

## Implementation of Country of Origin Labeling (COOL) in the Beef Industry

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Implementation of mandatory country of origin labeling (COOL) began on Sept. 30, 2008 after years of discussion, controversy, modification and delay. Even yet, the recently published final rules made additional changes and the recent WTO challenge by U.S. trade partners means that uncertainty remains and additional modifications in COOL are likely in the future.

The central notion of COOL, to provide consumers with information about the source of beef products, seems simple enough and not likely to generate much inherent opposition. However, the issues involved in development of the COOL law and the implementation in the beef industry have proven to be the source of significant contention. Much of the support for the inclusion of COOL in the 2002 Farm Bill came from elements of the beef industry but the provisions were immediately resisted vigorously by other industry sectors and have continued to be a lightning rod for policy disputes that have often pitted producer against producer (Kay, 2003, 2003). The controversy over COOL within the beef industry can be broadly grouped into three areas of contention: 1) the specific language and implications for implementation of the COOL law; 2) the motivation for the law; and 3) the question of costs and benefits to the industry.

### The Devil is in the Details

The original COOL provisions of the 2002 Farm Bill emerged very late in the final negotiations of the farm bill with specific language that had not been considered or deliberated by many of the various interests affected by the law. The law was written with the intent to ensure certain outcomes, e.g. processed products were excluded but ground meat could not be exempted; and also to exclude

certain outcomes, e.g. that USDA would not require an animal identification system in order to implement the law. Opponents immediately noted that the language would make implementation more difficult and more costly than necessary (Kay, 2004).

Opponents also charged that the language of the bill seemed to have been deliberately crafted to minimize political opposition by including provisions such as an exemption for food service and the exclusion of the poultry industry. The compelling argument that consumers have a right to know where their food comes from is compromised by the exclusion of almost half of total beef consumption from the law. The disassembly of beef carcasses into many different products destined for a wide variety of final markets means that virtually all cattle and meat must be tracked under COOL. Rarely is it known or likely that all the products from an entire animal will end up as processed products or in food service markets and therefore not subject to COOL requirements. This means that the industry must incur the costs of COOL on total production in order to generate the label information for about half of beef consumption. Table 1 shows the 2007 levels of cattle slaughter, beef production, and cattle and beef trade and the various labels that are being used to meet COOL requirements.

The exclusion of poultry was ostensibly based on the fact that little poultry is imported. Concerns were raised that the trade picture could change over time and also that any additional costs on red meat production and marketing not shared by the poultry industry was an inherent disadvantage for red meat industries. Ultimately poultry was included in COOL in the 2008 Farm Bill modifications to the law.

**Table 1. Beef and Cattle Supplies, Trade and COOL Labels**

	2007 Supply	COOL Labels
All Cattle and Calves, Jan 1, 2008	96.67 Million Head	
Calf Crop	37.36 Million Head	Prod. of USA
Steer and Heifer Slaughter (FI)**	27.49 Million Head	Prod. of USA; or Prod. of USA and Canada; or Prod. of USA and Mexico*
Cow and Bull Slaughter (FI)**	6.23 Million Head	Prod. of USA; or Prod. USA and Canada*; or Prod. of USA and Mexico*
Cattle Imports, Total	2.49 Million Head	
Canada	1.40 Million Head -0.85 Slaughter -0.55 Feeders	Prod. of USA and Canada*
Mexico	1.09 Million Head	Prod. of USA and Mexico
Beef Production (FI)**	26.07 Billion Pounds	Prod. of USA; or Prod. of USA and Canada; or Prod. of USA and Mexico*
Beef Imports	3.05 Billion Pounds	Prod. Of Country X
Beef Exports	1.82 Billion Pounds	

\*Meat from mixed origin animals and commingled product is labeled with the appropriate countries, which may be listed in any order. Only if an entire day's production consists of animals imported for slaughter does the foreign country have to be listed first, e.g. Product of Canada and USA. Also, only in the rare circumstance that a packer processed Mexican and Canadian cattle in the same day would the Product of USA, Canada, and Mexico label be appropriate.

