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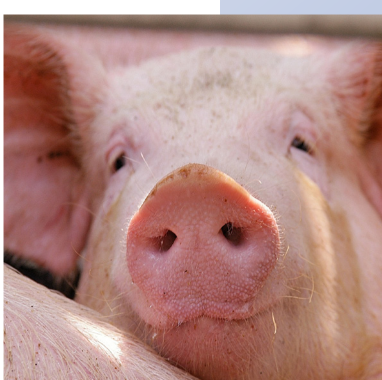
MCOOL and the Politics of Country-of-Origin Labeling

by Alexander Moens and Amos Vivancos-Leon
Preface by Fred L. Smith, Jr., President, Competitive Enterprise Institute



Key findings

- The Mandatory Country-of-Origin Label (MCOOL) for beef and pork products was brought into force by the United States in 2008. It imposes uneven tracking, segregating, and recording costs that result in a *de facto* barrier to trade, which has created a severe impact on the more than $4 billion in annual trade in this sector.
- Since MCOOL was implemented, Canadian cattle and hog exports to the United States have decreased by 42 and 25 percent respectively. The trade impact threatens the livestock industry, which contributes over 100,000 jobs in Canada. At the same time, thousands of jobs are at stake in the US slaughtering industry. Over time, the regulation will likely lead to higher prices for consumers on both sides of the border.
- MCOOL does not address specific problem, but is a product of concentrated lobbying by US livestock producers coupled with a Congressional sentiment to "Buy American."
- Even after accounting for other major factors, MCOOL appears to have caused a significant reduction in Canadian hog and cattle exports to the United States.
- The solution for this regulatory problem in meat trade is to harmonize the sector and manage it bi-nationally. The paper calls for Canadian-American negotiations to remove the outstanding regulatory differences between our two countries.

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Précis

In the United States, Mandatory Country-of-Origin Labeling (MCOOL) was introduced in 2002 in the United States Farm Bill, but it was not brought into force until 2008. Because of the bill, American retailers must inform consumers about the country of origin of various classes of meat products including muscle cuts of beef, pork, and lamb, as well as fish products and other perishable food items. Chicken was added to the list in 2008.

The common practice in most countries is that imported products are either labeled with a simple declaration of their country of origin, or are labeled under the name of the country that has added the last substantial amount of value (such as processing) to the product. The MCOOL provision is substantially different. It requires retailers to use one of four types of labels. In the process of determining the appropriate label, the origin of the animal, where it was raised, and the country in which it was slaughtered and processed must be determined, tracked, and recorded. Over the past several decades, Canada and the United States (as well as Mexico) have developed an integrated supply chain for many red meat products in which calves and young pigs may be born in one country, raised in another, and/or slaughtered on either side of the border. Because of this, the new MCOOL label imposes by necessity a tracking, segregating, and recording system that adds significant extra cost to the integrated system of meat production.

This extra—and, we argue, misdirected and unnecessary—cost imposition threatens the efficiency created over the years between Canada and the United States (and Mexico). US producers can now choose an "all-American-all-the-time" product and in so doing avoid steep labeling costs. Contrary to what many legislators suggest—this product is not necessarily of better quality, or derived from a safer animal or a better health standard, but just happens to have lower transaction costs due to the criteria and processes needed to implement MCOOL.

In 2011, Canada-US bilateral agriculture trade was worth over US $38 billion. Canadian exports to the United States were approximately 19 percent of total US agricultural imports. Canadian imports from the US were approximately 14 percent of total US agricultural exports to the world (USDA/FAS, 2012). Of this trade, over US $4.1 billion relates to trade in live cattle and hogs, or trade in beef and pork products. In 2011, over US $2.8 billion of this trade was Canadian exports to the US (Statistics Canada, 2011). In turn, the United States exported over US $1.3 billion in such trade to Canada; the highest figure to date. The damages to trade caused by the Mandatory Country-of-Origin Labeling (MCOOL) law have been costly on both sides of the border and continue to increase. As the paper details, since MCOOL went into force in 2009, Canadian cattle and hog exports to the United States decreased by 42 and 25 percent respectively. This drop in trade affects the US nearly as much as it affects Canada as many American processors and packers are faced with a lack of supply. There is an additional impact on employment. The livestock industry directly contributes to over 100,000 jobs in Canada and indirectly to many other jobs (Grier & Mussel, 2012). Likewise, many jobs in the United States are jeopardized by this measure. According to the Canadian Cattlemen's Association, "Although COOL has not produced any quantifiable benefits for US agriculture, it puts at least 9,000 US meat processing jobs at risk" (CCA, 2012).

Contents

Dedication

This report is dedicated to Alberta Cow-Calf Producer, John Moens, who has given me a life-long love for farming.

Preface

The Competitive Enterprise Institute[1] (CEI) is pleased to co-publish this study with the Fraser Institute. CEI has long pointed out the nefarious nature of non-tariff trade barriers, which have become more prevalent as traditional protectionist approaches come under greater scrutiny.

As multilateral, regional, and bilateral trade agreements have dramatically reduced tariffs among most trading countries, protectionist interests have become extremely creative at finding less direct ways to protect their domestic industries. Since overt protectionist measures would violate these agreements, and in many cases, violate World Trade Organization (WTO) rules, opponents of trade liberalization have turned to non-tariff barriers to achieve their anti-competitive objectives. Usually, these are disguised as needed rules to advance the public good, ensure consumer safety and welfare, protect the environment, or any combination of these goals. Too often, these newfangled protectionist measures succeed, rolling back the gains of free trade.

This paper discusses one such protectionist measure—the United States' Mandatory Country of Origin Labeling (MCOOL) requirements for beef and pork. It describes how a small but politically influential group of US meat producers lobbied hard—and successfully—to find ways to hobble foreign competitors with onerous labelling rules, ostensibly to provide consumers with detailed information about where their meat was produced. The law requires US companies to provide customers with labels showing the country of origin of certain food commodities, including beef, lamb, pork, fish, shellfish, perishable produce, ginseng, peanuts, pecans, and macadamia nuts. In the case of beef and pork, under MCOOL, these meat products can qualify for US country-of-origin labels only if they have been "derived from animals exclusively born, raised and slaughtered in the United States."

These requirements place the greatest burden on those nations that have been major exporters to the US of livestock and meat products—and, most heavily, on America's peaceful neighbour to the north, Canada.

The nature of the modern meat production sector makes this labelling requirement very costly. It mandates that meat which comes from various sites must be segregated and labelled to document its trail through the supply chain. As often happens when special interests get special treatment, the real losers are consumers who must

1 The Competitive Enterprise Institute is a public policy organization in Washington, DC that promotes economic liberty.

pay these higher costs for what are termed "benefits," but are of dubious validity (the report's discussion of that point illustrates this well).

Canada, along with Mexico, challenged the MCOOL labelling provisions before the World Trade Organization on December 1, 2008. Several years later, on November 18, 2011, the WTO ruled that the US measure was inconsistent with certain WTO and GATT obligations. The WTO found MCOOL to be in violation of the Technical Barriers to Trade Agreement (TBT) because it gave less favorable treatment to imported Canadian cattle and hogs than to US domestic products. MCOOL also violated TBT because it did not "fulfil its legitimate objective of providing consumers with information on origin."

As this paper notes, Canada, although it has prevailed to date in the WTO process, has little interest in taking retaliatory action against the US. Canada realizes that trade wars are costly—it would be in neither Canada's nor America's interest to further jeopardize our mutually beneficial trade in meat products. Nor does Canada wish to further harm American producers or Canadian consumers by extending the meat dispute to other sectors.

This paper instead advocates building upon the strong trade relationship between the two countries by establishing "mutual recognition" of their regulatory regimes for cattle, beef, and pork, instituting a label that would state "Produced in the US and Canada," and the creation of a bi-national group that would work to ensure that any future standards or regulations were negotiated jointly. This approach would allow the cross-border supply chain to continue without the disruptions and costs that MCOOL has created. Importantly, it would provide the relevant information useful to consumers at lower costs.

CEI has long been involved in trade policy, advocating for the idea that free trade is one of the basic means of ensuring a pro-consumer competitive economy. We are pleased to add our voice to this important commentary on a poorly considered policy. After all, if the United States treats its closest neighbor and trade partner in this way, what grounds can we have for urging the rest of the world to eschew protectionism and embrace free trade as a governing principle?

—Fred L. Smith, Jr.,
Founder and President, Competitive Enterprise Institute, Washington, DC

Executive summary

This paper argues that the implied and necessary mandate of MCOOL as per the Farm Security and Rural Investment Act of 2002 (H.R. 2646), constitutes a de facto trade barrier. As such, the Canadian and Mexican action to request a ruling by the World Trade Organization (WTO) was a logical and necessary step to protect the principles of free trade as found in the GATT, WTO, and NAFTA agreements. The WTO ruling of the fall of 2011 quite unambiguously upheld the position articulated by Canada and Mexico. The United States has appealed the decision and the appellate proceedings commenced in the first week of May 2012. We argue that the WTO process may not provide a final solution and that a better scenario is in fact within close range. What is the way forward?

In this paper, we argue that the conventional response in such trade disputes (in which Canada and Mexico would retaliate with similar MCOOL labels) would be counterproductive, imposing further damage to the integrated chain of supply in red meat products and would harm consumers on both sides of the border. Rather, we argue for a Canadian-American initiative (we concentrate on Canada in this paper) to negotiate a single market in beef and pork products. We show that the standards and regulations in the two countries are already highly complementary in this sector. Further steps to achieve mutual recognition or harmonization, depending on the technical issues in question, could address most of the concerns raised by MCOOL's impact on North American supply chains. The recently completed joint declaration Beyond the Border by Prime Minister Stephen Harper and President Barack Obama offers a possible vehicle for this process in the form of the Regulatory Cooperation Council. We argue that a "Red Meat Committee" in this council should be empowered to prepare the groundwork for such a single market. In this single market, all remaining regulatory differences would be replaced by a single bi-national regime, which would include a single bi-national labeling system. We believe that such a regime could prove to be the model which Mexico could emulate, should it wish to join in the future. Indeed, it might offer ways to liberalize the trade in meat products beyond North America to the global level.

This paper makes the following arguments:

1. MCOOL was a product of political opportunity rather than a result of market-based demand. It was developed after concentrated lobbying by livestock producers coupled to a Congressional sentiment to "Buy American." A narrow and concentrated lobby favoring MCOOL outmaneuvered a larger but less focused lobby against it (see Section A). The pro-MCOOL lobby concentrated its resources at the crucial time in

2002-2003 when MCOOL provisions were being written into the American Farm Bill. The anti-MCOOL lobbies eventually spent more than the advocates of MCOOL, but theirs was a rearguard action that achieved less.

2. The Congressional momentum on MCOOL is best explained by a majority desire to have an ethnocentric label that advances the "Buy American" objective. Not infrequently, Congressmen and women have associated MCOOL with food safety standards even though the COOL label has nothing to do with either animal health or food safety. Conflating health and safety issues with the "Buy American" initiative helped garner support for the concept.

3. The United States Department of Agriculture (USDA) was the lead executive agency involved in both testifying to Congress and in proposing the COOL rules for implementation. Between 2002 and 2008 it sought to demonstrate the lack of economic or market cause for this measure. In responding to Congressional fiat, the USDA sought to reduce the potential protectionist impact of the implementation of the new rule and make its application less rigorous. The Bush administration opposed the MCOOL measure and was able to postpone its application until Republicans lost control of the House in 2006. The Obama administration, in contrast, embraced the MCOOL concept and acted rapidly on its implementation.

4. The economic and regulatory grounds for MCOOL are flawed (see Section B). Despite frequent references by American legislators that consumer surveys show overwhelming evidence for the need for mandatory country-of-origin labeling, our analysis of these surveys and consumer studies does not provide evidence for this conclusion. The critical point is: will consumers actually pay more to buy "USA only" meat? Price evidence from fish and shellfish after it was given COOL labels a few years ahead of red meat shows that consumers showed no inclination to pay more for "all American" fish. Given that more than 80 percent of current beef products bought at the retail level in the US are already US product, it is difficult to imagine that consumers would pay more if this grew by another 10 or even 20 percent.

5. MCOOL does not address a market failure. There is no underlying problem of communication in the beef and pork market between producers and consumers. If there was substantial consumer demand for a "USA-only" label, producers would have filled this market void and would have been able to increase their profit margin by doing so. There are no restrictions on voluntary-COOL labeling. Indeed, between 2003 and 2009 when VCOOL was offered by US regulators, there were no takers among the main meat producers. The fact that it did not occur (unlike, for example, New Zealand lamb products, which have commanded higher prices for a long time) strongly suggests that producers know consumers are not willing to pay more for such a specific label. In fact, the absence of VCOOL suggests that producers will, of necessity, need to

pass the extra MCOOL labeling cost down the chain to suppliers, rather than up the chain to consumers.

6. This paper shows that the integrated supply chain in red meat that developed after the Canada-US Free Trade Agreement (CUFTA) has increased trade for both the United States and Canada. Two major disruptions have interrupted this market success: the bovine spongiform encephalopathy (BSE) or "Mad Cow" crisis from 2003 till 2005, and the MCOOL intervention, whose impact began in the latter half of 2008 and continues today. We examine a variety of studies including econometric applications that have been conducted to measure the impact of MCOOL on live hogs and cattle and on beef and pork imports to the United States. We find that even when major variables such as the H1N1 swine flu, the economic downturn in the post-2008 US economy, rising feed prices, and the substantial appreciation of the Canadian dollar are taken into account, MCOOL appears to have caused a significant reduction in Canadian hog and cattle exports to the United States. More complicated is an evaluation of the impact of MCOOL on prices. However, it appears there was an overall price depression for Canadian live animal exports to the USA following the 2008 anticipation of MCOOL which continued in 2009 and beyond. Strong overall beef prices in 2011, however, have helped ease (and conceal) the effects.

7. MCOOL is causing substantial damage to the integrated supply chain. Given the trade reduction in live animals and the spread in prices between the US and Canada for identical product on both sides of the border, MCOOL is effectively re-nationalizing the production of beef and pork products and eroding the efficiencies produced under the integrated supply chain. Ultimately, consumers on both sides will pay the price for this imposed and unnecessary cost.

