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Uncool Rules: Second Thoughts on Mandatory Country of Origin Labeling

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Introduction

The 2002 farm bill included a provision that mandates country of origin labeling (COOL) for beef and certain other perishable products previously exempt from such requirements. Implementing regulations are scheduled to become effective on September 30, 2004. However, late last year the House of Representatives passed a moratorium on implementing mandatory COOL for all products except fish until September 2006. The Senate is scheduled to begin debate on this bill on January 20.

Advocates of country of origin labeling are pointing to the recent case of mad cow disease as evidence that such rules should be mandatory. But COOL has nothing to do with food safety. By attempting to link the COOL issue to a health concern, particularly one that generates hysteria and overreaction, advocates are hoping to scare up support for a complicated, controversial, and costly idea.

Proponents argue that mandatory COOL is desired by both producers and consumers. A "made-in-the-USA" label, they contend, would help identify U.S. products for consumers who are otherwise unsure and who may be willing to pay a premium to know they are buying American food.

That sounds fair enough. But there's more to the story. If, in fact, consumers are overwhelmingly in favor of country of origin labeling, then why haven't domestic producers voluntarily obliged? After all, if there is demand for it, why does there need to be a law mandating it?

Proponents argue that the costs of implementing COOL are small, yet none of them has been willing to implement it voluntarily. Instead, they have been expending considerable time and money to force those requirements further down the supply chain. Processors, wholesalers, and retailers—firms that buy and sell both domestic and imported products—would incur the costs of segregating inventory, keeping records, constructing and maintaining compliance systems, and often physically labeling products. Burdensome compliance costs may induce those firms to limit their sources, in some cases to only domestic suppliers. In this regard, there is question as to the WTO legitimacy of this legislation. If products of foreign origin are treated differently from U.S. products as a result of domestic regulations, the principle of "national treatment," a touchstone of the rules-based trading system, could be found to be violated.

Saddling others with what should be the marketing costs of domestic producers and reducing import competition are ultimately what COOL is all about.

Current Country of Origin Labeling Requirements

For more than 70 years, federal law has required most items imported into the United States—including food items—to bear a conspicuous label identifying their country of origin to the ultimate purchaser.[1] U.S. Customs and Border Protection (formerly the U.S. Customs Service) defines "ultimate purchaser" as the last person in the United States who receives the article in the form in which it was imported. It defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the United States.

The law exempts from labeling requirements articles that would be "economically prohibitive" to label.[2] Among those items are livestock, vegetables, fruits, nuts, live or dead animals, and fish.[3] Although those products are exempt from country of origin labeling requirements, their "immediate containers" are required to bear country of origin labels.[4] So while the cartons containing oranges from Brazil or tomatoes from Mexico must be labeled, produce sold individually from those cartons is exempted.

Expanding Country of Origin Labeling Requirements

In 2002 Congress passed the Farm Security and Rural Investment Act (the Farm Bill of 2002), which included language making country of origin labeling mandatory for certain products that previously had been exempt. The law requires retailers to notify their customers of the country of origin of covered commodities beginning September 30, 2004. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts.[5]

In accordance with the law, the U.S. Department of Agriculture issued proposed regulations for implementing this legislation, which were published in the *Federal Register* on October 30, 2003.

In addition to requiring certain "retailers"[6] to notify their customers of the country of origin of covered commodities, the law stipulates how certain products should be labeled if the various stages of production are completed in more than one country or if the final product includes covered commodities from more than one country (e.g., frozen mixed vegetables with carrots from the United States and peas from Canada). It also stipulates exemptions for certain processed food items derived from the covered commodities.[7]

Although covered meat products imported in consumer-ready packaging for retail are already required to bear a country of origin label, the new rules for beef, pork, and lamb would require greater specificity with respect to the various stages of production. Currently, if an imported cow, pig, or sheep is destined for a U.S. processor where it will undergo "substantial transformation" (e.g., the cow is slaughtered and its meat sold as steaks), that processor is considered the ultimate purchaser and U.S. origin is conferred upon the resulting value-added products. Under the new rule, however, such processing in the United States will no longer confer U.S. origin to the resulting meat products if they are sold as covered commodities. Specific criteria must be met for a covered commodity to bear a U.S.-origin label.

