.*
15. *Federal Register*, Vol. 74, No. 10 (January 15, 2009), p. 2685.
16. U.S. Department of Agriculture, “Country of Origin Labeling (COOL) Frequently Asked Questions,” January 12, 2009, <https://web.archive.org/web/20090322101832/http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5074846> (accessed December 6, 2019).
17. U.S. Department of Agriculture, “Country-of-Origin Labeling: Theory and Observation,” Economic Research Service *Economic Outlook Report*, January 2004, [https://www.ers.usda.gov/webdocs/publications/40388/15801\\_wrs0402\\_1\\_.pdf?v=41057](https://www.ers.usda.gov/webdocs/publications/40388/15801_wrs0402_1_.pdf?v=41057) (accessed December 6, 2019).
18. Glynn T. Tonsor, Jayson L. Lusk, Ted C. Schroeder, and Mykel R. Taylor, “Mandatory Country of Origin Labeling: Consumer Demand Impact,” Kansas State University, November 2012, [https://www.agmanager.info/sites/default/files/Tonsor\\_KSU\\_FactSheet\\_MCOOL\\_11-13-12.pdf](https://www.agmanager.info/sites/default/files/Tonsor_KSU_FactSheet_MCOOL_11-13-12.pdf) (accessed December 6, 2019).
19. *Ibid.*

20. The analysis found that only 23 percent of respondents were aware of mandatory COOL. Further, another 12 percent of respondents incorrectly believe it is not law.
21. Lydia Zuraw, "Is Country-of-Origin Labeling a Food Safety Issue?" Food Safety News, February 5, 2014, <https://www.foodsafetynews.com/2014/02/food-safety-in-country-of-origin-labeling/> (accessed December 6, 2019), and "Meat Industry Loses Attempt to Block Country-of-Origin Labeling," Food Safety News, March 28, 2014, <https://www.foodsafetynews.com/2014/03/meat-industry-fails-at-attempt-to-block-country-of-origin-labeling/> (accessed December 6, 2019).
22. "Country of Origin Labeling: All Cost, No Benefit," Roll Call, May 18, 2015, [https://www.rollcall.com/news/country\\_of\\_origin\\_labeling\\_all\\_cost\\_no\\_benefit\\_commentary-241873-1.html](https://www.rollcall.com/news/country_of_origin_labeling_all_cost_no_benefit_commentary-241873-1.html) (accessed December 6, 2019), and U.S. Department of Agriculture, "Country of Origin Labeling for Meat and Chicken," August 21, 2013, <https://web.archive.org/web/20160130001426/https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/country-of-origin-labeling-for-meat-and-chicken/country-of-origin-labeling-for-meat-and-chicken> (accessed December 6, 2019).
23. The USDA's Food Safety and Inspection Service is required to ensure the safety and proper labeling of most meat products, including imports, under the Federal Meat Inspection Act. The mandatory COOL provisions did not change the requirements of the Federal Meat Inspection Act.
24. North American Meat Institute, "Facts: Mandatory Country of Origin Labeling," December 2015, <https://www.meatinstitute.org/index.php?ht=a/GetDocumentAction/i/117561> (accessed December 6, 2019).
25. U.S. Department of Agriculture, *Report to Congress: Economic Analysis of Country of Origin Labeling (COOL)*, Office of the Chief Economist, April 2015, [https://www.usda.gov/oce/economics/reports/COOL\\_ReportToCongress.pdf](https://www.usda.gov/oce/economics/reports/COOL_ReportToCongress.pdf) (accessed December 6, 2019).
26. *Ibid.*, p. 9.
27. *Ibid.*
28. *Ibid.*
29. *Ibid.*
30. "Why and How Mandatory COOL Should be Reinstated Through the NAFTA Renegotiations," R-CALF USA, May 2, 2017, <https://www.r-calfusa.com/mandatory-cool-reinstated-nafta-renegotiations/> (accessed December 6, 2019).
31. World Trade Organization, *United States: Country of Origin Labeling (COOL) Requirements*.
32. *Ibid.*
33. *Ibid.*
34. *Ibid.*
35. Greene, "Country-of-Origin Labeling for Foods."
36. While Canada and Mexico were satisfied with this outcome and have not instituted any retaliatory tariffs, they nevertheless still retain the authority to impose retaliatory tariffs against the U.S. should mandatory COOL regulations be reinstated. While including mandatory COOL in a trade agreement (which is highly unlikely) may show Canada and Mexico's tacit agreement to it, it does not negate the fact that it is a harmful trade practice and bad policy.
37. The Heritage Foundation's annual *Index of Economic Freedom* illustrates the close link between lower trade barriers and greater economic prosperity. See Terry Miller and Anthony B. Kim, *2019 Index of Economic Freedom* (Washington, DC: The Heritage Foundation, 2019), <http://www.heritage.org/index/> (accessed December 6, 2019).
38. World Trade Organization, *United States: Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R, June 29, 2012, p. 209, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/386ABR.pdf> (accessed December 6, 2019).