8. The third section of this paper (Section C), examines political reaction to the US MCOOL measure at the World Trade Organization (WTO) level and proposes a Canada-US regulatory solution to the problem that may ultimately lead to the inclusion of others—Mexico in the first place—and so create conditions for more free trade in North America and possibly beyond.[2] Contrary to some of the arguments the US government raised in its WTO defence on MCOOL, the effects on Canadian livestock trade and prices are disproportionate to the impact on US livestock trade and prices. As such, MCOOL indeed functions as a trade barrier. Understandably, the Canadian and Mexican governments launched a complaint with the WTO. The 2011 WTO decision was a clear victory for Canada and Mexico. The US regulation was found in

2 While it is not the purview of this paper to specify the conditions for eventual Mexican accession to the proposed bi-national US-Canada regime, we do add several points in the final section to assure that such a provision exists and that the proposed US-Canada regime does not run afoul of WTO or other international agreements on trade.

violation of both the Technical Barriers to Trade Treaty (TBT) and the 1994 GATT Agreement. MCOOL was found to treat imported product less favourably than domestic product.

9. While the United States appealed the first WTO ruling in April 2012, the solution for this regulatory problem in meat trade lies not in retaliation or international arbitration or adjudication, but in a combination of mutual recognition and harmonizing standards that will create a joint regime administered in a bi-national manner. Akin to the fallout following the 2003 BSE crisis, the MCOOL problem strongly points to the discrepancy that exists between the highly integrated cattle-hog-beef-pork market on the one hand and the remaining differences in national regulatory regimes between the United States and Canada on the other. These minor differences act as launching pads from which narrow interests can erect barriers to this integrated market.

10. We call for immediate Canadian-American negotiations (Section D)—through the Regulatory Cooperation Council or a separate venue—to remove all remaining regulatory differences between our two countries so that consumers in both can benefit from a de facto single market in a single red meat regulatory area. We argue that achieving such a fully integrated sector requires the following steps:

- The finalization of a bi-national food and animal safety standards regime regarding beef and pork
- A bi-national inspection regime on both sides of the border at various stages of the production process, including in slaughtering and processing plants
- Blending or harmonization of meat grades designation
- Adoption of a single bi-national country-of-origin label
- The subsequent removal of all border inspections

A single label indicating "Product of the USA and Canada" will require no costs for segregation and record keeping. It will produce no loss in quality for US consumers, but it will allow the bilateral supply-chain to become even more efficient. Such efficiency will generate overall benefits for both US and Canadian red meat consumers. The efficiency gains from a bi-national red meat sector will make North America more competitive globally.

Section A: MCOOL and the Politics of Country-of-Origin Labeling

What MCOOL is and how we got there

For many years, several US advocacy groups argued for legislation to make country-of-origin labeling mandatory at the final point of sale for agricultural products. Until the early years of the century, there was not enough consumer, agribusiness, or political support for a Mandatory Country-of-Origin Labeling (MCOOL) law to pass through Congress. However, on July 26, 2001, MCOOL was included as part of the Farm Security and Rural Investment Act of 2002 (H.R. 2646), better known as the "2002 Farm Bill." MCOOL is described in Section 10816 of the 2002 Farm Bill which includes a provision that amends the Agricultural Marketing Act of 1946 to include Subtitle D—Country of Origin Labeling (H.R. 2646-107th Congress: Farm Security and Rural Investment Act of 2002).

The 2002 Farm Bill—of which MCOOL is only one part—passed with strong support in both houses of Congress (House: 280 Ayes, 141 Nays; Senate: 65 Ayes, 35 Nays). The 2002 MCOOL provision requires retailers to inform consumers of the country of origin at the final point of sale of selected commodities. Those commodities include muscle cuts of beef, lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised and wild fish; a perishable agricultural commodity (fresh and frozen fruits and vegetables); and peanuts. Furthermore, the provision states that a commodity can only carry a US origin label if that product is exclusively from an animal, fish, peanut, or perishable commodity that is, as appropriate, born, hatched, produced, raised, harvested, and slaughtered, or processed in the United States. Excluded from the MCOOL Law are processed foods and foods served in food service establishments (H.R. 2646-107th Congress: Farm Security and Rural Investment Act of 2002, 2001).

Faced with increased opposition from many industry associations as well as the disapproval of the White House and the Secretary of Agriculture, the House of Representatives modified the 2002 Farm Bill in the Consolidated Appropriations Act of 2004 (H.R. 2646) to postpone MCOOL, with the exception of "farm-raised" fish and "wild fish," until September 30, 2006 (H.R. 2673-108th Congress: Consolidated Appropriations Act, 2004, 2003). MCOOL was postponed again until September 30, 2008 in the Marketing Appropriations Act of 2006 (H.R. 2744) (H.R. 2744-109th Congress: Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations, 2005).

With the change in leadership in the House from Republican to Democrat after the 2006 election, the House of Representatives became more favorably disposed towards MCOOL. The Food, Conservation, and Energy Act of 2008 (H.R. 2419) was introduced on May 22, 2007. The new chair of the House Committee on Agriculture, Collin Peterson, strongly supported MCOOL. In this bill, the MCOOL provisions were expanded to include goat meat, chicken, ginseng, pecans, and macadamia nuts.[3] Moreover, the designated criteria for country-of-origin labeling were also modified to allow multiple countries to be listed on labels for beef, lamb, pork, chicken, and goat meat (H.R. 2419-110th Congress: Food, Conservation, and Energy Act of 2008, 2007). The bill passed with overwhelming support, 73 percent in the House and 81 percent in the Senate. President George W. Bush vetoed the bill but both the Senate and the House of Representatives overrode the veto. On May 22, 2008, President Bush signed Bill H.R. 2646 into Public Law No: 110-234 (H.R. 2673-108th Congress: Consolidated Appropriations Act, 2004, 2003). MCOOL became law on September 30, 2008 and then-Secretary of Agriculture, Ed Shafer, introduced the final rule in early 2009 (Federal Registry, 2009).

On February 5, 2009, the Ranchers-Cattlemen Legal Fund (R-CALF), which has been one of the most vociferous advocates of MCOOL, sent a letter to Tom Vilsack (2009), who was expected to replace Ed Shafer as the Secretary of Agriculture in the Obama Administration. The letter expressed concern over how the USDA had implemented MCOOL in the final rule and requested that Vilsack restore Congress's intent in the MCOOL rule. The "concern" appears to have been the idea that producers may choose to minimize their costs by using one label only: "mixed origin." Thus, both all US-only and all mixed product would be put together and at the end be labeled "mixed origin."

The "intent of Congress," R-CALF reminded Vilsack, was to ensure that processors and meat packers segregate their products instead of co-mingling all production and offering the products under a single mixed-origin label (R-CALF, 2009). Thus, among R-CALF's requests we find:

- "Meat packers must be prohibited from labeling meat derived from animals exclusively born, raised, and slaughtered in the US with a mixed-origin label."
- "[M]eat packers must be authorized to visually inspect each animal that is being slaughtered for the presence or absence of foreign import markings, and declare

3 MCOOL continues to expand to other commodities. On April 14, 2011, the Dairy COOL Act of 2011 was introduced which further expands the commodities covered under MCOOL to include dairy products (milk, cheese, yogurt, ice cream, and butter) (S. 831-112th Congress: Dairy COOL Act of 2011, 2011). Currently, this bill has been read twice and referred to the Committee on Agriculture, Nutrition, and Forestry for further review.

animals lacking any foreign import marking as exclusively originating in the United States" (R-CALF, 2009).

Subsequently, on February 20, 2009, his first day as Secretary of Agriculture, Tom Vilsack released a letter to industry representatives asking them to take additional voluntary measures to ensure that the MCOOL law achieve the "intent of Congress" (Vilsack, 2009) (see appendix 5 for a copy of the letter). Vilsack asked processors to provide additional information on the country-of-origin label concerning what production steps occurred in each country (e.g., born in Canada, raised and slaughtered in the United States). This further step virtually ensured that those who import animals face higher costs. If organizations provided this information, by definition they could not label products exclusively of US origin as "mixed origin" products, and thus would comply with the segregation requirements. Vilsack stated that if organizations did not comply with his voluntary recommendations, he would consider making modifications to the final rule.

It appears that the industry took Vilsack's letter to heart. As this report shows, US imports of Canadian (and Mexican) live cattle and Canadian hogs was severely reduced as producers cut back on foreign animals that would require a costly segregation and paper trail. The impact of MCOOL has been protectionist. Some US legislators blamed USDA (wrongly in our view) for creating this impact in the manner in which they produced the method (called final rule) by which to implement the law.

MCOOL segregation costs for products that include imported cattle were expected to increase by an estimated $45.50 to $59.00 per head, while that for cattle of American origin by only an estimated $1.50 per head (Informa Economics, Inc., 2010). Similarly, the segregation costs for handling mixed-origin hog products were expected to increase by an estimated $6.90 to $8.50 per head while that of American-only hog products by $0.25 per head (Informa Economics, Inc., 2010). Obviously, these cost differentials act as a strong incentive for US processors and packers, and wholesalers and retailers to refrain from handling international (Canadian) livestock. After MCOOL's implementation, many companies announced that they would no longer be accepting imported livestock (CCA, 2009). In 2009, Canadian cattle and hog exports to the USA dropped by nearly one quarter. When compared with US consumption numbers (as is done below), it is clear that the MCOOL trade effect goes well beyond the other key factors influencing the US consumption of red meat, such as the depression of the US economy, the rise of the Canadian dollar, and the rise in feed prices.

Recognizing the discriminatory nature of the MCOOL law, Canada and Mexico filed complaints against the US under the WTO's Technical Barriers to Trade (TBT) and General Agreement on Tariffs and Trade (GATT) agreements. In December 2011, the WTO declared that MCOOL, including Vilsack's letter, violated international trade agreements by affording less favorable treatment to imported livestock and failing to fulfill the genuine objective (minimal cost) of providing consumers with information on origin. As this report appears, the US government has decided to appeal the WTO case.

Whichever way the WTO rules on the appeal, we do not recommend Canadian (and Mexican) trade action. Any such retaliation would further damage the efficiencies generated in the integrated supply chain. Trade wars typically have no victors. Instead, consumers on both sides of the border end up paying higher prices and the overall competitive nature of the market is reduced. We highlight and itemize the key steps needed to create a fully integrated red meat regime between our two countries, which would simply lead to a single label.

The early lobby catches the worm

The push for MCOOL appears to have come from lobbies that represent livestock producers and vegetable and fruit workers. These groups are trying to protect US production and keep out foreign competition. MCOOL lobbies argue that US producers have invested resources in creating safe, high-quality products that meet strict US production regulations, and that consumers recognize this and are willing to pay a premium to buy American products. These groups state that without MCOOL, consumers cannot differentiate between US and foreign products, or trust that US products really are US produced. MCOOL would enable them to strategically promote and market made-in-the-USA products to increase their market share and marginal profits. In other words, lacking the means to impose tariffs or quotas by virtue of the CUFTA and NAFTA agreements, these US producers resorted to regulatory measures to find new protectionist barriers.

These associations and corporations include: R-CALF; the Farmers' Educational and Cooperative Union of America, better known as the National Farmers Union (NFU); United States Cattlemen Association (USCA); Florida Fruit and Vegetable Association (FFVA); and American Farm bureau Federation (AFBF) (Awada and Yiannaka, 2006). Together these organizations spent over $59 million from 2002 to 2011 on lobbying expenditures that include the issue of MCOOL (US House, Office of the Clerk, 2011; OpenSecrets, 2012).[4] These organizations are few, but have strategically positioned themselves to have considerable influence in Congress.

Opposition to MCOOL has come from the agricultural industry and from food retailers, wholesalers, processors, packers, and feeders. These groups argue that the

4 There is no data available on specific MCOOL spending, so all the financial expenditures in this section represent total or aggregate spending by lobbies on a variety of farm concerns, of which MCOOL is one significant issue.

costs of implementing MCOOL are much greater than the benefits. They say that in order for benefits to be realized, consumer demand for US products must rise substantially, but since there is no significant evidence that consumers would be willing to pay premiums for US meats, consumer demand is not likely to increase enough to offset the costs. These organizations state that if there was value in country-of-origin labeling, producers would have recognized it and implemented COOL on a voluntary basis (Krissoff, Kuchler, Nelson, Perry, and Somwaru, 2004). The president of the National Pork Producers Council has stated that consumers value price, convenience, nutrition, freshness, and flavor before they value origin (US Committee on Agriculture, 2003). This finding is echoed in many studies that argue that consumers value quality and safety labels, such as USDA approved, over COOL (Ehmke, Lusk, and Tyner, 2008). The organizations further argue that MCOOL is a marketing campaign label; it only provides information about a product's country of origin, not about its quality nor safety standards. If consumers are interested in MCOOL for quality, safety, and health reasons, then there are better programs that can provide this information more efficiently (US Committee on Agriculture, 2003).

These groups argue that the increased costs in the meat industry supply chains are unevenly distributed. The import-export supply chains between Canada and the US (and Mexico) consist of back-and-forth trade throughout the process. MCOOL increases the costs of integrated supply chains more than it increases the costs of segregated supply chains. Hence, packers will shift their trading patterns to support segregated supply chains, which forces mixed products out of the market, thereby lowering consumer choice and production capacity (Krissoff, Kuchler, Nelson, Perry, and Somwaru, 2004).

How did these opposing lobby groups fare? It is a well-established phenomenon in American politics that lobbies with narrow interests and representing a minority often outperform broad-based interest groups. Narrow interest-based groups such as R-CALF stand to gain a great deal from keeping out Canadian livestock while the costs associated with such a protectionist act are spread out widely across many slaughtering plants and ultimately the consumers of meat. Indeed, in the MCOOL case, we find an instance of this dynamic. Spending, timing, and influence on the legislative debate are other variables that show how the pro-MCOOL lobby outmaneuvered the anti-MCOOL lobby.