Covered beef must be derived exclusively from an animal that was born, raised, and slaughtered in the United States (including an animal born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States). Covered lamb and pork must be derived exclusively from an animal that was born, raised, and slaughtered in the United States. If any of the three stages of production (born, raised, and slaughtered) occurred outside the United States, the label must identify where each of the three stages occurred.

Covered farm-raised fish and shellfish must be exclusively fish or shellfish hatched, raised, harvested, and processed in the United States, and covered wild fish and shellfish must be exclusively fish or shellfish either harvested in the waters of the United States or by a U.S.-flagged vessel and processed in the United States or aboard a U.S.-flagged vessel. If any of these stages occurs outside the United States, the label must identify where each stage occurs.

Covered fresh and frozen fruits and vegetables and covered peanuts must be exclusively perishable agricultural commodities or peanuts grown in the United States. If a fruit or vegetable product is comprised of covered commodities from multiple countries, the label must list the countries of origin for each ingredient alphabetically.

Published with the proposed regulations was an extensive analysis of the costs and benefits to directly affected companies. USDA estimates the costs of first-year implementation at somewhere between $582 million and $3.9 billion.[8] Largely in response to that analysis, in December 2003 the House of Representatives voted to impose a two-year moratorium on implementation of the mandatory country of origin labeling requirements stipulated in the Farm Bill of 2002. The Consolidated Appropriations bill for 2004, which contains this moratorium language, will be debated in the Senate beginning January 20, 2004.

COOL Is Not a Health Safety Measure

Included in USDA's proposed regulations on COOL are the following description and disclaimer:

> The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. It is not a food safety or animal health measure. COOL is a retail labeling program and as such does not address food safety or animal health concerns. Food products, both imported and domestic, must meet the food safety standards of FSIS [Food Safety and Inspection Service] and/or the Food and Drug Administration (FDA), as applicable. In addition, all food products must also meet FDA labeling standards as well as other FDA regulations and standards.[9]

But facts rarely stand in the way of a political agenda. The recent case of bovine spongiform encephalopathy, otherwise known as mad cow disease, in Washington State has inspired opportunistic calls for yet another layer of superfluous regulation of the food supply chain. Capitalizing on these fears, Sen. Tom Daschle (D-SD), one of COOL's most ardent proponents, offered the following statement on January 7, 2004:

> In light of the Mad Cow incident, Senator Tom Daschle (D-SD) today called for the USDA to immediately implement a program that would essentially expand the "Made in the USA" labeling campaign to cover meat and produce. . . . The Canadian-born Holstein in Washington state that was diagnosed with Mad cow in December, could not have been labeled a U.S. product.[10]

That statement is half-baked. It is true that if COOL were required and this particular cow had been slaughtered in the United States for sale as a covered commodity in a qualifying retail establishment, the packages containing its meat would have been labeled "born in Canada, raised in the United States, slaughtered in the United States." However, under the COOL provisions, there are no guarantees that consumers would ever know this lineage.

If the meat were sold in a butcher shop—as opposed to a grocery store—then no country of origin labeling would be required. Butchers are not covered by the definition of "retailer" as established by the legislation. If the meat were sold as a steak at a restaurant, no country of origin information would be required either. Food service establishments are exempt, too. If the meat were further processed as cold cuts, or sold as beef Wellington, it would bear no country of origin label. Further-processed meat products also are exempt.

Furthermore, if a package of steak were labeled "born in the U.S., raised in the U.S., and slaughtered in the U.S.," the animal could have lived in Canada for a period of 60 days without the consumer knowing that. Cattle in transit from Alaska through Canada to the continental United States do not lose their U.S. origin qualification, if the transit period does not exceed 60 days. But during that transit, the cow might eat Canadian feed, or walk on Canadian soil, or breathe Canadian air.

In addition, the COOL legislation doesn't apply at all to chicken, which is associated with a variety of bacterial illnesses.

