



Consumer Federation of America

June 12, 2017

Mr. Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC

Re: Docket number USTR–2017-10603; Negotiating Objectives Regarding Modernization of North American Free Trade Agreement with Canada and Mexico

SUBMITTED VIA REGULATIONS.GOV

Dear Chairman Gresser,

The Consumer Federation of America (CFA) appreciates the opportunity to comment on the Office of United States Trade Representative (USTR) Request for Comments; Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement (NAFTA) with Canada and Mexico. CFA writes to urge the USTR to negotiate concessions with Canada and Mexico that clear the path for reinstatement of Country of Origin Labeling requirements for beef and pork (COOL).

Until recently, COOL required labels on beef and pork products to inform consumers of where the source animal was born, raised, and slaughtered.¹ Canada and Mexico, however, challenged COOL as an unlawful trade barrier before the World Trade Organization (WTO). The WTO authorized the two countries to levy over \$1 billion in tariffs on U.S. goods,² and less than two weeks later, Congress passed a rider repealing COOL.³ Tucked into a 2,000 page, \$1.1 trillion omnibus spending bill, the rider's proponents made clear that it was meant to avoid "economically devastating tariffs."⁴

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, 74 Fed. Reg. 2658 (Jan. 15, 2009).

² Decision by the Arbitrator, *United States – COOL Requirements*, WTO Doc. WT/DS384/ARB; WT/DS386/ARB (adopted Dec. 7, 2015).

³ See Public Law No: 114-113 (12/18/2015), Sec. 759.

⁴ Michael Conaway, *Country of Origin Labeling: All Cost, No Benefit | Commentary*, ROLL CALL (May 18, 2015, 7:15 AM), http://www.rollcall.com/news/country_of_origin_labeling_all_cost_no_benefit_commentary-241873-1.html

United States law has required products to indicate country of origin on their labeling for over 125 years.⁵ However, it was not until 2009 that these requirements applied to beef and pork.⁶ This legal change was prompted in part by increased imports from Canada and Mexico of cattle and hogs, which sometimes were immediately slaughtered and labeled “Made in the USA.” The policy also responded to U.S. authorities tracing a case of mad cow disease back to Canada.⁷ Congressional leaders cited sustainability, support for domestic ranchers, and a basic consumer right-to-know when they passed legislation applying COOL to beef and pork in the 2002 Farm Bill.⁸

COOL enjoyed widespread popular support that wavered little over the years. In 1999, before it turned against the bill, the National Cattlemen’s Beef Association commissioned a survey finding 78% of respondents in favor of origin labeling for meat products.⁹ A 2002 industry poll indicated that fully 86% of consumers favored country of origin labeling.¹⁰ And after COOL’s passage, no less than eight surveys showed similar results, with the latest of these in 2013 showing 87% of respondents as agreeing that “food sellers should be required to indicate on the package label the country or countries in which animals were born, raised and processed.”¹¹

Why such a requirement violates the United States’ international trade obligations has never been coherently explained. The WTO declared that the costs of complying with COOL, potential labeling inaccuracies, and the law’s exemptions for restaurants and smaller stores, made it an illegal trade barrier. But it also acknowledged that delivering information to consumers about the origin of meat is a legitimate objective. At least theoretically, some alternative labeling regulation should be able to lawfully promote that objective, but the WTO’s various decisions on COOL—all in favor of Canada and Mexico—give no clue as to what that alternative might look like.¹²

During the campaign, President Trump talked about ceding sovereign authority to tribunals like the WTO Appellate Body. His promise to withdraw from the Trans-Pacific Partnership trade pact was premised on the view that the deal would “undermine our independence” by creating “a new international commission that makes decisions the American people can’t veto.”¹³ The story of COOL shows that international commissions already make decisions that the American people can’t

⁵ See *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 23-24 (D.C. Cir. 2014) (citing Tariff Act of 1890, ch. 1244, § 6, 26 Stat. 567, 613)

⁶ Joel L. Greene, *Country of Origin Labeling for Food and the WTO Trade Dispute on Meat Labeling*, *Analyst in Agriculture Policy*, CONG. RESEARCH SERV. At 2, Appx. B (Dec. 8, 2015).

⁷ *Bovine Spongiform Encephalopathy in Dairy Cow*, CDC (Jan. 9, 2004), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5253a2.htm>

⁸ 107 CONG. REC. H153740 (daily ed. Apr. 24, 2002) (Statements of Bono and Reps. Thune and Thurman)

⁹ *Country-of-Origin Labeling: Hearing Before the Subcomm. on Livestock and Horticulture of the H. Comm. on Agric.*, 106th Cong. 11 (Apr. 28, 1999) (statement of Rep. Chenoweth), available at http://commdocs.house.gov/committees/ag/hag10615.000/hag10615_0f.htm.

¹⁰ See *Tabled Labels: Consumers Eat Blind While Congress Feasts on Campaign Cash*, PUB. CITIZEN: CRITICAL MASS ENERGY AND ENVIRONMENT PROGRAM 33 n.2 (Sept., 2005), <https://www.citizen.org/documents/COOL.pdf> (citing *Fresh Trends 2002*, THE PACKER (2002), http://nfu.org/documents/legislative/cool/fresh_trends_survey_2002.pdf).

¹¹ Chris Waldrop, *Large Majority of Americans Strongly Support Requiring More Information on Origin of Fresh Meat*, CONSUMER FED. OF AM. (May 15, 2013), <http://www.consumerfed.org/pdfs/CFA-COOL-poll-press-release-May-2013.pdf>.

¹² See, e.g., Thomas Gremillion, *The High Price of Free Trade: Country-of-Origin Labeling and the World Trade Organization in LOYOLA CONSUMER LAW REVIEW*, Vol.29, No.2 (2017); Petros Mavroidis & Kamal Saggi, *What is not so cool about US COOL regulations? A critical analysis of the Appellate Body’s ruling on US-COOL*, in VANDERBILT UNIVERSITY DEPARTMENT OF ECONOMICS WORKING PAPER SERIES, VUECON-13-00016 (Oct. 03, 2013).

¹³ Trump, *supra* note 1 (“These commissions are great for Hillary Clinton’s Wall Street funders who can spend vast amounts of money to influence the outcomes”).

veto, or at least that their elected representatives in Congress are unwilling to veto. In renegotiating NAFTA, however, this Administration has the opportunity to put control over what American consumers have the right to know about their food back in the hands of our elected representatives.

Thank you for considering these comments.

Sincerely,

Thomas Gremillion
Director, Food Policy Institute
Consumer Federation of America