Table 1 below shows lobbying expenditures from 2002 to 2003 and from 2004 to 2011 for lobbying in-favor and against MCOOL. These numbers show that the majority of interest groups and lobbies are against the MCOOL law, while the minority of organizations is in favor. However, the minority outspent the opposition ($17.5 million versus $5.6 million) during the critical 2002 to 2003 time period that enacted MCOOL into legislation (U.S. House. Office of the Clerk, 2005 – 2011). From this point on, removing the provision from the bill would be more complicated than delay-

Table 1: Lobbying Expenditures For and Against MCOOL

MCOOL Supporters	2002-2003 Total	2004-2011 Total
American Farm bureau Federation	$15,610,000	$34,183,000
National Farmers Union	$1,730,000	$6,701,000
R-CALF United Stockgrowers of America	N/A	$950,000
Florida Fruit and Vegetable Association	$140,000	$220,000
Total	$17,480,000	$42,054,000
MCOOL Opponents	**2002-2003 Total**	**2004-2011 Total**
Food Marketing Institute	$1,250,000	$16,045,000
Wal-Mart	$782,000	$11,375,000
National Pork Producers Council	$1,020,000	$8,183,000
Tyson Foods	Inc.	N/A
Cargill	$1,299,000	$4,400,000
JBS Swift & Company	$180,000	$3,611,000
American Meat Institute	$460,000	$2,260,000
National Cattlemen's Beef Association	$622,000.00	$1,317,000
Hormel Foods	N/A	$1,644,000
Total	$5,613,000	$56,419,000

Notes: Totals include any lobbying done on behalf of the agricultural industry.
Some information may be incomplete.
Sources: US House, Office of the Clerk, 2011; OpenSecrets, 2011.

ing or implementing the law. As we will see in the next section, the advocates of MCOOL eventually overcame the blocking game played by the majority of lobbies even when the latter outspent MCOOL's proponents. It was a case of too little too late. Thus by concentrating their lobbying in the early stages of law-making, MCOOL supporters scored a strategic win.

MCOOL goes to Congress

House Representatives and Senators from ranching states are keen to provide their voters with a benefit. This, combined with the patriotic idea of "buying American" leads to broad support for COOL. The earliest coalition in Congress for COOL was in 2002 and included both Democrats and Republicans. Senator Maria Cantwell (D-WA) (2005) stated that "Families sitting at the dinner table should not have to wonder about what went into the food they eat. They should be provided the information to know what they are consuming. To put it simply, consumers deserve better accountability."

Senator Tim Johnson (D-SD) was the author of the labeling provision enacted as part of the 2002 Farm Bill. He consistently fought for the provision, noting in 2008 that "COOL retains support from over 80 percent of American consumers" and "this program is not only widely supported by approximately 92 percent of our nation's consumers, but also overwhelmingly by our nation's producers" (Johnson, 2008). We argue below that this claim is dubious. Representative Larry Combest [R-TX] sponsored the 2002 Farm Bill when he was the chairman of the House Agriculture Committee from 1999–2003. Representative Charles Stenholm [D-TX] co-sponsored the 2002 Farm Bill, while many others, including Senator Mike Enzi (R-WY) promoted and lobbied for the final implementation of MCOOL.

Proponents of MCOOL, such as Representative Dennis Rehberg (R-MT), associated food safety criteria with COOL criteria (House Committee on Agriculture, 2003). There is little doubt that concerns about the safety of beef as a result of the BSE crisis coming from Canada, and other incidents of food safety scares, such as those from Chinese products in 2007, have had an impact on the perception of legislators regarding MCOOL. In this scenario, legislators mention health and safety or family and quality in their speeches close to where they mention COOL, which enforces the false link between COOL and quality or safety. For example, Senator Charles E. Schumer (D-NY) stated that "clear labeling will enable consumers to choose the highest quality, homegrown products" and Senator Kirsten Gillibrand (D-NY), argued that "country-of-origin labeling will allow families to buy the best products" (Groom, 2011). In fact, country-of-origin labeling does not differentiate between high quality and low quality products. Other programs already in place, such as the USDA grading system, are specifically designed to ensure that all food is properly inspected to meet quality and safety standards. There is no data to suggest that imported foods in general are of lower quality or less safe than domestic foods. Because MCOOL does not apply to food served in restaurants or other eateries, which provide more than one quarter of all food consumed in the United States, it is indeed odd to argue that country-of-origin labels are needed to protect 75 percent of consumers, but not the remaining 25 percent.

As a result of the highly uncertain nature of the benefits expected from the enactment of the law and the considerable costs involved as estimated by USDA, the MCOOL provision was twice delayed at the appropriations stage. These delays were sought and supported by the Bush administration. George W. Bush's first Secretary of Agriculture, Ann Veneman, called MCOOL "unfortunate" and argued that it was a "financial burden for the US farm economy." In a news conference she stated, "We, of course, did not want country-of-origin labeling" (Informa Economics, 2002, May 6). Her successor, Michael Johanns, stated, "On the first issue of COOL, let there be no nuance. The Administration's position is voluntary, and that's the position of this Secretary of Agriculture" (Tradereform, 2007). Both agreed that MCOOL was an onerous law that had greater costs than benefits.

MCOOL did not become a Federal Rule until after the Republicans lost the House in 2006. According to Neils (2009), the change in the US congressional leadership from 2006 to 2008 led to increased support for MCOOL in Congress. Collin Peterson [D-MN] became the chair of the House Committee on Agriculture. He sponsored Bill H.R. 2419, which led to the final implementation of MCOOL. Then-Senator Barack Obama signed a letter with other senators directed to Secretary of Agriculture Ed Schafer, stating, "This rule is a step forward after years of effort to provide clear, accurate and truthful information to consumers as well as a marketing tool for farmers and ranchers across the nation" (Johnson et al. to E. Schafer, September 28, 2008).

In early 2009, President Barack Obama appointed former Governor of Iowa Tom Vilsack to be his Secretary of Agriculture. Vilsack strongly supports MCOOL. He has received endorsements from the National Farmers Union and the American Farm Bureau Federation, both of which are advocates for MCOOL. On his first day in office, he fired off a letter to red meat processors, as is discussed earlier and below.

The USDA walks a fine line

Throughout the legislative process, the USDA provided the technical expertise to guide the rule making for the country-of-origin labeling measure. On October 30, 2003, the USDA's Agricultural Marketing Service (AMS), which provides standardization, grading, and market news services for agriculturalists, published the proposed rule for the mandatory COOL program (Federal Register, 2003). After reviewing the proposed rule, the AMS published an interim final rule on August 1, 2008 (Federal Register, 2009). On January 15, 2009, the AMS published the final rule for the mandatory COOL program which came into effect on March 16, 2009 (Federal Register, 2009).

AMS received many comments about the definition of a processed food item, the record keeping requirements for both retailers and suppliers, labeling muscle cuts of multiple countries of origin, and the enforcement of the program. The challenge for the USDA was to implement the will of Congress while keeping costs as low as possible for the industry. Though the USDA faced pressure from political leaders and interest groups to ensure MCOOL regulations would be restrictive to imports, it considered comments from industry associations as it tried to develop a law that would have minimal consequences to trade (Johnson, Enzi, Harkin, Grassley, Dorgan, Barrasso, et al., 2008).

On numerous occasions, the USDA's analysis reveals doubts about being able to reach the stated objectives of MCOOL and worries about the high costs that may accrue. The USDA let it be known that "the department has not identified a market failure associated with this rulemaking and therefore does not believe the rule would have measurable economic benefits" (Federal Register, 2009). At the same time, various cost estimates were undertaken for the implementation of MCOOL. The results were wide ranging, from between $69.9 million to over $4 billion; the majority of the studies leaned towards the higher end of the scale (VanSickle et al., 2003; Federal Register, 2009; Grier and Kohl, 2003; Informa Economics, Inc., 2010; Hayes and Meyer as cited in Rude, Iqbal, and Brewin, 2006). Thus, even if there were benefits to MCOOL, they may not easily offset the high costs of implementing the program.

The USDA found little evidence to support the idea that consumer preference for country-of-origin labeling would lead to increased demands for commodities labeled with a US origin (Federal Register, 2003). Early in the proposed rule, the USDA stated that the direct incremental costs would likely fall between $582 million and $3.9 billion (Federal Register, 2003). In the final rule, the USDA's conclusion regarding the benefits of MCOOL remained unchanged, but its cost estimate narrowed to $2.6 billion (Federal Register, 2008; Federal Register, 2009).

The key aspects of MCOOL's final rule and its specific implementation can be summarized as follows: Products that have a mixed origin have to be labeled with each country and include a brief description of the process that occurred there. For example, products derived from a pig that was born and raised in country X and slaughtered in the United States could either be labeled as "Imported from country X, Slaughtered in the United States" or "Born and Raised in country X, Slaughtered in the United States" (Federal Register, 2003). (For a detailed description of the development of the final rule, see appendices 2, 3 and 4.) In the review period as mandated by the Federal Register, this provision received extensive comments from livestock producers and Congressmen. Most did not want the label "Product of the United States" to be diluted by being mixed in with other origin labels. However, as the legislation was to provide market information to consumers, AMS could not remove "the US" from the mixed-origin labeling provision. To make it easier for meat packers and processors to comply with MCOOL, the USDA removed the need to put a description of the processes that took place in each country. In the example above, the company could simply put on the label, "Product of country X, US," with the countries in any order (Federal Register, 2009).

In the proposed rule, the USDA stipulated that a business involved in supplying a commodity covered by the rule must retain records that identify the origin of the commodity, as well as the country of origin, for a period of two years from the date of the transaction. Upon request, the records were to be provided to the USDA within seven days (Federal Register, 2003). Subsequently, the USDA reduced the length of time that records must be retained to one year and the inspection request to five days. In the final rule, the USDA made it easier yet to comply with MCOOL by allowing records that are maintained in the normal course of business to serve as verification.

The final MCOOL meat classification is as follows:

A. Category A: Labeled "Product of the US"; consists of meat derived from animals born, raised, and slaughtered in the United States.

B. Category B: Labeled "Product of the US, Country X"; consists of meat derived from animals that were born in Country X, raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter. The countries may be listed in any order.

C. Category C: Labeled "Product of Country X, U.S."; consists of meat derived from animals born and raised in country X, and imported into the United States for immediate slaughter.

D. Category D: Labeled "Product of Country X"; consists of meat derived from animals born, raised and slaughtered in country X.

E. Category E: Labeled "Product of Country X, Country Y, Country Z"; consists of ground meat and must be labeled with a list of all reasonably possible countries.

Furthermore, any mixture of Categories A and B, and any mixture of Categories B and C, must be labeled under Category B (Federal Register, 2009).

Section B: MCOOL and the Economics of Regulatory Policies

Was the political advocacy for MCOOL by various lobbies and the reference by various legislators in favor of MCOOL based on valid economic or regulatory principles? The political debates frequently cited consumer preference studies, suggesting a pressing need for mandatory labeling. Many advocates for MCOOL argued that the market was failing to provide a good that only the government by means of regulation could provide. How valid are these claims?

There is no market failure in the red meat market

A common rationale to justify government intervention in the market is when a market failure exists (Kerr and Hall, 2003; Lusk, Brown, Mark, Proseku, Thompson, and Welsh, 2006; Winston, 2006). A market failure is a situation where "the market fails to provide a socially optimal allocation of resources" (Lusk et al., 2006). But even when there is a market failure, economists recognize that it may be better for the market to correct itself than for governments to intervene; such intervention may have unforeseen and unintended consequences that could create further inefficiencies (Winston, 2006).

At least two requirements must be met to recognize whether a market failure exists. First, there must be sufficient consumer demand for it to be profitable for companies to offer a good. Second, a situation must exist in the market that acts as a significant barrier for companies to efficiently provide the good. So is there a barrier in the case of MCOOL? The answer is clear: there are no significant barriers that prevent companies from providing country-of-origin labeling voluntarily. We should thus expect sellers to look for the margin between higher cost and higher expected prices as the basis on which to make their decision regarding COOL. If there were costly benefits that could be recovered with a higher price, profit-seeking companies would have sufficient incentive to provide COOL voluntarily (Federal Register, 2003).

If there were a willingness to pay for it, why have sellers not capitalized on this by voluntarily providing country-of-origin labeling? In the United States, the packing industry is highly concentrated (Loureiro and Umberger, 2005). Three main packing organizations dominate the industry. Unless there is sufficient demand for COOL for it to be profitable, there is little incentive for any of these companies to incur higher production costs by adding the labels. None of these packing companies wants to find itself at a competitive disadvantage. Kerr and Hall (2003) state that even if a market failure existed, the chance for any positive benefit would highly depend on the costs associated with MCOOL. The greater the costs of implementing MCOOL, the higher the possibility that overall welfare for consumers and producers will not be attained. As MCOOL stands, there does not appear to be enough real customer demand to justify its implementation. In other words, while certain lobbies and politicians may want MCOOL, consumers do not demand it. If they did, they would be willing to pay for it and sellers would be able to pass on the costs of implementing it through higher prices.

Consumers say they want to "buy American," but will they pay?

Consumer preference is the reason MCOOL advocates cite most frequently by for the new law. Members of Congress, likewise, ply this argument vigorously. We have dug into this debate in some detail to find out what is actually being argued and what can and cannot be concluded.

Loureiro and Umberger (2003) assert that various food safety concerns combined with the increase in the standard of living of American consumers has amplified the public's interest in information related to safety, origin, and the ethical production processes of food. They note that the 2003-2005 bovine spongiform encephalopathy (BSE) crisis and 2009 swine flu (H1N1) in North America further increased support for country-of-origin labeling. Other studies do not show the same correlation. Neils (2009) notes that, "it is not known if BSE concern has changed the consumer's desire for a COOL for beef." Puduri, Govindasamy, and Onyango (2009) assert that the war on terrorism has raised concerns regarding food safety and security that can be partly satisfied through origin labels. Mayer (2008) argues that northern US beef producers concerned that the growing imports of beef, pork, cattle, and hogs from Canada were having an adverse impact on the US industry pushed for MCOOL under a consumers' "right to know" guise. Between food scares, terrorist dangers, and preference for homegrown, there indeed appears to be some desire for origin labels.