Rep. Mary Bono (R-CA), who introduced mandatory COOL as an amendment to the House version of what became the Farm Bill of 2002, relies on tactics similar to Senator Dachle's. She said, "At a time when people have died or been taken ill due to the hepatitis A outbreak in Pennsylvania linked to imported produce, Congress should lead the way in ensuring our health and safety rather than taking actions to weaken these standards."[11] Of course, the hepatitis cases were linked to certain green onions sold at a Mexican restaurant, an establishment that is exempt from the requirements of her legislation.

The Food Safety and Inspection Service, an agency of USDA, is tasked with ensuring that imported meat is just as safe as domestically produced meat. In testimony concerning country of origin labeling before the House Committee on Agriculture in September 2000, then deputy under secretary of food safety, Caren Wilcox, offered:

> FSIS ensures that imported meat is every bit as safe as domestically produced meat. FSIS requires imported meat to be inspected under a system that FSIS has determined—through a rigorous and comprehensive process—to be equivalent to the U.S. system. Then, upon arrival at a U.S. port of entry, FSIS reinspects all meat shipments. Almost all imported products, about 85 percent, then proceed to a U.S. plant for further processing into value-added products—all under FSIS inspection. So, approximately 85 percent of imported product undergoes inspection three times.[12]

How Important Is COOL to Consumers?

Proponents of mandatory COOL argue that consumers overwhelmingly support country of origin labeling. Without labeling, the argument goes, consumers are unable to make informed choices between domestic and imported products. In a letter to Congress, the Consumer Federation of America wrote that "many consumers may wish to purchase produce grown and processed in the United States or meat from animals born, raised and processed here."[13]

Americans for Country of Origin Labeling, a group comprised of agricultural trade associations, has on its website a document titled "Top Ten Reasons Why U.S. Consumers Deserve Swift Implementation of Country of Origin Labeling." It states: "Overwhelmingly, consumers want to know where their food comes from. Recent polls found nearly four of every five consumers support mandatory country of origin labeling of fresh produce, and 86 percent support country of origin labeling for meats."[14]

Bolstering this argument are academic studies that have found consumers willing to pay a premium for country of origin labeling of beef. One study reported that 73 percent of consumers in Denver and Chicago were willing to pay an 11 percent premium for steak and a 24 percent premium for hamburger that bears the country of origin label.[15]

If those results are valid, why haven't U.S. beef producers and retailers instituted labeling and increased prices? For the past three years, USDA has had a voluntary program under which suppliers label their meat products with declarations of U.S. origin. However, no suppliers have participated in the program.[16] In contrast, there has been a high level of participation by food suppliers in the USDA's organic food labeling program, which covers products for which consumers have demonstrated a willingness to pay premiums.[17]

The same study that found consumers willing to pay more for U.S-labeled beef also showed consumers ranking the importance of country of origin information 9th out of 17 factors.[18] Food safety and freshness were deemed the most important,[19] which might help explain attempts at linking COOL with various food-borne illnesses.

Suppliers are unsure of the benefits of labeling, notwithstanding what some surveys purport to demonstrate. When faced with actual purchasing decisions at grocery stores, consumers might respond differently than they did in a hypothetical survey situation. Real budgetary constraints become more apparent. Demand for products of mixed origin—rather than of 100 percent U.S. origin—might be deemed a reasonable alternative. Substitute products, like chicken, might be more appealing. Visual comparisons might lead to buying decisions that were different from those reported in the survey. Although consumers are inclined to favor knowing the country of origin of their food to the alternative of not knowing, the evidence suggests that that information is a relatively unimportant determinant of the purchasing decision.

If consumers preferred American beef or tomatoes to imported alternatives, they would be willing to pay higher prices for products they know are of U.S. origin. The allure of additional revenues would induce producers, intermediaries, and retailers to convey that information voluntarily, provided that the additional revenue exceeded the additional cost of making country of origin information available. The fact that firms that have a profit incentive to know what consumers prefer are unwilling to provide country of origin information voluntarily suggests that any increased revenues would be outstripped by increased costs.

