

## In The Cattle Markets

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### COOL's Last Stand?

On Monday, the World Trade Organization (WTO) released the report of the compliance panel reviewing the Canada/Mexico complaint against the U.S. over Country of Origin Labeling (COOL). Given that this process has been grinding through the wheels of WTO justice for so long, a brief recapitulation of the issue is probably in order.<sup>1</sup>

As a domestic policy issue, COOL originated in the 2002 Farm Bill. Due to a lack of any kind of consensus on how COOL should be designed, though, implementation on beef and pork was delayed until revisions were made to the policy in the 2008 Farm Bill. A COOL interim final rule was published by USDA in July 2008. By December 2008, Canada had begun the WTO dispute settlement process by requesting a consultation with the U.S. on the issue through the WTO. This process continued over most of the next year, with other countries – notably Mexico – formally joining the process. In October 2009, Canada requested and was granted the establishment of a formal dispute settlement panel. The panel was appointed by the Director-General in May 2010. The dispute was heard over several months, and it was not until November 2011 that a report was issued.

The first dispute panel report was unfavorable to the U.S. position on COOL, finding that the rule was inconsistent with U.S. obligations under the WTO: specifically that it afforded less favorable treatment to imported livestock than to domestic and that it failed to “fulfil [*sic*] its legitimate objective of providing consumers with information on origin...”. On March 23, 2012 – that latest possible date at which it could do so – USDA filed a formal appeal of the panel finding. This appeal was contested over several weeks, with an Appellate Body report issued at the end of June 2012. The Appellate Body upheld the original panel’s findings but differed significantly in their rationale for doing so. They agreed that the COOL rule constituted a disincentive to use imported livestock due to recordkeeping and verification requirements. However, they argued that the detrimental impact on foreign producers could be justified if it stemmed “exclusively from a legitimate regulatory distinction...”. From the Appellate Body’s position, origin labeling can be a legitimate requirement. The problem with COOL was that so little of the information collected and maintained was actually passed on to consumers; the disproportionate burden associated with imported products was not justified by the limited information conveyed.

The Appellate Body ruling at least kept the door cracked for a COOL fix; and USDA requested a “reasonable period of time” to implement such a fix. That reasonable period was

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<sup>1</sup> This summary is based on WTO’s summary of dispute number DS384, United States – Certain Country of Origin Labeling (COOL) Requirements. This material is available online at [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds384\\_e.htm#bkmk384rw](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm#bkmk384rw). All direct quotes are from this source.

to extend to May 23, 2013. On that date, USDA implemented a revised final rule in an attempt to address the deficiencies identified by the WTO Appellate Body. The main feature of the revision is that it would expand the COOL label to include more of the information being collected under the COOL program (the born, raised, slaughtered feature of the new labels). It is this new final rule that has been under review by the WTO compliance panel; and it is this compliance panel's report that was issued on Monday.

The compliance panel has determined that even though the amended COOL program results in better consumer information, it imposes a "disproportionate" burden on importers as compared to domestic suppliers; therefore the amended COOL measure accords less favorable treatment to imported livestock than to US-origin products and as a result is still in violation of U.S. obligations under WTO. Specifically, the panel found that the revised COOL rule actually increased the detrimental impact on imported livestock (as Canada alleged) because it increased the degree of segregation and the level of recordkeeping that would be required for compliance. They further found, addressing the Appellate Body's concerns, that this detrimental impact did not rest exclusively on legitimate regulatory distinctions. This is largely due to the fact that a large proportion of relevant meat products (e.g., anything sold through the food service trade) is exempt from COOL anyway.

So what happens now? Is this the end of the long and winding road for COOL? Maybe; but probably not. For now, the WTO compliance panel recommends that the WTO Dispute Settlement Body (DSB) request the U.S. to bring the inconsistent measure "into conformity with its obligations." The next step in the WTO process would be adoption of the compliance panel's report at a DSB meeting. Adoption of the report — subject to delay by a U.S. appeal — would trigger Canada and Mexico's rights to compensation or retaliation. If the U.S. files an appeal and loses once again, Canada and Mexico would be authorized to slap retaliatory tariffs on U.S. exports.