There is no doubt that consumers are becoming more particular about their choices. Most recently, organic growing methods and ethical treatment of animals have been added to this list. Several surveys have tried to measure consumer purchasing patterns in relation to consumer preference for country-of-origin labeling. Some of these studies go a step beyond preference and try to determine consumers' willingness to pay price premiums for such labels.

Schupp and Gillespie (2001) estimate consumer reactions to mandatory country-of-origin labeling of fresh and frozen beef by providing a choice between domestic beef and imported beef. The authors collected information from a sample of 337 participants from Louisiana households. They found that 93 percent of participants were in favor of mandatory country-of-origin labeling for frozen and fresh beef products in grocery stores (Schupp and Gillespie, 2001). A similar study sampled 1000 individuals from Louisiana and found that 78 percent favored COOL on beef (Congress: House Committee on agriculture, 1999, as cited in Schupp and Gillespie, 2001).

Umberger, Feuz, Calkins, and Sits (2003) researched whether consumers not only have a preference for mandatory country-of-origin labeling, but are also willing to pay for it. From a sample of 273 participants from Chicago and Denver, 75 percent of participants preferred to purchase products with a country-of-origin label. The participants where then asked about their willingness to pay for origin labels on hamburger and steak. For hamburger priced at \$1.25/lb, participants were, on average, willing to pay a \$0.36/lb premium. For steak with an original price of \$4.00/lb, they were willing to pay a \$0.42/lb premium. After the surveys, the consumers where asked to bid on steaks presented in an auction-like setting, one without a label and one with an origin label. The results suggested that 69 percent of participants indicated a willingness to pay a premium for a steak with a label indicating "Guaranteed product of the United States" (Umberger, Feuz, Calkins, and Sits, 2003).

A similar study by Loureiro and Umberger (2003) of Colorado consumers also found a strong preference for mandatory country-of-origin labeling as well as willingness to pay premiums of \$1.53/lb for steak and \$0.70/lb for hamburger. Survey research by Puduri, Govindasamy, and Onyango (2009) also found clear preference for country-of-origin labeling for fresh products.

So is the case for MCOOL and price premiums a slam dunk? Not really, when we consider several critical contextual factors. First, when participating in a study, even in a simulation of a real auction, consumers often overstate their willingness to pay for a product. This typically happens because they are not constrained by their normal household budgets when applying value to a product difference (Federal Register, 2008). Second, their responses to survey questions will vary depending upon the questions consumers are asked, the way they are asked, and the variety of choices they are given. This is not just our clever point. Tonsor (2011) demonstrated with survey results that only 30 percent of consumers are aware that MCOOL exists. When consumers were asked if they paid attention to country-of-origin labels on meat, 60 percent said "no."

Another reality check for the consumer preference argument is that the US market for beef and pork consists mainly of American products. Even before MCOOL came on the scene, around 80 percent of beef products in stores were of US origin. If so, why would anyone pay more for expanding a majority label? Plain and Grimes

(2003) explain that, "The fact that 65 to 75 percent of Americans profess to be willing to pay a premium for certified US-origin beef does not translate into a higher price for US-origin beef when 89 percent of the steaks and roasts and 75 percent of the trimmings (e.g., ground beef) are already of US origin." Also not included in the preference studies is the fact that major competing products will originate in Canada, and will have a good reputation for being safe and of high quality. This may even lead to unintended consequences of MCOOL. As Plain and Grimes put it, "With a 4.66 percent market share, Canadian steaks and roasts are well positioned to develop a niche market for those… looking for an alternative to US-origin beef," which could translate into higher prices for imported beef (Plain and Grimes, 2003).

Another important contextual variable is the fact that country of origin is not alone among values sought by the consumer. The value of COOL information tends to decrease as information about a product's other positive attributes is provided alongside (Verlegh and Steenkamp, 1999, as cited in Ehmke, Lusk, and Tyner, 2007). If a consumer is asked if she is interested in knowing the country of origin of a product, she will most definitely say yes, but if that same consumer is given a choice between "countries of origin labeling," or "ethically produced," or "freshness," the answer may be different (Federal Register, 2008). Finally, the results reported from these studies do not take into account changes in consumers' preferences for a particular product over time. Consumers may prefer a product today, but a year from today they may prefer something completely different (Federal Register, 2008).

Ranking country of origin may be as important as *preference* testing. Table 2 shows the results of a study undertaken by Umberger, Feuz, Calkins, and Sitz (2003) who sought to determine where country of origin ranked among consumers' other preferences.

The important point about this ranking is that consumers are interested in various attributes and will thus evaluate the price or worth of a product according to several criteria. If all these criteria are taken into account, it is quite uncertain whether the willingness-to-pay results mentioned above would actually materialize. The willingness-to-pay results would have a lot more credibility in the real world if country-of-origin was among the top criteria. As it is, the origin attribute is in the middle (number 9 out of 17).

Perhaps the most important reason of all to reject the argument of MCOOL advocates that consumers are willing to pay for such a label comes from the empirical data from fish and MCOOL. Data are readably available for fish since MCOOL was implemented in 2004 for that industry. Market research done on the fish industry suggests that there are no price premiums for "Product of America" labels. Kuchler, Krissoff, and Harvey (2010) in a study measuring demand for "American" labeled shrimp versus imported shrimp concluded that "consumers did not respond to the new country-of-origin labels on shrimp." Similarly, in a study measuring how COOL

Table 2: Food Attributes

Attribute	Mean
Freshness	1.23
Inspected for food safety	1.45
Color	1.60
Price	1.72
Leanness	1.76
High quality grade	1.79
Tenderness	1.86
Nutritional value	2.20
Country-of-origin label	**2.41**
Marbling	2.43
Brand	2.53
Source assurance	2.56
Environmentally friendly production	2.61
Beef raised in your region of the country	2.64
Convenience	2.66
Fat content	2.75
Organic/natural	3.01

Source: Umberger, Feuz, Calkins, and Sitz, 2003.
The table shows the mean rank of the importance of beef attributes to consumers measured on a Likert scale where 1 = Extremely Desirable and 5 = Not Desirable at All.

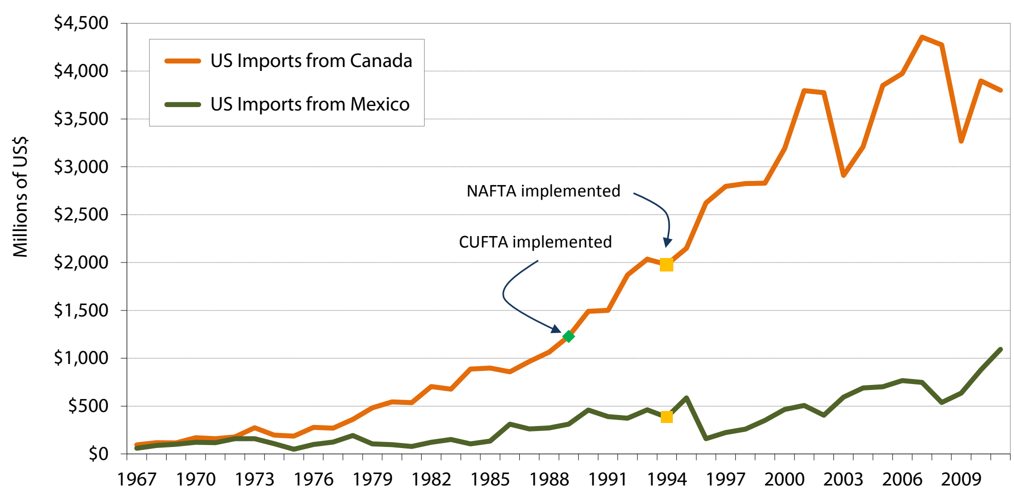
affected consumer purchases of salmon products, Wozniak (2010) concluded that "COOL has not significantly affected the way consumers purchase salmon products." Both findings are consistent with conclusions by Jones, Somwaru, and Whitaker (2009) who found that the implementation of COOL had no structural change on the fish trade.

The red meat market after CUFTA and NAFTA

In order to understand the impact of MCOOL on the red meat market, we need to go back to how the United States and Canada (and later Mexico) created a closely integrated industry.

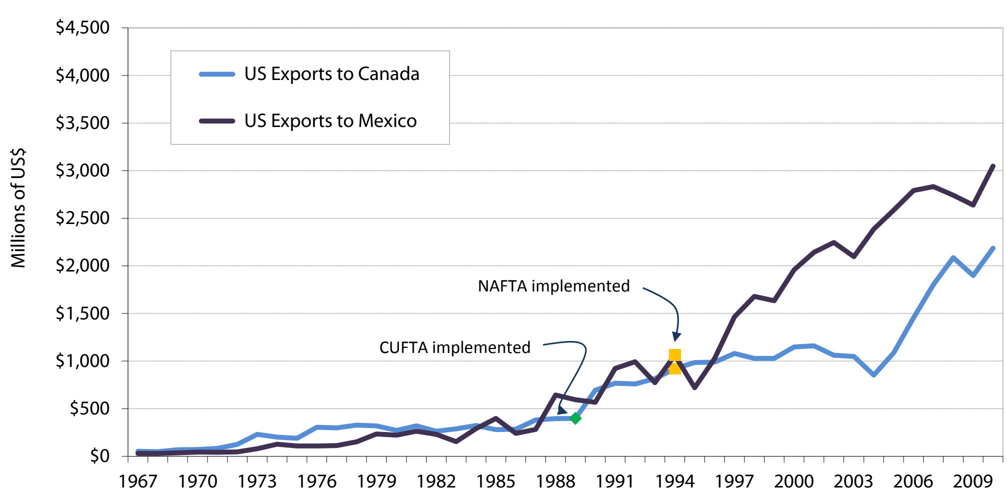
From 1967 to 1977, the trade levels in livestock and meat were relatively constant and showed little growth. But, as figures 1 and 2 reveal, with the implementation of the Canada-United States Free Trade Agreement (CUFTA) in 1989 and the North American Free Trade Agreement (NAFTA) in 1994, US exports to Canada increased from an average annual growth rate of 2 percent from 1979 to 1989, to 16 percent from 1989 to 1999. Although not as high as US export growth to Canada, Canadian exports to the

Figure 1: US Imports of Livestock and Meat from Canada and Mexico



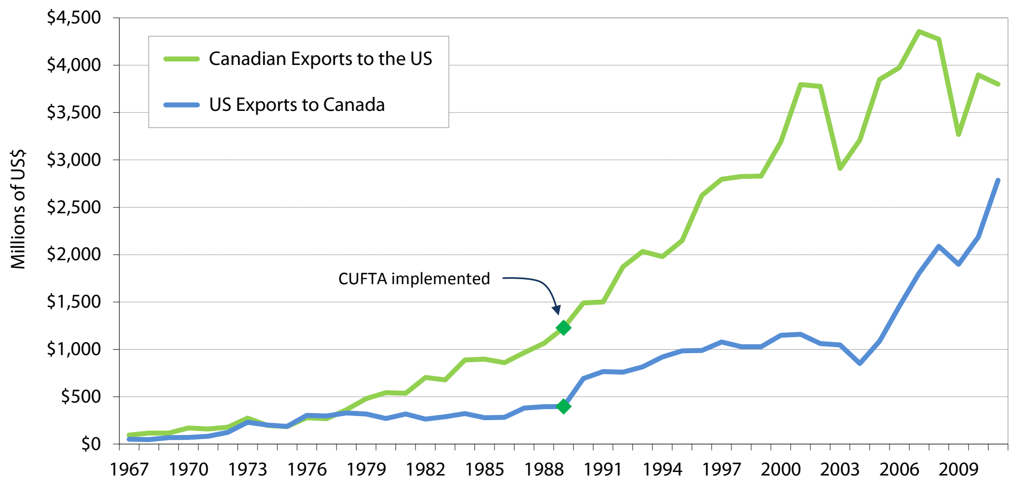
Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Figure 2: US Exports of Livestock and Meat to Canada and Mexico



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Figure 3: The Canada-US Trade in Livestock and Meat



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

United States increased from 14 to 17 percent annually for the same period (USDA/FAS, 2012).

Meanwhile, figure 3 shows that the value of Canadian livestock and meat exports to the USA increased from US $888 million in 1984 to $1,063 million in 1988; a pre-CUFTA growth rate of 19 percent. The same exports increased from $1,228 million to $2,034 million from 1989 to 1993; a post-CUFTA growth rate of 66 percent. Similarly, US livestock and meat exports to Canada increased from $323 million in 1984 to $395 million in 1988; a pre-CUFTA growth rate of 22 percent. Comparably, exports increased from $398 million in 1989 to $816 million in 1993; a post-CUFTA growth rate of 105 percent (USDA/FAS, 2012). The point is that the free trade provisions helped secure gains for both economies; their trade integration benefitted both.

In comparison, the five year average rate of growth of US livestock and meat exports to the rest of the world (ROW), excluding Canada and Mexico, decreased by 45 percent post-CUFTA (1989-1993), and US imports from the ROW declined by 39 percent. Whereas trade between Canada and the US increased drastically post-CUFTA, trade between the ROW and the US decreased considerably (USDA/FAS, 2012). Moreover, while the rate of growth of US livestock and meat exports to Canada increased by 228 percent, and vice versa by 210 percent from 1989 to 2000, US livestock and meat exports to the ROW increased by a comparatively small 41 percent while that from Canada to the ROW increased by 57 percent (USDA/FAS, 2012). The large difference between the growth rates of trade between Canada and the

United States versus Canada and the US and the ROW showcases the large benefits of market integration.

Hayes and Kerr (1997) state that CUFTA "was signed with considerable optimism that a single market for livestock and red meat products would be achieved relatively quickly." Kerr (1988) explains that it was put in place, amongst other issues, to eliminate all tariffs on livestock and red meat over a 10-year period, to provide a system of mutual exemptions for beef import laws, and to reduce the use of border inspection as a means to limit trade (Kerr, 1988).

Free trade has allowed Canada and the United States to "better exploit their natural geographic advantages and reap economic gains from increased specialization" (Vollrath and Hallahan, 2006). Market integration has many benefits as it provides producers and consumers with a means to maximize their relative strengths as well as to respond more efficiently to changes in the economy.