\*\* Federally Inspected.

## COOL and Trade

Opponents of COOL have suggested that the underlying motivation of some of the strongest supporters was not an overriding concern for consumer information. Although COOL was not promoted openly as a trade issue, COOL has been widely viewed as an attempt to construct a trade barrier against imported cattle and beef. Many COOL supporters suggested that the law could be easily invoked by requiring only that imported animals and products be identified and tracked (R-CALF, 2003). This approach was immediately rejected as an overt violation of U.S. trade principles and one that would not stand up to trade challenges. Subsequently, supporters of the resulting comprehensive labeling law suggested that it would only be necessary to track

imported product and that all other product could be "presumed" to be U.S. in origin thus avoiding additional costs for the U.S. industry. This view was, in large part, the reason that the COOL law prohibited the use of a mandatory animal identification system to implement COOL.

## COOL and Food Safety

Consumers often confuse COOL with food safety and at times COOL supporters have deliberately perpetuated this confusion (See Government Accountability Project, 2007; and Ernst, 2007 for different views of COOL and food safety). COOL is a marketing program as highlighted by the fact that COOL is administered by the Agricultural Marketing Service (AMS) of USDA rather than the Food Safety Inspection Service (FSIS) and the Animal and Plant

Health Inspection Service (APHIS). The general principle of food safety is that product safety should not be the subject of marketing and label information. Food (or indeed any product) that is not fundamentally safe for consumption or use is not permitted in the market and labeling a product known to be dangerous does not make it acceptable. Certainly there are plenty of challenges to the U.S. food safety system and food imports can and should be the subject of continual efforts to maintain a high level of food safety. COOL does not affect any food safety standards nor change any potential sources of food in the marketplace. Suggesting that COOL is a food safety measure detracts from legitimate concerns about food safety and efforts to insure that imported food products do not pose a risk for consumers.

## The Challenges of Implementing COOL in the Beef Industry

The rather straightforward concept of COOL is by no means simple to implement in the beef industry. COOL is a retail law that applies to meat. Cattle are not considered a covered commodity under the COOL law. Nevertheless, cattle producers are indirect suppliers of a covered commodity and are obligated to provide origin information to downstream industry sectors in order to verify the origin of meat. Cattle often change hands several times and are commingled and sorted numerous times before reaching the packing plant. Assembly of cattle from widely dispersed small cow-calf producers into larger lots occurs at the stocker and feedlot levels before being commingled into large enough groups to comprise a shift or operational day at a packing plant. Unlike hogs or poultry that are usually maintained in closed production groups until processing, cattle are much more likely to move through several production groups which increases the difficulty of tracking domestic and imported

cattle through the system.

Supporters and opponents of COOL in the beef industry can be found in all sectors of the beef industry and in all regions. COOL has sometimes been characterized as producers versus the meat industry (Kay, 2007). Certainly the meat industry has generally opposed the law, fearing the costs involved. However, among producers there have been strong supporters and equally strong opponents to COOL and to a large extent these can be distinguished regionally (NCBA, 2008). In general, the strongest support for COOL has come from producers in the northern part of the United States while opposition has been the strongest in the southern half of the country.

In many ways, the COOL debate has highlighted fundamental differences in cattle production in the two parts of the country. COOL was perceived to be easy and low cost to implement in the northern regions where larger cattle operations, selling larger groups of generally heavier cattle directly to feedlots represents a relatively streamlined production system. In southern regions, cattle are often bought and sold several times and move through a complex and diverse set of stocker and feedlot production systems with much assembly, sorting and commingling. The prospect of tracking animals in order to verify origin in this region was viewed as likely a much more burdensome and costly effort.