Why, then, would firms that are unwilling to provide this information voluntarily support a law that would require them to do so? The reason is that the costs of labeling would be distributed very differently under mandatory COOL than under a voluntary system—and in a way that would benefit U.S. producers. First, mandatory COOL would require foreign producers to bear labeling costs; under a voluntary system, only U.S.-origin goods would be labeled. Second, mandatory labeling shifts much of the cost burden onto processors, distributors, and retailers, particularly those that purchase and sell foreign commodities. Those firms will require more elaborate compliance management systems. Thus, mandatory COOL boils down to a scheme by U.S. food producers to make imports less attractive and foist the tab for a "made in the U.S." marketing program on its competition and customers.

Projected Costs of Mandatory COOL

Proponents of COOL argue that the cost of implementing mandatory labeling is immaterial. Americans for Country of Origin Labeling claims it costs "virtually nothing." The group cites a Florida Department of Agriculture study that concludes it costs supermarkets one to two man-hours per store per week and states that "the costs for producers and those who distribute or ship these products are minimal."[20] As a reality check on those claims, consider the failure of U.S. firms to engage in voluntary labeling. If the cost is immaterial and the benefits are significant, why does labeling have to be imposed by legislative mandate?

Of the three broad groups of firms in the supply chain (producers, intermediaries, and retailers),[21] retailers will bear the heaviest burden, incurring projected first-year costs of between $49,581 and $396,089 per firm. Estimated first-year costs for intermediaries range from $4,048 to $50,086 per firm. Producers will incur only an estimated first-year cost of $180 to $443 per firm.[22]

The projected cost differences are intuitive. Producers generally have no suppliers. They know with certainty that their commodities are domestic, and they may have to convey this information to only a single intermediary. Their compliance systems can be rudimentary. Firms further down the food supply chain, like retailers, have more suppliers, more customers, and more transactions, and they are more likely to buy and sell imported commodities. This portends the need for elaborate inventory management and compliance systems. Is it any wonder that producers favor and retailers oppose mandatory COOL?

Still, the estimated costs are for only the first year of implementation. As firms will have to find ways to recover those costs, they will do so by charging higher prices to their customers or by offering lower prices for their inputs. In this sense, producers may ultimately pay for their labeling by realizing smaller revenues.

Of the six broad industry groups of commodities covered by these regulations (beef, pork, lamb, fish, fruits and vegetables, and peanuts), firms operating in the beef industry, throughout the supply chain, are projected to incur the largest aggregate costs. Those costs could reach as high as $1.7 billion, or 43 percent of costs for all industry groups combined.[23]

One explanation for the high costs projected for the beef industry is that the industry is highly integrated in North America. Cattle and hogs change hands and cross the border between northern states and Canada frequently. When livestock is ultimately brought to slaughter, processors tend to segregate the animals by attributes such as weight and grade. A system that would require them to further segregate animals that were born in Canada or the United States, and raised in Canada or the United States, would effectively quadruple the amount of physical segregation, tagging, and documenting that must take place. It also portends the need for quadruple the number of production runs at the processing stage.

To avoid significant changes to the processing stage and extensive record-keeping burdens, the optimal response of firms may be to stop importing entirely. That is true for firms throughout the supply chain dealing with all covered commodities. The more sources used, the more likely some sort of segregation and verification system will be required. And since the cost of compliance is going to be lower for firms that deal exclusively with domestic products, demand for imports could drop significantly.

This outcome could lead to charges in the WTO that mandatory COOL regulations deny national treatment to U.S. trade partners. Given the number of high-profile WTO disputes in which the United States is a defendant—several of which have resulted in adverse rulings that have yet to be implemented—a new dispute would be unwelcome. That is particularly true in light of U.S. concerns about the European Union's labeling regulations for genetically modified organisms—a worthy position that is weakened by this legislation.