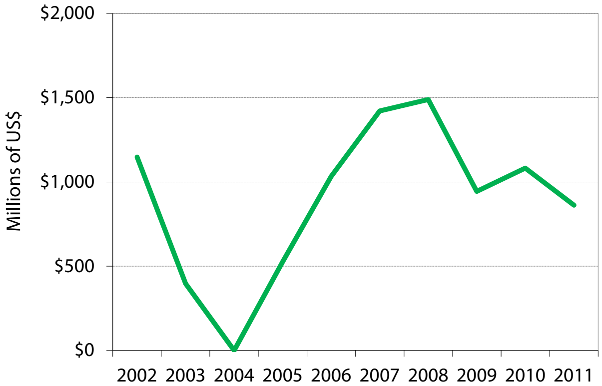
To ensure that domestic technical regulations, testing procedures, and certificates do not create unnecessary obstacles to trade, in 1995 the WTO implemented the Technical Barriers to Trade Agreement and the Application of Sanitary and Phytosanitary Measures Agreement (TBT and SPS). These agreements set minimal international standards, such as standards for equal treatment, product quality, and safety, to increase integration and facilitate trade. They encourage countries to conform and recognize each other's standards. The Canada-US meat market has become so integrated that many experts prefer to view it as a single market, especially the market for cattle and beef, which is often viewed as "the most integrated market of the major agricultural commodities" (Vollrath and Hallahan, 2006; Young and Marsh, 1998).

What MCOOL has wrought

Figure 4 shows the enormous impact on Canadian exports as a result of the 2003-2005 BSE crisis. The initial US border closure was followed by a drawn-out process of regulatory changes on both sides of the border. The cost to industry was very high, but the crisis also led to further harmonization between Canadian and US standards (Moens and O'Keefe, 2006). Figure 4 also shows that Canadian live bovine exports had recovered from the BSE impact by 2006 and by then had more than doubled their 2003 value. By 2008, exports had fully recovered, reaching trade levels of 1.61 million cattle, close to 2002 levels (see figure 5). However, from 2008 to 2009, US cattle imports declined to 1 million cattle, a drop of 33 percent (figure 5). From 2009 to 2011, US imports dropped by another 35 percent to 700,000 cattle (USDA/FAS, 2012).

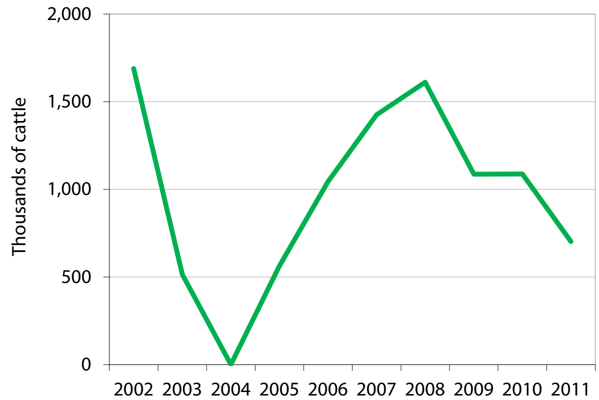
In a comparison of figures 4 and 5 that accounts for the rise in the value of the Canadian dollar from 2008 to 2011 (from US $0.94 per Canadian dollar in 2008 to US

Figure 4: Value of Live Cattle Exports from Canada to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Figure 5: Number of Live Cattle Exported from Canada to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

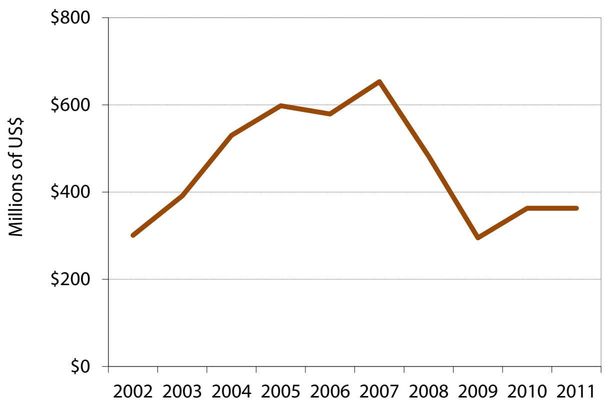
$1.02 per Canadian dollar in 2011), we find that the exchange rate impact on cattle imports is only US$126 million in contrast to a drop in trade of over US$600 million. Clearly, the rise in the value of the Canadian dollar does not alone explain the spread.

Similar effects can be observed for Canadian hog exports to the US (ignoring the 2004 BSE crisis), as we see in figures 6 and 7. Moreover, figure 7 further shows that the number of hog imports steadily increases from 5.7 million in 2002 to 10 million in 2007. Then from 2007 to 2008 there is a drop of 7 percent to 9.3 million hogs, followed by a steep drop of 31 percent the following year to 6.4 million hogs (2008-2009), and a further 10 percent drop to 5.8 million from 2009 to 2011.

Because the appreciation of the Canadian dollar over this time does not explain the decline in US imports of Canadian live cattle and hogs, is it possible that the serious economic downturn in the United States, which began in 2008, may be the chief reason for the drop? Table 3 shows that the reduction in imports from Canada far exceeded the reduction in US consumption of beef and pork products, pointing strongly to import substitution. Thus, even when we account for both the rise in the value of the Canadian dollar and the adverse impact on demand as a result of the US economic downturn, a large additional impact remains. It appears that the MCOOL measure is the key explanation for this import substitution, as we will further illustrate in the next section of this paper.

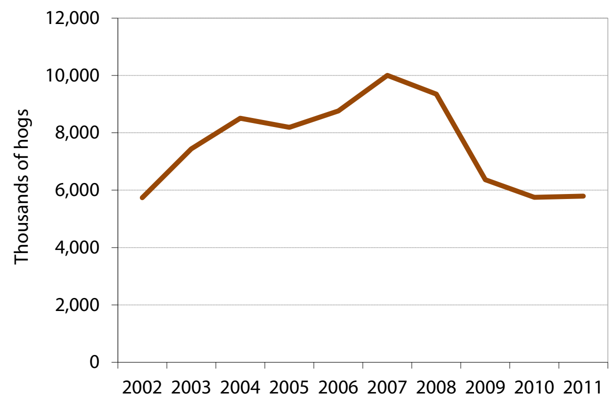
Another piece of the puzzle can be found when comparing imports of live cattle and hogs on the one hand and trade in beef and pork products on the other. Compar-

Figure 6: Value of Live Hog Exports from Canada to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Figure 7: Number of Live Hogs Exported from Canada to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

ing figures 4 and 6 with figures 8 and 9 shows that MCOOL has affected trade in livestock to a greater degree than trade in beef or pork products.

Canadian hog and cattle exports to the US decreased significantly between 2008 and 2010 as compared to pork and beef imports from the US, which decreased from 2003 to 2008. From 2008 to 2011, pork exports slightly increased by an average of 3 percent per year, while beef exports continued to decrease, but at a slower rate. Thus, from 2008 to 2010 there was a substitution from trade in livestock to meat products.

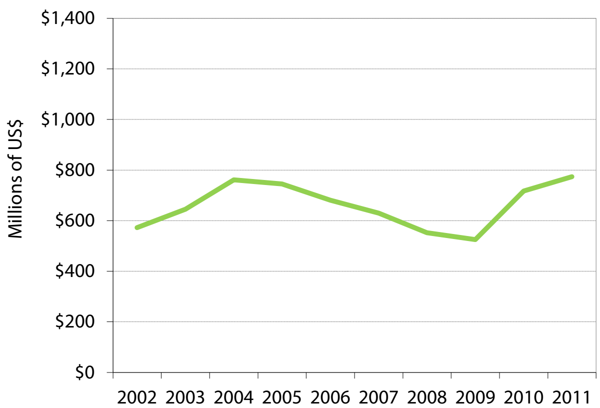
When we consider US exports to Canada with those from Canada to the United States (figures 10 and 11), another change becomes apparent. The value of meat exports from Canada to the US is declining, while that of US meat exports to Canada is increasing significantly; in the case of beef, by 2011 the US had fully caught up with

Table 3: Decline in Imports and Consumption from 2007 to 2011

	Commodity	Percent Change
US imports from Canada	Cattle	-51%
	Hogs	-42%
US consumption	Beef	-8%
	Pork	-5%

Source: ERS/USDA, 2011; USDA/FAS, 2012; Calculations by authors.

Figure 8: Value of Swine Trade—Canadian Exports to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

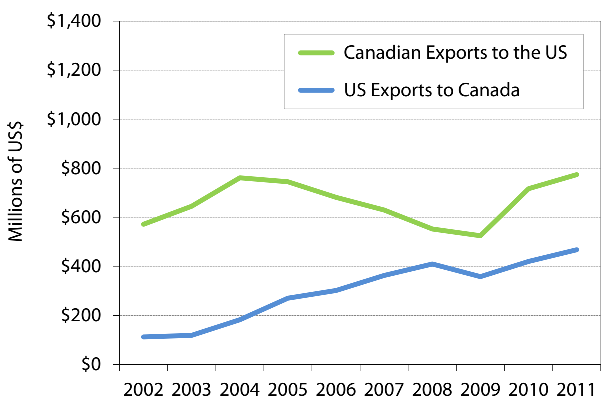
Figure 9: Value of Bovine Trade—Canadian Exports to the US

Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Canada. From 2002 to 2011, US beef and pork exports to Canada increased by 299 percent and 318 percent respectively, while Canadian exports to the US of beef and pork decreased by 19 percent and increased by 35 percent respectively. Some of this rise in US exports to Canada is likely due to the relative decline in the value of the US dollar, making US products more competitive in the Canadian market. The US was quickly closing the gap between imports and exports. This fact can also be observed by looking at the value of US red meat exports to Canada as a percentage of total Canada-US red meat trade which increased from 11 percent in 2002 to 32 percent in 2011. If the integrated supply chain was operating without imposed segregation and other costs, the US recession should have affected demand for livestock and meat equally. These facts suggest a move away from integration, signifying that MCOOL acts as a non-tariff barrier to trade.

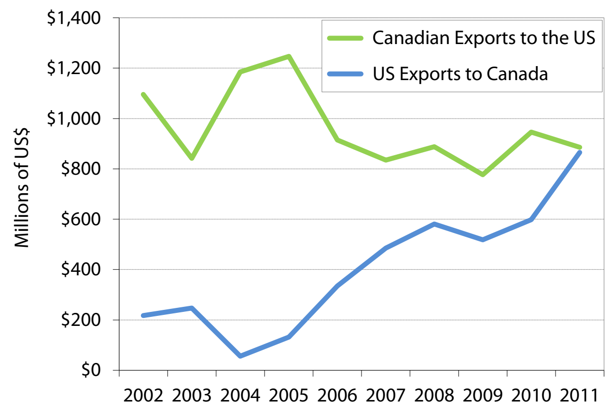
For years, the Canada-US red meat industry has become consistently more integrated, increasing benefits to both parties. This integration comes in the form of greater average rates of growth in trade of intermediate products (livestock—a 36 percent rise from 2002 to 2008), over final products (pork and beef—a 14 percent decline in the same period). MCOOL successfully reversed this trend: from 2008 to 2011 the average growth rate for livestock declined by 38 percent and grew by 15 percent for the meat trade. Figures 12 and 13 show these trends. From 2002 to 2008, Canadian livestock exports to US increased while meat exports decreased, then from 2008 to 2011 the reverse was true. This substitution can be explained by MCOOL legislation more than by other factors, including higher feed prices, which affect costs on both sides of

Figure 10: The Value of the Canada-US Swine Trade



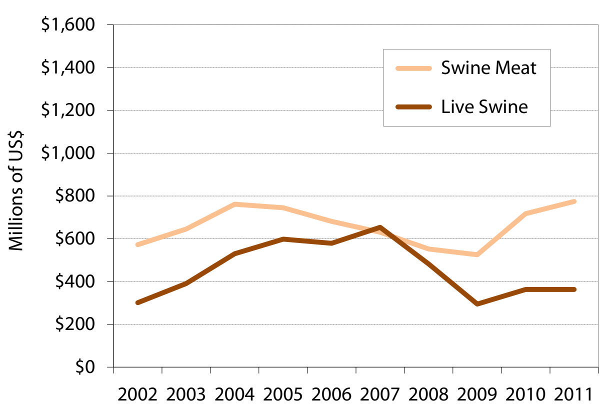
Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Figure 11: The Value of the Canada-US Bovine Trade



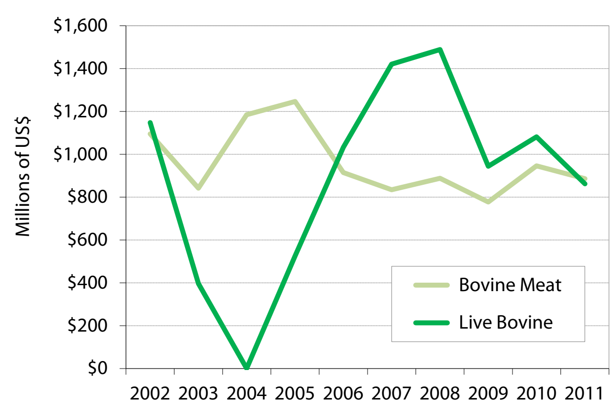
Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Figure 12: The Value of Canadian Swine Exports to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

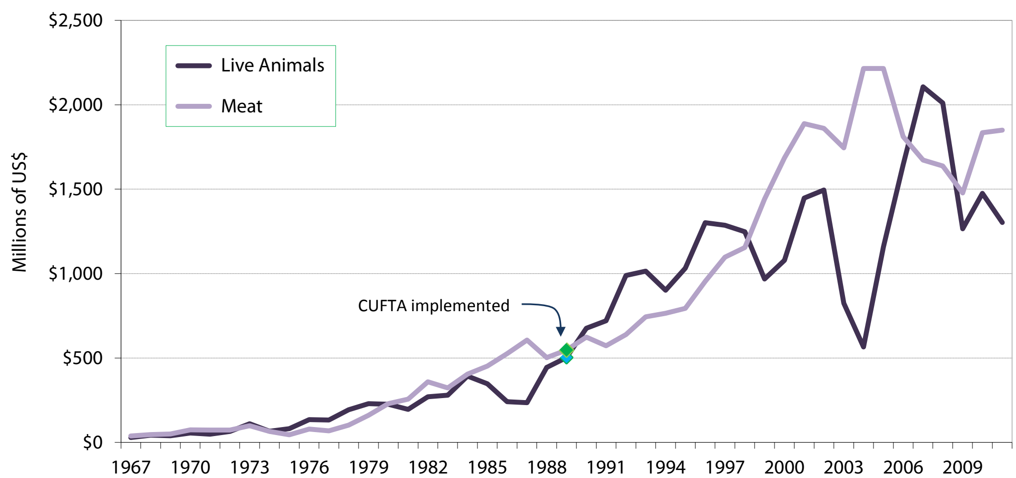
Figure 13: The Value of Canadian Bovine Exports to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

the border. MCOOL increases the costs of livestock more than the costs of meat as more associated labeling costs (segregation, etc.) are imposed on livestock than on processed meat products. Therefore, we see MCOOL lowering the demand for livestock at a greater intensity than for pork and beef.

