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Comment on Proposed Country-of-Origin Rule

Docket: AMS–LS–13–0004

April 11, 2013

Public Citizen welcomes the opportunity to comment on the proposed rule for country-of-origin labeling (COOL) published as document number AMS–LS–13–0004 on page 15645 of the March 12, 2013 issue of the Federal Register. Public Citizen is a national, nonprofit public interest organization with 150,000 members and supporters that champions citizen interests before Congress, the executive branch agencies and the courts. We have conducted extensive analysis on the World Trade Organization (WTO) panel and Appellate Body rulings against U.S. COOL requirements.

The WTO Appellate Body ruling in June 2012¹ against the popular U.S. COOL policy followed final WTO rulings against two other widely-supported U.S. consumer measures: dolphin-safe tuna fish labeling and a ban on candy-, cola- and clove-flavored cigarettes used to attract children to smoking. Building on a series of past WTO rulings against U.S. environmental policies, these latest WTO decisions again drew public attention to how WTO rules extend beyond “trade” to target domestic consumer and environmental protections.

The COOL policy was created when, after 50 years of U.S. government experimentation with voluntary labeling and efforts by U.S. consumer groups to institute a mandatory program, Congress enacted mandatory country-of-origin labeling for meat in the 2008 farm bill. In their successful WTO challenge, Mexico and Canada argued that the mandatory program violated the limits that the WTO sets on what sorts of product-related “technical regulations” WTO countries are permitted to apply.² Canada and Mexico suggested that the United States should eliminate mandatory labeling and return to voluntary COOL, or to standards suggested by the Codex Alimentarius, an international food standards body at which numerous international food firms play a central role.³ Neither option is acceptable, as neither would provide U.S. consumers with the same level of information as the current U.S. labels.

The response by the United States and other countries in the face of WTO rulings against public interest policies has typically been the elimination or watering down of such essential safeguards, contravening basic tenets of democracy, sovereignty and public well-being. The COOL rule proposed by the Agricultural Marketing Service (AMS) to remedy the WTO’s determination that our policy violates WTO requirements is anomalous in that it would actually strengthen, not weaken, the meat labeling regime widely supported by consumers. This approach – to strengthen COOL’s consumer protections – is the only acceptable means of responding to the WTO ruling.

Any pressure from the Mexican or Canadian governments or from industry groups to abrogate or weaken COOL must be rejected.

The proposed rule rightly aims to provide consumers with more information about the meat that they are consuming. Doing so conforms to consumers' rising demands for information regarding the production of their food. The approach also addresses the WTO Appellate Body's concern that the existing COOL regulation requires meat producers to gather a greater amount of information than is actually delivered to consumers.⁴ The Appellate Body used this disjoint to aver that COOL did not "stem exclusively from a legitimate regulatory distinction," and thus violated the anti-discrimination provisions of the WTO's Agreement on Technical Barriers to Trade.⁵ By bridging the gap between the level of information that COOL requires producers to collect upstream and the level that consumers receive downstream, the proposed rule would address the concerns of the WTO and better fulfill the policy's goal of informing consumers.

Public Citizen supports the rule's proposal for the use of more precise labels that specify the country in which each step in the meat production process occurred. This change fixes the ambiguity embodied in the current label, in which a steer born and raised in Canada and imported into the United States immediately before slaughter could be labeled "Product of Canada and the United States."⁶ By requiring the label in this instance to read "Born and Raised in Canada, Slaughtered in the United States," the proposed rule eliminates potential confusion and provides greater transparency to consumers.

Public Citizen also supports the rule's provisions that would end the practice of commingling of different meat origins under a single label. This practice, which only adds greater ambiguity to the labels by allowing meat exclusively produced in the United States to be labeled as mixed origin, was ironically adopted in part to *avoid* a WTO dispute. In contrast, the Appellate Body took particular issue with commingling, noting that it did not diminish the regulatory burden on producers, but that it did further obfuscate the information provided to consumers (which the Appellate Body used as an argument against COOL's legitimacy).⁷ As such, the elimination of commingling would not significantly increase the burden on producers, while it would allow consumers to have a more honest appraisal of the origin of their meat.

In addition to the changes to existing COOL rules that AMS is proposing to address the WTO ruling, further improvements should be made. Currently, COOL exempts processed foods and food sold in food service establishments from the labeling requirements.⁸ These exemptions should be narrowed or mitigated to provide more information about meat origin, already gathered by upstream producers, to those who eat processed food or dine in cafeterias, restaurants or other food service establishments. These improvements can be made, without needing to change the COOL statute, through two low-cost, high-impact regulatory changes:

1. The rule should specify that simple modifications to raw meat that currently pass as "processing" are not sufficient to exempt products from COOL labeling requirements. For example, under current regulations, meat does not need to reveal country-of-origin information as soon as it has been roasted, cured, smoked or similarly treated with minimal alteration. As one option for improvement, the rule could simply state that such steps are not sufficient to exempt the products from COOL labeling requirements.

2. The rule should require meat producers to transfer the already-collected country-of-origin information to food service establishments. COOL could not require those establishments to post the information without a change to the statute.⁹ (We oppose opening up the statute to amendment.) However, many establishments, upon being provided the information, would likely welcome the opportunity to display it, given consumers' rising demand to know where their food comes from.

Both of these small regulatory changes could be made without incurring significant costs, as is the case with the changes already included in the proposed rule. COOL already mandates collection and verification of the requisite information regarding country of origin, which covers the most significant expenses associated with labeling. Removing the loophole for minimally processed food would simply require the comparably small cost of adding the actual labels to those products. Requiring producers to pass information on to food service establishments would have negligible costs. Meanwhile, these additional changes would vastly expand the number of consumers who are able to see the country of origin of the meat they are consuming, further bolstering COOL's ability to provide the information that consumers rightfully demand.

ENDNOTES

¹ Appellate Body Report, United States — Certain Country of Origin Labelling (COOL) Requirements, WT/DS384/AB/R and WT/DS386/AB/R, 29 June 2012.

² Appellate Body Report, US – COOL, at para. 89.

³ Appellate Body Report, US – COOL, at para. 480.

⁴ Appellate Body Report, US – COOL, at para. 349.

⁵ Appellate Body Report, US – COOL, at para. 349.

⁶ The Appellate Body argued that this ambiguity undermined COOL's legitimacy and thus provided evidence that the regime's technical regulations were excessive. Appellate Body Report, US – COOL, at para. 343.

⁷ Appellate Body Report, US – COOL, at para. 343.

⁸ 7 U.S.C. § 1638a(b); and 7 C.F.R. § 65.135(b) and 65.220.

⁹ 7 U.S.C. § 1638a(b).