Basically, then, two more important decision points remain. First, the U.S. must decide whether or not to appeal the compliance panel's ruling. This decision should come within the next 60 days. An appeal will likely last the better part of a year. If the U.S. appeals and wins, COOL stands. If the U.S. appeals and loses (which must be considered likely in light of previous experience with the process) the U.S. will face the second decision point. At this decision point, there are three options: 1) let COOL stand as a non-compliant program and endure whatever retaliatory measures are permitted to Canada and Mexico by the WTO, 2) repeal COOL – at least on beef and pork, or 3) replace COOL with a new labeling law that is compliant (or that will start the whole review process over again). The first option is not likely. Retaliatory measures can be quite broad and will therefore awaken powerful domestic constituencies to oppose COOL; this is what such measures are designed to do. The second option is the cleanest but will obviously not appeal to those who have invested well over a decade in COOL. It may not be easy to stand down on the issue at this point. That leaves the third option. But a new COOL law won't necessarily be easy to design. COOL has always been an attempt to thread the needle between what WTO requires of compliant labeling programs and what domestic producers (and other industry stakeholders) are willing to implement in their own operations. It is not clear that the eye of that needle has gotten any bigger in the last twelve years.

## The Markets

Fed cattle prices basically held firm last week. The 5-area live steer price worked out to \$163.76, about a nickel less than the prior week. These last two weeks have been the highest prices of the year, just eclipsing the previous high from the last full week of July. In a normal seasonal market, we should probably expect to see prices edge on up for about another five weeks or so. This has not, however, been anything like a normal year in terms of seasonality. Feeder cattle prices were all over the place last week. The National Feeder and Stocker Cattle Summary report called the market from \$5 higher to \$5 lower, with some instances of \$8 to \$10 lower later in the week. Corn markets were contributing quite a bit to this uneasiness. While the crop looks really good, there is far too much of it still in the field. Harvest delays are giving the market a reason to jump – the best reason it has had in a while, anyway. Meat prices had a pretty good week last week. The Choice boxed beef cutout averaged a little over \$249 for the week last week – a \$4 improvement over the prior week. Clearly packers want to hold their margins together as they are paying up for cattle. Looking ahead a bit, beef prices will be facing stiff competition from pork. The pork cutout dropped from \$121.57 to \$111.01 from Monday to Friday last week and is headed lower so far this week.

		Week of	Week of	Week of
<i>Data Source: USDA-AMS Market News</i>		10/17/14	10/10/14	10/18/13
<b>5-Area Fed Steer</b>	all grades, live weight, \$/cwt	\$163.76	\$163.82	--
	all grades, dressed weight, \$/cwt	\$257.75	\$257.78	--
<b>Boxed Beef</b>	Choice Price, 600-900 lb., \$/cwt	\$249.26	\$245.26	\$196.16
	Choice-Select Spread, \$/cwt	\$13.73	\$12.16	\$15.31
<b>700-800 lb. Feeder Steer Price</b>	Montana 3-market average, \$/cwt	\$241.24	\$248.25	\$156.03
	Nebraska 7-market average, \$/cwt	\$250.71	\$249.35	\$175.86
	Oklahoma 8-market average, \$/cwt	\$245.35	\$248.92	--
<b>500-600 lb. Feeder Steer Price</b>	Montana 3-market average, \$/cwt	\$285.80	\$287.68	\$181.39
	Nebraska 7-market average, \$/cwt	\$293.57	\$300.39	\$190.15
	Oklahoma 8-market average, \$/cwt	\$272.00	\$273.93	--
<b>Feed Grains</b>	Corn, Omaha, NE, \$/bu (Thursday)	\$3.09	\$2.94	\$4.44
	DDGS Price, Nebraska, \$/ton	\$111.75	\$105.00	\$212.00