It is evident that USDA-AMS was caught in the middle of a very difficult task in trying to develop rules that meet the intent of the COOL law and maintain consistency with other laws. For example, the law provided for exemptions for processed food products. Developing the COOL definition of processing presented several challenges particularly with respect to Customs and Border Protection (CBP) treatment of imported products. In general, CBP

requires all imported products to be labeled as imported to the final consumer or until they are “substantially transformed”, in other words processed into new products. Meat from imported cattle cannot be considered processed when slaughtered and fabricated nor can imported meat used in the production of ground beef be considered processed under COOL despite the fact that it is substantially transformed under CBP rules. These and other similar considerations forced USDA to walk a fine line in developing definitions and terminology for the implementation of COOL that would not create conflicts and inconsistencies with other rules.

The original proposed final rule that AMS published prior to the first mandatory implementation date was the subject of much controversy. The rule called for a rigorous set of auditable records at all industry levels. Critics charged that USDA was deliberately making COOL more burdensome than necessary. However, a review of the rule shows that the approach was generally similar to the approach that AMS uses in providing third party verification of a host of voluntary marketing programs. Food labeling under the COOL law must be consistent with food labeling provisions of the Food and Drug Administration (FDA). The general “truth in labeling” provisions of FDA rules are what preclude the use of a presumption of U.S. origin for beef. All label claims must be truthful and verifiable. The need to comply with FDA rules was often overlooked by critics of USDA rulemaking efforts. Nevertheless, in a last minute change and apparent abandonment of this principle, the final rule for COOL implementation allows anyone who visually appraises cattle and finds no “CAN” or “M” brands, official Canadian or Mexican tags, or other indication of foreign origin to issue an affidavit of U.S. origin for the cattle.

Through the intervening political

debates, delays and modifications in COOL, culminating in Congress’ modifications to COOL in the 2008 Farm Bill, AMS has significantly reduced the records requirements in COOL, particularly for cattle producers. In the summer of 2008, a coalition of industry groups developed language for producer affidavits that are being used as the primary documentation for cattle to verify origin claims for COOL. These affidavits and AMS rules that allow cattle to be commingled in groups rather than requiring records linking specific source and destination groups have significantly reduced the potential burden of COOL on cattle producers. In fact, the last minute provision allowing visual appraisal to establish origin claims essentially removes all record-keeping requirements for producers. Although the COOL law prevents USDA from implementing an animal ID system for COOL, the current National Animal Identification System (NAIS), which began in 2004 to enhance animal disease detection and control, provides COOL verification and animals with an official “840” tag require no additional documentation for COOL (USDA-APHIS). However, meat packers, distributors and retailers still must segregate label and track meat from different origins.

## **Will COOL Benefit the Beef Industry?**

The underlying theme of all the issues raised above is the fundamental debate about the net benefit of COOL to the beef industry. COOL supporters believe that U.S. consumer’s preferences for U.S. beef will provide enough premium to more than offset the added costs, which they perceive to be relatively low. Although there is no doubt that some consumers have strong preferences for U.S. beef, COOL opponents question whether there is enough premium on enough products on that portion of beef that moves through retail markets as fresh or frozen beef to pay for the added

costs on all beef, even if those costs are relatively small. Moreover, even a small increase in beef cost may have negative impacts on demand for other beef products that are particularly price sensitive and intensely competitive. COOL critics have noted that there has been nothing to prevent voluntary origin labeling in the past other than an apparent recognition that the costs exceeded the expected benefits. Several studies have examined the potential benefits (See Dunn and Gray, 2008 for a summary). Numerous studies have produced widely varying estimates of costs under different assumptions and a constantly changing set of proposed rules. Recent estimates of the cost of COOL implementation are smaller than earlier estimates but still vary widely (Kay, 2008).

The idea of COOL is simple and carries a lot of emotional appeal to both producers and consumers. Few would argue that, in general, providing more information to consumers is a good idea. However, information is costly and the optimal level of information must reflect the costs of providing the information relative to the benefits. The U.S. beef industry

is enormously complex and the costs of providing this information are not trivial. The long path toward COOL implementation has highlighted many of these challenges and the inherent danger of a top-down mandate on an industry. The extent of both the costs and benefits of COOL are not yet known and only time will tell what will be the ultimate impact of COOL on the beef industry.

#### **For More Information:**

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