Conclusion

Proponents of mandatory COOL are now resorting to scare tactics, exploiting recent concerns about mad cow disease to advance their agenda. But the fact is that such labeling is neither a substitute for nor a complement to the extensive network of U.S. food safety regulations already in place. Any of the covered commodities can make it to consumers' mouths without their knowledge of country of origin by way of restaurants, butcher shops, fish markets, or vegetable stands—all exempt retailers under this law. Such commodities can find their way onto consumers' dining tables as cold cuts, fish sticks, frozen chicken vegetable medley, or beef Wellington as processed food items, exempt under this law. All domestic and imported food items are subject to a rigorous set of food safety standards and inspections. Country of origin labeling would not add any additional safety screening.

Although consumers may be interested in having country of origin information, it is a relatively unimportant determinant of the purchasing decision. If it were important, consumers would be willing to pay higher prices for products labeled with that information, and producers would supply that information voluntarily if the increase in revenues exceeded the increase in the costs of providing it. That such information is not provided voluntarily indicates that any preference for commodities of U.S. origin is marginal.

Mandatory labeling is nothing more than a scheme to pass on what should be the marketing costs of U.S. producers to other firms in the supply chain. It is also intended to drive up the costs and reduce the revenues of businesses that produce, process, distribute, and retail imports. In this regard, it might violate important principles of the rules-based trading system.

The House-passed temporary moratorium on implementing COOL is a good start, and the Senate should follow suit. Eventually, though, Congress needs to repeal this ill-advised measure and put COOL on ice permanently.

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1. 19 U.S.C. § 1304 (a).
2. 19 U.S.C. § 1304 (a)(3)(C).
3. 19 U.S.C. § 1304 (a)(3)(J).
4. 19 U.S.C. § 1304 (b).
5. Pub. L. No. 107-171, 116 Stat. 134, Subtitle D, § 281 (2)(A) (2002).
6. The law defines retailers as they are defined under the Perishable Agricultural Commodities Act (PACA). PACA defines a retailer as "any person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail when the invoice cost of all purchases of produce exceeds $230,000 during a calendar year." This definition excludes butcher shops, fish markets, and small grocery stores that either sell fruits and vegetables at a level below this dollar volume threshold or do not sell any fruits and vegetables at all. Food service establishments (restaurants) also are exempt.
7. Pub. L. No. 107-171, 116 Stat. 134, Subtitle D, § 281 (2)(B) (2002). The law excludes items otherwise considered covered commodities that are ingredients in a processed food item. USDA's proposed regulations define the term as "ingredients in a processed food item."
8. Department of Agriculture (USDA), Agricultural Marketing Service, "Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts; Proposed Rule," *Federal Register*, October 30, 2003, p. 61953 (to be codified at 7 C.F.R. pt. 60).
9. Ibid., p. 61945.
10. Tom Daschle, "Daschle Calls on USDA to Immediately Implement Country-of-Origin Labeling," news release, January 7, 2004.
11. Mary Bono, "Bono Criticized Deal to Kill Mandatory Country-of-Origin Labeling of Fresh Produce," news release, November 25, 2003.
12. Caren A. Wilcox, Statement before the Subcommittee on Livestock and Horticulture of the House Committee on Agriculture, September 26, 2000.
13. Arthur Jaeger, Consumer Federation of America; Patty Lovera, Public Citizen; and Linda Golodner, National Consumers League; "Dear House member" letter, February 1, 2002.
14. "Fresh Trends 2002." *The Packer*, January 2002.
15. Wendy Umberger, Dillon M. Feuz, and Bethany M. Sitz, "Country of Origin of Beef Products: U.S. Consumers' Perceptions," *Journal of Food Distribution Research*, March 2003, p. 1.
16. USDA, p. 61956.
17. Ibid.
18. Umberger, Feuz, and Sitz, p. 18.
19. Ibid.
20. Americans for Country of Origin Labeling, "The Reasons We Need Mandatory Country of Origin Labeling of Fruit and Vegetables," http://www.americansforlabeling.org/resources/reasons.htm. Florida has had a mandatory country of origin program for fruits and vegetables in place since 1979.
21. Intermediaries include firms such as handlers, importers, processors, and wholesalers.
22. USDA, p. 61956.
23. Ibid., p. 61964.