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Congress Loses Its COOL, Repeals Meat Labeling Rule

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On Dec. 18, 2015, Congress repealed the country-of-origin labeling rule (COOL) for beef and pork with a measure added to the omnibus budget bill, which President Barack Obama signed into law the same day.[1] With the repeal of COOL for muscle cut and ground beef and pork, consumers will be hard-pressed to figure out whether the steaks, hamburgers and pork chops on their plates were raised and slaughtered in the United States or abroad.

COOL is a labeling law that requires suppliers and retailers to provide country of origin and, in some instances, method of production information to consumers regarding the source of certain foods referred to as "covered commodities."[2] COOL became effective on Sept. 30, 2008. The intent of the law is to provide consumers with additional information on which to base their purchasing decision. Covered foods include, among other items, muscle cut and ground meats (prior to Dec. 18); lamb, goat, and chicken; wild and farm-raised fish and shellfish; fresh and frozen fruits and vegetables; peanuts, pecans and macadamia nuts; and ginseng.

Although the implementation of country-of-origin labeling practices for food began relatively recently, the use of such labels for other types of products extends back more than 100 years. Country-of-origin labeling first appeared in the United States in the post-Civil War era. The McKinley Tariff Act of 1890 imposed country-of-origin labeling requirements on "all articles of foreign manufacture." The two primary issues that Congress sought to address related to the elimination of "misbranded and counterfeit foreign goods" and protection against the price-lowering effect of foreign goods on the domestic market.

The McKinley Tariff Act contained many ambiguities and so Congress passed the Tariff Act of 1930 with country-of-origin labeling laws embedded in section 304 of the act. In particular, the Tariff Act of 1930 attempted to close a gap which allowed imported products that might be wrapped for shipping but

“could not be or were not ordinarily labeled” to avoid the labeling mandate. The law does not require that all products contain country-of-origin labels during every part of the importation and selling process. Instead, the product must indicate to the “ultimate purchaser” where it originated. U.S. Customs and Border Protection interprets the term “ultimate purchaser” to mean “the last U.S. person to receive the article in the form in which it was imported.” This means that if a product reaches the consumer in the same form in which it was imported, it will still contain its country-of-origin label. In contrast, a product that undergoes “substantial transformation” once it reaches the United States will not contain a label with its country-of-origin by the time it reaches the consumer. Furthermore, the law only requires labeling on wrapped products. Fruits and vegetables in loose bins at the grocery store, for example, receive an exemption from the labeling mandate.

In addition to the substantially transformed or unwrapped products that the Tariff Act of 1930 does not cover, the secretary of the Treasury has exercised discretion to grant exemptions under the Tariff Act to certain products that would otherwise fall under the scope of the law. These products — known as the “J List” because the provision that grants this discretion to the secretary is in subsection J of the statute — include “natural products, such as vegetables, fruits, nuts, berries and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.” The J list also provides exemptions for agricultural products such as eggs, flowers, livestock and Christmas trees. These provisions, in effect, eliminate country-of-origin labeling requirements for a large portion of agricultural products.[3]

COOL closed the agricultural product loophole created by the J List exemptions. While the Tariff Act applies broadly to all products unless they receive an express exemption under the J List, COOL applies only to a certain set of “covered commodities.” COOL also differs from the country-of-origin labeling requirements in the Tariff Act of 1930 because COOL requires labels for products that originated both in the United States and abroad, whereas the Tariff Act only mandates labels for foreign products. COOL does not cover all of the food that consumers eat in the United States. In particular, the law specifically excludes processed foods and any product served by restaurants and others in the food services industry.

Since its inception, COOL provisions have been the subject of political wrangling. Many people, including industry trade groups, did not want to see the COOL legislation implemented. Large producers and qualified grocers lobbied to keep the provision inactive due to perceived cost increases. Other critics focused on the lack of evidence to support the proposition that country of origin labeling would provide valuable information to the consumer or lead to an increased demand for American-made covered commodities.

Agricultural and consumer advocacy groups countered that U.S. consumers preferred domestic products to imported. They claimed consumers would use these labels to help alleviate their food safety concerns, to support ethnocentrism, and to guide their preference for U.S. foods of a perceived higher quality. Instances of mad-cow disease in the United States and Canada, labeling proponents argued, further emphasized the need for COOL. Proponents further argued that domestic sales would increase with labeling and translate into higher prices and increased returns for U.S. producers.

Although COOL is a domestic regulation, it has received intense international scrutiny. Indeed, the decision to repeal COOL for beef and pork comes on the heels of a ruling from the World Trade Organization finding the labels discriminate against meat raised and slaughtered outside the United States.

On Dec. 7, 2015, the WTO authorized Mexico and Canada — America's second and third largest agricultural export markets — to impose more than $1 billion in retaliatory tariffs on United States goods if the labels were not removed. The WTO ruling renewed calls to repeal COOL. A wide range of industries lobbied Congress to remove the labeling requirement out of fear that the tariffs would extend to exports other than meat, including jewelry, furniture, frozen orange juice and mattresses. The repeal was necessary to avoid retaliatory tariffs since the Dec. 7 ruling was the last available appeal of the WTO discrimination finding. Canada and Mexico both made it clear that the only way they would not retaliate was if the muscle cuts of meat that were the subject of WTO proceeding were repealed. Congress, however, enacted an even broader COOL repeal, extending it to ground beef and pork in addition to muscle cuts.

A day after the COOL repeal, Canada and Mexico issued the following joint statement: "We are very pleased that yesterday the U.S. Congress passed and U.S. President Barack Obama signed into law a bill that will repeal COOL for beef and pork, effective immediately." On Dec. 21, 2015, the Canadian government announced it would hold off on applying the WTO-authorized retaliatory tariffs it was scheduled to begin imposing that same day in response to the Congress's repeal of COOL requirements for beef and pork. Mexico is expected to follow suit.

The U.S. Department of Agriculture plans to amend COOL regulations as expeditiously as possible to reflect the repeal of the pork and beef provisions. Agriculture Secretary Tom Vilsack already released a statement regarding the repeal, making it clear that "[e]ffective immediately, the USDA will no longer enforce the COOL requirements for muscle cuts of beef and pork, and ground beef and pork." All meat, however, will still undergo inspection by the USDA before it heads into grocery stores, supermarkets and club warehouses. In addition, packers and retailers may voluntarily provide origin information to their consumers, as long as the information is truthful and not misleading. The mandatory COOL requirements are still in effect for the remaining covered commodities: muscle cut and ground chicken, lamb, goat; wild and farm-raised fish and shellfish; fresh and frozen fruits vegetables; peanuts, pecans, macadamia nuts and ginseng. Whether other countries follow the trail cleared by Canada and Mexico through the WTO to obtain COOL repeal for these products remains to be seen.

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[1] See Consolidated Appropriations Act, H.R. 2029, at 104-105 (2015) (enacted).

[2] Country of Origin Labeling Regs, 7 C.F.R. §§ 60.101-60.400, 65.100-65.500.

[3] George S. Becker, CRS Report for Congress: Country of Origin Labeling for Foods (May 13, 2008).