Figure 14: Value of Canadian Red Meat Exports to the US



Source: Data retrieved from USDA/FAS, 2012 (http://www.fas.usda.gov/gats/default.aspx).

Going from macro to micro: Why the changes in the market match the experience of industry

The red meat industry is composed of cow-calf producers, feedlots and backgrounders, processors and packers, and wholesalers and retailers. MCOOL is expected to directly or indirectly affect approximately 1,056,276 firms. The industry includes approximately 1,036,940 producers; 15,296 feedlots, processors, and wholesalers; and 4,040 retailers (Federal Registry, 2009). Table 4 shows the accumulation of costs to the various businesses involved in the red meat industry at different levels of the supply chain operating under the MCOOL legislation.

Table 4 shows that the total added cost per head for the cattle and beef industry to provide mixed-origin (Categories A and B and/or C) or only American-origin products (Category A) are alarmingly skewed. For companies to provide mixed-origin products, the costs are estimated to increase between $45.50 and $59.00 per head. In comparison, US-only firms face an increased cost of an estimated $1.50 per head (CCA, 2009; Informa Economics, Inc., 2010). There is a great incentive for the US red meat industry, especially at the retail level, to provide only American-origin products.

In fact, many processors and packers announced on the day that MCOOL legislation was implemented that they would only provide Category A products (CCA, 2009; Informa Economics, Inc., 2010). Others announced that they could provide Category A products and one of Categories B or C (for a description of the categories see

Table 4: Cattle and Beef Supply Chain MCOOL Cost Estimates

Type	US origin cost per head for Category A alone (US$)	Mixed Origin cost per head for Categories A, B, and/or C (US$)
Cow-calf producers	0.25	Not Applicable
Feedlots and backgrounders	0.25	0.50 - 1.00
Processors and packers	0.25	10.00 - 18.00
Wholesalers and retailers	0.75	35.00 - 40.00
Total cost per head	$1.50	$45.50 - $59.00

Source: Informa Economics, Inc., 2010.

"The USDA walks a fine line" section above). This decision corresponds to the significant reduction of cattle and hog imports into the US from Canada.

An analysis of the different sectors of the supply chain shows that the cost burden of MCOOL, especially for mixed-origin products, is skewed towards wholesalers and retailers. As table 4 shows, costs for cow-calf producers for producing US-origin only products increases by an estimated $0.25 per head; their only cost is to sign an affidavit asserting that their animals are of US origin (Informa Economics, Inc., 2010). Similarly, feedlots and backgrounders that produce US-origin only products must simply retain and pass the seller's affidavits to processors, so their US-origin costs would also increase by an estimated $0.25 per head. In contrast, feedlots and backgrounders who sell mixed-origin products must segregate Canadian and Mexican cattle. This type of operation increases costs by an estimated $0.50 to $1.00 per head (Informa Economics, Inc., 2010).

For processors and packers producing US-origin only products, MCOOL costs are estimated to increase by $0.25 per head, as they are required to keep records and label boxes with US-origin. In contrast, processors and packers who choose to process mixed-origin products incur additional costs between $10.00 and $18.00 per head. This is because these firms have to segregate all slaughter and processing operations. The firms can also choose to co-mingle most or all of their products and produce a single "Product of mixed origin" label under Category B, but these operations will still see an increase in costs by an estimated $10.00 per head over US-origin only operations of $0.25 per head (Informa Economics, Inc., 2010).

Wholesalers and retailers face the brunt of the costs of MCOOL. When they handle only US-origin products, they face an estimated cost increase of $1.50 per head. In comparison, retailers and wholesalers who provide mixed-origin products are faced with increased costs of $35.00 to $40.00 per head. The high cost associated with con-

Table 5: Hog and Pork Supply Chain MCOOL Cost Estimates

Type	US origin cost per head ($US)	Mixed origin cost per head ($US)
Vertically integrated hog producer and packer/processor firms	Minimal $0 - 0.10	Not applicable
Producer firms: farrow/wean/finish	Minimal $0 - 0.10	$0.25 - 0.50
Packer/processor only firms	Minimal $0 - 0.10	$5.00 - 6.00
Wholesalers and retailers	$0.25	$1.65 - 2.00
Total cost per head	$0.25 - $.35	$6.90 - $8.50

Source: Informa Economics, Inc., 2010.

figuring all operations to handle all product categories and their additional stock-keeping units (SKU) codes explains the steep increase.[5] Retailers also have the final responsibility for the paperwork trail to show proper origin labels. Retailers thus face the added risk of non-compliance (Informa Economics, Inc., 2010).

Similar to cattle and beef, businesses in the hog and pork industry face much higher costs if they provide mixed-origin products instead of US-only products. Table 5 shows that the costs for handling US-only meat range from approximately $0.25 to $0.35 dollars per head. In comparison, the costs for providing mixed-origin meat are approximately $6.90 to $8.50 per head. Again, as the previous section showed, these cost ratios correspond to the decline in trade in live hogs.

The hog-pork supply chain is more vertically integrated than the cattle-beef supply chain. Hog and pork production is often carried out by the same firms. Those highly integrated hog-pork producers and packer-processor organizations that use US-only stock face minimal costs, in the range of approximately $0 to $0.10 dollars per head. Their costs are limited to signing an affidavit assuring that their animals are of US origin.

Producer firms (which farrow, wean, and finish hogs) that provide US-only origin products incur additional costs of $0.10 per head, which is similar to vertically integrated hog producer and packer-processor firms that provide the same product. Packer-processor firms that provide only US-origin products combined with producer firms are also similar to the vertically integrated hog producer and packer-processor firms because the added costs of slaughter they incur align with the other

5 SKUs (stock-keeping units) are numbers used to identify each product for sale in a store. Companies use them to manage inventory and keep track of sales, popular products, and ordering. If a store adds more products, it must create new SKU numbers to accompany those products.

US-only processing configurations. Thus, the costs for producers and packer-processor firms combined remains at $0.10 per head.

The mixed-origin costs for producer firms are estimated to be slightly higher, at $0.25 to $0.50 per head, than US-origin only products as the firms have to keep additional documentation for their products, especially of herd health. The mixed-origin costs for packer-processor firms are much higher, approximately US $5.00 to $6.00 per head, as these companies are dealing with the segregation of products with different origins, as required by MCOOL legislation. Similar to the additional costs wholesalers and retailers bear for beef products, the pork retail distributors face additional estimated costs of US $1.65 to $2.00 per head, whereas retail distributors of US-origin only products would incur an estimated additional cost of $0.25 per head.

Drawing the conclusion is not rocket science

Given the distribution of costs associated with MCOOL provisions throughout the production chain, it is clear that the greatest impact is for Categories B and C. The minor costs associated with products of US-origin can easily be absorbed or passed on to consumers. However, the costs that emerge from handling products of mixed origin, or from handling both US-only and other origin products (Categories B and C) are prohibitive. Given the narrow margins on most of these products in all stages of production and the fact that red meat competes with other foods at the retail level, the added cost cannot easily be passed on to consumers and must either be pushed down the chain or avoided altogether. MCOOL happens to offer both choices: pushing the cost down the chain, which leads to a reduction in Canadian cattle and hog prices, or the production of US-only product.

R-CALF (2012) argues that MCOOL increases competition in the market as it creates new demand. But a government regulation that imposes different costs on domestic and international products is not competition, but imposition. This method of market intervention does not give rise to new demand, but instead inserts costs that are unrelated to real demand. As a result, US retailers may indeed be able to sell more US-only product, and thus consumers may be expected to buy more US product. But the stimulus is akin to selective price controls rather than free market communication between producers and consumers. The result is that consumers end up paying a higher price.

The impact of MCOOL on the market and on the integrated supply chain has been enormous. The number of Canadian cattle and hogs sold to the United States is down below what could be explained in any macro-economic context. Canadian cattle producers are realizing much lower prices for their herd because of discounting by US buyers. US buyers are discounting to pay for the new transaction costs associated with

MCOOL. Lower prices for Canadian cattle will send a signal to cow-calf producers in Canada to reduce the supply. At the same time, higher prices in the United States signal to American cow-calf producers to increase their supply. Thus, because of this forced price differential, there is a risk that the single market with traditionally very close prices may split into two markets.

The successful integration of the red meat market was based on competition on a relatively level playing field. The future of this sector is being threatened by the MCOOL legislation, which is driving a wedge into the market (Vollrath and Hallahan, 2006). Because cattle prices were high in 2011 and are still expected to be high in 2012, the damage caused by this wedge has eased, but only temporarily.

The costs to trade of this protectionist regulation can be seen by looking again at figure 3. Canadian exports to the United States increased continuously from 1970 to 2000, then from 2000 to 2010 trade declined in precipitous spikes. On average, Canadian exports to the US of livestock and meat increased by 168 percent every 10 years from 1970 to 2000. In contrast, in the decade from 2000 to 2010, exports increased by just 20 percent (USDA/FAS, 2012). Two interruptions caused this drop in trade growth: BSE and MCOOL, both of which stem from minor regulatory differences.

Bovine spongiform encephalopathy (BSE), or “Mad Cow,” caused a major disruption in Canada-US trade from 2003 till 2005, not because the two countries lacked nearly identical standards and procedures to mitigate the risk of this disease (they did), but because they lacked a single (or bi-national) regime that both governments formally recognized. Because there was a small difference between the regulations and standards, US lobbies and Congressmen were able to disrupt and delay resumed trade (Moens and O’Keefe, 2006; Hart, 2007). MCOOL—though very different from BSE—points to the same underlying problem, namely, slight regulatory differences in the two regimes, while in practice, there is a nearly identical set of rules and standards and safeguards in place on both sides of the border.

The red meat market faces a regulatory vulnerability in a largely integrated market. The solution to preventing arbitrary interventions like MCOOL lies in completing a single trade and regulatory regime in livestock and red meat products and formally recognizing it as such in order that regulators on both sides of the border are formally committed to joint action.

Section C: WTO Dispute Resolution and the Case for a Canada-US Red Meat Regime

The WTO to the rescue?

In 2008, Canada (on December 1) and Mexico (on December 17), requested consultations with the United States regarding particular sections of the mandatory Country-of-Origin Labeling legislation and Tom Vilsack's letter under:

1. Articles III:4, IX:4, and X:3 of the GATT 1994:

- III:4—Imported products must be treated equally to like domestic products in respect of all laws, regulations, and requirements affecting trade, transportation, distribution, or use (WTO, 1994)
- IX:2—In enacting and enforcing laws, the contracting parties must ensure minimal inconvenience to the trade and industry of exporting countries with due regard to the necessity of protecting consumers against fraudulent or misleading actions (WTO, 1994).
- IX:4—The laws and regulations regarding imported products must allow compliance without seriously damaging the products, materially reducing their value, or unreasonably increasing their cost (WTO, 1994).
- X:3—Laws, regulations, judicial decisions, and administrative rulings must be made accessible to easily enable governments and traders to become acquainted with them and follow them appropriately. There must also be an independent institution (judicial or administrative) that can ensure the laws are implemented and followed appropriately (WTO, 1994).

2. Articles 2.1 and 2.2 of the Technical Barriers to Trade (TBT) Agreement, which ensure that regulations, standards, testing, and certification procedures do not create unnecessary obstacles.

- Article 2.1—In respect to technical regulations, the treatment accorded to imported products must not be less favorable than to like domestic products in respect to all laws.

- Article 2.2—Regulations should not intentionally create unnecessary obstacles to international trade. For this purpose, the regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective.

Canada and Mexico sought consultations with the United States to resolve the issue, but they failed to come to an agreement (WTO, 2012). Hence, Canada and Mexico requested a dispute settlement panel in 2009.[6]

Canada argued that "COOL is a mandatory US labeling measure that imposes unfair and unnecessary costs on the integrated North American supply chains which reduces competitiveness in both Canada and the US and creates confusion and uncertainty for livestock industries on both sides of the border" (DFAIT, 2009). Canada specifically argued that "US COOL has resulted in additional and unnecessary costs being imposed on Canadian cattle and hog exports" because it treats Canadian imports into the US differently than US domestic products (DFAIT, 2009). For example, MCOOL forces US processors to segregate Canadian products at each stage of production, which increases processing costs for Canadian products, thus encouraging US processors to refrain from purchasing Canadian animals. This gives the US industry an unfair advantage, which is inconsistent with the United States' WTO obligations (DFAIT, 2009). Canada further argued that in the case of livestock and red meat products, "the determination of their nationality deviates considerably from international country-of-origin labeling standards, a situation which has not been justified as necessary to fulfill a legitimate objective" (WTO, 2012). Concerning Tom Vilsack's letter, Canada argued that it called for additional voluntary steps that, if followed, would shift the US industry from purchasing Canadian-born livestock in favor of products born, raised, and slaughtered in the US.

In response, the office of the United States Trade Representative (USTR) stated that Canada's (and Mexico's) arguments that MCOOL imposes unfair and unnecessary costs on the North American supply chains are "overly broad and could jeopardize the ability of WTO members to adopt origin labeling requirements" (USTR, 2010). Moreover, the US argued that MCOOL "measures treat covered commodities of all origins identically… To the extent that these measures apply to livestock, they apply to them identically… regardless of where the source animal was born, raised, and slaughtered" (USTR, 2010). The US argued that there are many options available to feed lots and slaughter houses to cope with the costs of MCOOL, such as "accepting all domestic livestock, accepting all foreign livestock, commingling different origin live-

6 Argentina, Australia, China, Colombia, India, Japan, Korea, Peru, New Zealand, Brazil, the European Communities, Guatemala, and Chinese Taipei reserved their rights as third parties. Canada and Mexico reserved their rights as third parties on each other's disputes (DFAIT, 2009; WTO, 2012). (Third-party rights refer to the rights of other nations whose interests may be affected by the resolution of the dispute in question between the two disputing nations and who therefore may be granted status to participate in the proceedings.)

stock on the same production day, accepting different origin livestock on different days, or by segregating if they so choose." The law does not require organizations to segregate products nor prevent them from accepting foreign livestock. Thus, the USTR reasoned, it is in compliance with all its obligations under the WTO trade agreement (USTR, 2010). Concerning Tom Vilsack's letter, the US argued that the letter clearly stated that the recommendations are voluntary and as a voluntary measure the recommendations are not covered under WTO law.

On May 2011, the WTO provided a confidential ruling to the Canadian, Mexican, and American governments (WTO, 2012). Finally, on November 18, 2011, the WTO released a report indicating that the US was in violation of Article 2.1 and 2.2 of the TBT agreement and Article X:3(a) of the GATT 1994 (WTO, 2012).

The WTO panel ruled unambiguously in favor of Canada and Mexico, and ruled the US MCOOL measure inconsistent with US obligations under GATT and TBT. It found that MCOOL is in violation of Article 2.1 of the TBT agreement as it treats imported livestock less favorable than like domestic livestock (WTO, 2012). Moreover, it violates Article 2.2 of the TBT agreement by not fulfilling its genuine objective of "providing consumers with information on origin with respect to meat products" in an economically feasible form (WTO, 2012). With respect to Vilsack's letter, the WTO panel ruled that the letter "went beyond certain obligations under the COOL measure… and [thus] constitutes unreasonable administration of the COOL measure in violation of Article X:3(a) of the GATT 1994" (WTO, 2012).

According to WTO law, the United States had until January 18, 2012 to respond to the ruling, which was extended to March 23, 2012. In December 2011, 19 US Senators led by Tim Johnson (D-SD) and Mike Enzi (R-WY), sent a letter to Agriculture Secretary Tom Vilsack and US Trade Representative Ron Kirk, urging them to appeal the WTO's decision (Johnson et al., 2011). Both R-CALF and the National Farmers Union increased their pressure in early 2012 on Ron Kirk to appeal the decision (R-Calf, 2012).

At the same time, various other industry associations as well as several state legislators were putting pressure on Ron Kirk to refrain from appealing the WTO decision and to move to a legislative resolution. They argued that "it is in the best interest of US farmers and ranchers to resolve the COOL dispute as soon as possible." They warned that considerable job losses in US packing and processing plants may occur if the US does not change MCOOL (CCA, 2012).

The Obama administration announced on March 23, 2012, that it will appeal the WTO panel's resolution. The WTO's appellate body is expected to make a decision in the summer of 2012. It is hard to imagine that the United States could gain anything except buying time. Given the US elections scheduled for November 2012, it is quite likely that the US Administration will not decide how to deal with the MCOOL problem until early 2013. The Canadian government should use this time as an opportunity to engage in intense negotiations as we will describe further in the next section.

Section D: Defining the Right Solution

Adding a single regime to a single market

Canada exported US $2.9 billion of red meat products to the US in 2011 while the United States in turn exported US $1.4 billion to Canada. The US $1.4 billion trade is a significant market for the US. Hence, some voices in Canada are calling for trade retaliation if the United States does not change course on MCOOL. There are two good reasons to refrain from doing so. First, in the long run, Canada has more at risk from a trade war in red meat than the United States. Moreover, if the dispute were to spread to other trade sectors, Canada again would be more vulnerable. The second reason, in our view is even stronger. There is a regulatory solution that can meet the Congressional wish of having an ethnocentric label. Admittedly, the solution will not satisfy the lobbies that want to use MCOOL as a protectionist barrier. However, there are many other players, especially in the slaughtering and retail segments, who might well support these changes to develop a North American label. Such a label would represent the high quality of red meat both countries produce, it would remove nearly all of the new costs introduced by MCOOL, and would still clearly identify "Product of the USA and Canada." Below, we outline the steps needed to reach this goal, realizing that most of this work needs to be done in 2012-2013.

Free Trade Agreements such as CUFTA and NAFTA have no mechanisms in place to mandate regulatory integration (but neither do they hinder such initiatives). Thus the trading relationship is vulnerable to opportunistic behavior by certain lobbies or interests who make their case on regulatory differences and are prepared to incur costs to trade and national social welfare (Hart, 2007).

Overall, regulations in the red meat sector in the United States and Canada are very similar. The benefits of completely harmonizing the system in this sector and recognizing it as a joint regime would be enormous. Note that we are not proposing that American and Canadian law in the red meat sector be unified. That would be unacceptable to both sovereign governments in Washington and Ottawa. Rather, we call for a mixture of harmonizing rules and mutual recognition as well as the establishment of a bi-national process to administer this joint regime. In such a regime, new standards and regulations would be proposed in a joint manner and both governments would make a commitment to keep equivalency and mutual recognition in place.The areas that must be addressed if a jointly-managed single regime is to be completed follow. For some of them, important steps need to be undertaken; for others, it is mainly a case of recognizing existing equivalence. They include: national grading systems, inspection services, re-inspection at ports-of-entry, national identification systems, and the use of growth hormones and antibiotics in livestock.

a. Quality grades and meat grading

Canada and the United States generally grade meat using two criteria:

1. Yield grades. This rating measures the amount of usable lean meat on the carcass. Canada grades yield on a range of 1 to 3 while the US uses a scale of 1 to 5. In both cases, yield grade 1 is the highest grade and denotes the greatest ratio of lean to fat (Canada Beef, 2012; USDA, 2012).
2. Quality grades. This rating measures tenderness, juiciness, and flavor. There are a variety of quality grades as discussed below. Quality grades are based on the amount of marbling (flecks of fat within the lean), color, and maturity. The more marbling meat has, the more flavor, and thus the higher the grade.

The Canadian grade for "Prime" beef with minimum marbling standards is equivalent to United States "Prime" grade with minimum marbling standards. Although the US has two higher grades of Prime, the Canadian grade encompasses all. Both cuts are produced from young, well-fed beef and are very high in tenderness, juiciness, and flavor. These grades are generally sold in restaurants and hotels. The Canadian "AAA" with minimum marbling standards is equivalent to United States "Choice" with minimum grading standards. AAA and Choice roasts and steaks from the loin and rib are very tender, juicy, and flavorful and are, like "Prime," suited to dry-heat cooking.

Canadian "AA" is equivalent to United States "Select." Both are fairly tender, but, because the meat is less marbled, it may lack some of the juiciness and flavor of the higher grades. Canadian "A" is equivalent to United States "Standard." This is frequently sold as ungraded or as "store brand" meat. Finally, Canada grades "B," "C," and "D" are equivalent to United States "Utility," "Cutter," and "Canner" grades. These are usually made into ground beef and processed products (Canada Beef, 2012; USDA, 2012).

Canadian and US pork is not graded by quality as it is generally produced from young animals that have been bred and fed to produce more uniformly tender meat (Canada Beef, 2012; USDA, 2012).

To bring the Canadian system as close as possible to that of the US, Canadian marbling standards were changed in 1996 to mirror American copyrighted marbling standards. Since then, Canada and the US have been using nearly identical beef grading systems (Canada Beef, 2012). But mutual recognition is largely absent. Canada has no federal standard for grading US beef. For example, in Eastern Canada, US beef is not sold in line with Canadian beef in retail outlets. In Ontario, US beef is classified as "ungraded." As a result, sales of US beef in Canada are not as strong as they could be and do not receive the price the meat deserves. Similarly, Canadian beef in the US is not classified as it should be. Boxed Canadian beef marketed in the United States cannot receive the USDA stamp of approval and thus must be sold at a "no-roll" discount (Hayes and Kerr, 1997).

The use of a single and bi-nationally used grade and single terminology on both sides of the border would be beneficial for consumers and would reward sellers by enabling them to be paid for the inherent quality of their product. It would make sense for Canada to join the US grading system and ask only that the Agriculture and Agri-Food Canada label be added to USDA label. The result would be a USDA/AAFC designation based upon US terminology, which Canada would recognize as equivalent to its own. Similarly, Canadian yield standards could be expanded to allow for further classification and so join the five-point US scale. Why would the Americans allow Canadian product to join the valuable USDA label? As this paper has shown, the meat is substantially of the same quality and part of the same supply chain. In addition, given that US beef exports to Canada are rising, it would be advantageous for the US to have its meat graded at the highest possible level for sale in Canada.

b. Hazard analysis and critical control points

Hazard analysis and critical control points (HACCP) systems are an internationally recognized, science-based food safety system, designed to prevent, reduce or eliminate potential biological, chemical, and physical food safety hazards (FSEP, 2010).[7] Both the United States and Canada have adopted mandatory HACCP systems. Canada's HACCP system is called the Food Safety Enhancement Program (FSEP) while the United States system is called the Pathogen Reduction HACCP.

US inspectors inspect Canadian plants to conduct Food Safety Assessments (FSA) by analyzing six areas of risk in Canadian meat facilities: HACCP Systems, government oversight, statutory authority, and food safety regulations (slaughter, preparation, processing, storage, handling, and distribution of livestock carcasses and parts, meat and meat food products), sanitation, chemical residues, and microbiological testing programs (USDA, 2010). The inspections are done through document review and on-site visits. The USDA Food Safety and Inspection Service (FSIS) is responsible for ensuring that domestic and imported meat products are safe, wholesome, and accurately labeled. Moreover, the service also ensures that imported products are produced under standards equivalent to those in the US, and it facili-

7 All countries with HACCP systems must meet the minimum requirements set by the Food and Agriculture Organization (FAO), the World Health Organization (WHO) for food safety practices that are outlined in a guideline called the Codex Alimentarius Commission.

tates the certification of exported goods. On average, the FSIS inspects Canadian firms annually (USDA, 2010). At the same time, the FSIS conducts at least annual comprehensive reviews of domestic meat inspection programs and their requirements, and schedules routine FSAs.

Canada does not physically inspect US plants on a systematic basis, but rather Canada's Food Inspection Agency (CFIA) inspects documents at the border and selected locations. Nonetheless, both countries recognize each system as practically equivalent to their own (CFIA, 2011c).

To create a bi-national HACCP system appears within reach. Canada and the United States would need to write a joint list of inspection criteria, either by adding national criteria or adopting a best-practices regime that satisfies both. Next, Canada, through the CFIA, would need to commit more resources so it could join the US and make all inspections of Canadian plants and selected US plants a bi-national process. Akin to the Integrated Border Inspection Teams (IBETs) now operating on our shared land and water border, these integrated meat inspection teams could set the rules of engagement so that national authorities and jurisdiction would be respected.

c. Re-inspection at port of entry

The Canadian and United States domestic food inspections are operated by provincial and state regulatory bodies, and work under federal laws. The provincial or state inspectors deal with products that are produced locally and sold throughout the province or state of origin. The federal inspectors deal with meat that can be exported outside the province or state of origin. Both Canadian and US systems recognize the other as being equivalent.

The FSIS recognizes the Canadian federal meat inspection system as equivalent to the United States system (USDA, 2009). Areas of equivalence include fair treatment of animals from birth to slaughter, inspector qualification, methods of slaughter, handling of sick animals and contaminated products, and post-slaughter sanitary processing, packing, and labeling procedures (USDA, 2010; Department of Justice, 2012).

Although the FSIS recognizes that Canada's meat inspection service is virtually the same as the American system and yearly inspects Canadian plants that export meat to the US to ensure compliance, all meat shipments—foreign and Canadian—are inspected visually for appearance and condition, and checked for certification and label compliance by an FSIS import inspector upon arrival at a US port of entry. In addition, selected shipments undergo various other types of inspections including product examinations and microbial and chemical laboratory analyses. Once shipments pass re-inspection, they are allowed to enter the US and are treated as domestic product (USDA, 2009).

For products coming to Canada, all foreign shipments are given a full inspection, while one in ten US shipments receives a full inspection; the other nine are referred to as "skip lots" and pass the border without inspection (CFIA, 2010). Even though Canada and the US have equal requirements for food safety, Canadian products entering the United States are treated more restrictively (and unnecessarily so) than US products entering Canada.

According to Canada Beef, "More than 99.9 percent of beef products exported to the US from Canada meet food safety requirements … [which] demonstrates a high level of confidence, both in Canada's regulatory system, and in the safety and quality of Canadian beef" (Canada Beef, 2012). Out of 1,366 million pounds of Canadian meat exported to the US in 2009, only 0.032 percent was rejected. Of those rejected products, only 1.65 percent was rejected due to food safety concerns; a miniscule amount considering the costs of running the re-inspection system.[8]

To resolve the issue of the re-inspection system, Prime Minister Stephen Harper and President Barak Obama have developed, as part of the Canada-US Action plan, a system that recognizes the need to further integrate inspection regulations to eliminate re-inspections at the border. Starting in June 2012, a bi-national inspection regime will be put in place as a pilot system. The results will be evaluated by September 2013 and, if successful, could lead to border inspections being deemed unnecessary, and thus removed (Government of Canada, 2011).

Apart from the move from pilot projects to a full bi-national inspection system, such inspections should lead to product grade and quality seals at the exit gates of both Canadian and American processing plants. Thus, such products should be able to cross the border without further inspection or delay, other than the electronic validation of the seals.

d. Animal traceability systems

Outbreaks of swine flu, BSE, and avian flu have led to demands for animal identification and traceability programs as necessary steps in protecting public health. The Canadian hog identification and traceability system was initiated in 2002 through the creation of the National Hog ID and Traceability Working Committee within the Canadian Pork Council (CPC). In 2009, the system was formally labeled as PigTrace Canada (CPC, 2011). The Canadian Cattle Identification Agency, CCIA, was incorporated as a collaborative effort between the Canadian beef industry and the CFIA in 1998. In 2001, CCIA began operating as a voluntary program, and in 2002 it became manda-

8 In comparison, out of all Mexican meat exports to the US in 2009, 0.102 percent was rejected. Of those rejected products, 61.44 percent was rejected due to food safety concerns (USDA, 2011b). The latter number suggests that Mexico would need to improve significantly in this area to meet Canadian-US levels.

tory. Currently, the agency is working towards upgrading its technology from dangle-tag bar codes to Radio Frequency Identification (RFID) ear tags to keep track of the cattle (CPC, 2011).

In 2004, the USDA introduced its version of an animal identification and traceability system. The voluntary system, called National Animal Identification System (NAIS), received some support, but many commenters viewed it as a government-imposed, "one-size-fits-all" approach to animal traceability. Since the program was highly controversial, as was the jurisdiction it belonged under—state or federal—in 2010 the USDA decided to take a narrower approach to animal identification and traceability. The new approach does not apply to locally traded animals; it only applies to animals that are traded interstate or nationally. Moreover, though the USDA has set some minimum requirements for the new approach, individual states can develop and operate their own systems. The USDA's Rule Proposal Process is currently accepting comments.

Canada's animal identification system is much more effective than the American one. This does not mean that Canada's system is fool-proof; ear tags do fall out and get lost. Given the different avenues the USDA and CFAI are pursuing, the best solution for animal traceability is mutual recognition and national treatment. Also, because Canada's system is superior to the US system in actual traceability, it offers the Americans more security in terms of traceability for disease and hazard mitigation efforts. It is important for Canada to stay ahead in this area, so that the chance of bringing any disease into the United States through the integrated chain of supply is virtually eliminated.

e. Growth hormones and antibiotic use in Canada and the United States

Canada and the United States have the same regulations for beef cattle that allow producers to use growth hormones.[9] Three natural hormones are permitted (estradiol, progesterone, and testosterone), as are three synthetic hormones (zeranol, trenbolone acetate, and melengestrol acetate). The growth hormones may be implanted on the animal's ear or, in the case of melengestrol acetate, introduced as a feed additive. The two countries differ in one respect regarding growth hormones used to increase the production of milk: Canada prohibits farmers from using recombinant bovine somatotropin (rBST) to increase milk production in dairy cows, whereas the US allows it (USDA, 2011a; CFIA, 2011b). Antibiotics are used throughout the life of the animals to ensure that they are disease free, but both countries employ stringent regulations to

9 There are no growth hormones used in hog production though a few types are allowed in reproduction. Swine somatotropin and beta-agonists are used to control breeding cycles and to speed growth rates during stressful times (Beyond the Factory Farming, n.d.).

minimize antibiotic use and to ensure that there is no to minimal residue remaining after slaughter that can be transferred to humans.

Thus, while North America has had a long-standing dispute with the European Union over the use of growth hormones in cattle, this issue does not divide the United States and Canada, and both countries should be able to move in tandem on this score as well as on further restrictions or liberalization on the use of antibiotics in animal production to safeguard human health.

An American-Canadian red meat regime sets the framework for Mexico to join when its regulatory level allows it to do so. Just as CUFTA led the way to NAFTA, so an American-Canadian red meat regime can lead the way for Mexico to join in due course. While it is not the purview of this paper to detail how the groundwork should be prepared for Mexican accession, it is key that all regulations be defined in a transparent manner with objective criteria that conform with international agreements. At the same time, the Canadian-American negotiations towards a single COO label based on a bi-national regulatory area must avoid running afoul of any WTO or GATT-1994 or TBT stipulations regarding the treatment of foreign products. However, given that the key question is livestock rather than packaged meat, and that no other country exports livestock to North America in a large commercial manner, it is not likely that WTO or TBT standards would be violated by an American-Canadian agreement to bi-nationalize red meat regulations.

Conclusion and recommendations

A concentrated group of US lobbies were able to mobilize enough support in Congress, and finally in the Obama Administration, to impose a trade-distorting country-of-origin label. This label was imposed on a highly integrated supply chain of cattle and hogs and beef and pork products. The impact of this distortion is large, not only for the volume of trade in live animals, but also for the price and long-term impact on the North American red meat sector. MCOOL has acted as a "weapon of mass disruption" in bilateral trade. If the two governments had had a bi-national regime in place in which new regulations and standards are proposed and processed jointly, this distortion in trade would have been far less likely.

The result of MCOOL is a situation where American cow-calf producers can reap short-term narrow gain at the cost of overall efficiency in the processing sector. It follows that consumers on both sides of the border are less likely to benefit from the lowest possible prices. When we think of the red meat sector in a global context, we should expect North America's overall competitiveness to be weakened as a result, given that economies of scale and lowest possible production costs have been compromised.

Tempting as it may be for Canadian industry and legislators to retaliate, this paper has shown a better approach, namely, to move to a single red meat regime in which both US and Canadian products can be priced according to their quality and in which the origin of the animals is irrelevant. Such a regime will reduce such costs as duplicative grades and inspections and will replace the two COOL practices and blend them into one. In so doing, we can ultimately create a stronger integrated industry which will benefit consumers, keep beef competitive among increasing food choices, and also keep North American beef competitive in the world.

Two government actions needed

This paper calls for the following two government actions

- A strengthened Canadian effort to engage the American Executive and Congressional branches to negotiate the final details of a single, joint American-Canadian red meat regime, as outlined earlier in this paper, in which both American and Canadian interests can advance.
- A legal expression of this regime in US and Canadian law in which "Product of the USA and Canada" becomes a label used for red meat products on both sides of the border.

Appendix 1: Crises

2003-2004 BSE Crises

In January 3, 2003, a cow containing bovine spongiform encephalopathy (BSE) was discovered in Northern Alberta; by May 20, 2003, tests confirmed it was BSE. The US took a restrictive approach and subsequently closed the border to cattle and beef imports from Canada. This caused a chain of events that cost the cattle and beef industry billions of dollars; recovery to pre-BSE trade levels was slow. From 2002 to 2004, bovine bilateral trade between Canada and the US decreased by US $1.8 billion. It was not until 2006 that bovine trade levels were approaching 2002 levels (Moens and O'Keefe, 2006).

2009 Swine Flu

In 2009, a strain of flu, H1N1, commonly found in pigs, was discovered to have transferred to humans in Mexico. Many cases were discovered in the United States and later in many countries worldwide. In response, a number of countries restricted hog imports from the United States. From 2008 to 2009, US exports of hogs dropped drastically. Every US-hog-importing country decreased its imports of US hogs except Canada. US exports decreased from US $28 million in 2008 to US $10 million in 2009 (USDA/FAS, 2012).

Appendix 2: October 30, 2003 Proposed Rule

USDA's Agricultural Marketing Service (AMS) offered a set of rules for how best to implement MCOOL. AMS asked for comments on how to improve those rules. The rules are as follows:

Covered commodity

- The AMS proposed to cover the same commodities as stated in legislation.

Processed food item

- Processed food is a retail item derived from a covered commodity that has undergone a physical or chemical change, causing the character to be different from that of the covered commodity and a retail item derived from a covered commodity that has been combined with either (1) other covered commodities, or (2) other substantive food components (e.g., chocolate, stuffing) resulting in a distinct retail item that is no longer marketed as a covered commodity. Processed food items are excluded from a country-of-origin label. For example, pork turned to ham, or a shish kabob containing mixed meats (Federal Register, 2003).

In the case of muscle cuts of beef, lamb, and pork

- If a commodity has undergone a physical or chemical change, causing the character to be different than that of the covered commodity, or be combined with other commodities resulting in a distinct retail item that is no longer marketed as a covered commodity, that item is considered a processed food item and would be excluded from a country-of-origin label. For example, pork turned to ham, or a shish kabob containing mixed meats (Federal Register, 2003).
- If it has been combined with non-substantive components, and the character of the covered commodity is retained, the resulting product would be subject to these regulations. An example is seasoned, vacuum-packaged pork loins (Federal Register, 2003).

In the case of ground beef, lamb, and pork

- Ground beef, lamb, and pork that meet the USDA's department of Food Safety and Inspection Service (FSIS) (in charge of ensuring that meat, poultry, and egg products are safe, wholesome, and correctly labeled and packaged) requirements to be labeled as "ground beef," "ground pork," or "ground lamb," must bear a country-of-origin declaration (Federal Register, 2003).

Labeling for products produced exclusively in the United States

- To be labeled as a "Product of the USA," the product must be exclusively from an animal, fish, peanut, or perishable commodity that is, as appropriate, born, hatched, produced, raised, harvested, and slaughtered, or processed in the United States. (Animals exclusively born and raised in Alaska or Hawaii can be transported for up to 60 days through Canada to the United States and still retain the US label) (Federal Register, 2003).

Labeling products produced entirely outside of the United States

- Under the Federal Meat Inspection Act (FMIA), all meat products imported into the United States already require country-of-origin labeling on the container in which the products are shipped. MCOOL mandates that the products maintain the labels until they reach the final consumer (Federal Register, 2003).

Labeling products of mixed origin, including United States

- Products of mixed origin must be labeled with each country and a brief description of the process that occurred. For example, products derived from a pig that was born and raised in country X and slaughtered in the United States could either be labeled as "Imported from country X, slaughtered in the United States" or "Born and raised in country X, slaughtered in the United States" (Federal Register, 2003).

Defining "country of origin" for blended products

- Commingled or blended products should be labeled in order of predominance by weight. The AMS received many comments regarding the difficulties of such a system. Accordingly, it decided to label the countries alphabetically (Federal Register, 2003).

Method of notification

- The labels must be conspicuous and allow consumers to determine the country of origin when making their purchases (Federal Register, 2003).

Recordkeeping requirements

- In the proposed rule, the USDA suggested that any merchant engaged in the business of supplying a covered commodity must retain records for a period of two years from the date of the transaction that identify the source the commodity was purchased from and the source the commodity was sold to, as well as the country of origin. For centrally located retailers, the records could be kept at a different location as long as they are provided to the USDA within seven days upon request (Federal Register, 2003).

Enforcement

- Routine inspections may be conducted at any locale subject to MCOOL regulations. Upon notification of inspection, retailers must make all documentary material available to USDA representatives (Federal Register, 2003).

Violations

- Once found in violation of a provision, retailers will be given 30 days to ensure compliance. If the retailer is still in violation after 30 days, they will be given a penalty of no more than $10,000. Suppliers will be given penalties of no more than $10,000 for each violation (Federal Register, 2003).

Costs and benefits estimates

- The USDA states that the expected benefits from implementing MCOOL are difficult to measure. However, it believes that if there are any benefits, they will be small and available mainly to consumers who prefer and are likely to pay higher premiums for country-of-origin information. The USDA finds little evidence to support the idea that consumer preference for country-of-origin labeling will lead to increased demands for commodities labeled with US origin (Federal Register, 2003). In contrast, the USDA anticipates that the direct incremental costs will likely fall in the middle to upper range of the estimated cost $582 million to $3.9 billion (Federal Register, 2003).

Appendix 3:
August 1, 2008 Interim Final Rule

Changes to the law since the proposed rule include:

Definitions

- Appropriate definitions and modifications have been added to include the added commodities from the 2008 Farm Bill (muscle cuts and ground chicken and goat, pecans, macadamia nuts, and ginseng) (Federal Register, 2008).
- The definitions of "canned" and "produced in any country other than the United States" have been deleted (Federal Register, 2008).
- A definition for "commingled covered commodities" and "imported for immediate slaughter" have been added for clarity (Federal Register, 2008).
- The definition of "ground beef" has been modified to include products defined by the terms "hamburger" and "beef patties" (Federal Register, 2008).
- Because numerous commenters suggested that the scope of what is considered a covered commodity should be narrowed, the definition of "processed food item" has been modified to exempt cooked items (Federal Register, 2008).
- The definition of "United States country of origin" has also been modified. To include animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States, shall be considered of United States origin (Federal Register, 2008).

Country-of-origin notification for muscle cuts and ground meat

- Proposed rule suggested that animals that were born and/or raised in Country X and slaughtered in the United States were to be labeled as being imported from Country X and identifying the production steps that occurred in the United States. This has been modified to contain the label "Product of Country X and the United States," where Country X represents the actual or possible country of foreign origin (Federal Register, 2008).

Labeling ground meat covered commodities

- Under this interim final rule, the declaration for ground beef, ground pork, ground lamb, ground goat, and ground chicken covered commodities shall list all countries of origin contained therein. Further, that when a raw material from a specific origin is not in a processor's inventory for more than 60 days, the country shall no longer be included as a possible country of origin. The countries will be listed alphabetically (Federal Register, 2008).

Markings

- Under this interim final rule, the declaration of the country of origin of a product may be in the form of a check box. Also, under this final rule, a bulk container may contain a covered commodity from more than one country of origin provided all possible origins are listed. Under the proposed rule, the use of check boxes was not expressly allowed and covered commodities from more than one origin that were offered for sale in a bulk container were required to be individually labeled (Federal Register, 2008).

Record keeping

- Only records maintained in the course of the normal conduct of the business must be kept. These changes have been made to reduce the record keeping burden and include the removal of the store-level record keeping requirement, a reduction in the length of time that records must be maintained, the removal of the requirement for a unique identifier, and revisions to the record keeping requirements for pre-labeled products (Federal Register, 2008).
- Any person engaged in the business of supplying a covered commodity to a retailer must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction instead of 2 years, as in the proposed rule (Federal Register, 2008).
- For retailers, this rule requires that records and other documentary evidence relied upon by the retailer at the point of sale to establish a covered commodity's country(ies) of origin be maintained for one year and, upon USAD request, that the records be provided within 5 business days of the request (also applies to suppliers). Under the proposed rule, retailers were required to have maintained these records at the retail store for 7 days following the sale of the product (Federal Register, 2008).

Cost and benefits estimates

- Benefits: The agency's conclusion remains unchanged, which is that the benefits will be small and will accrue mainly to those consumers who desire country-of-origin information (Federal Register, 2008).
- Costs: we anticipate that direct incremental costs for the proposed rule likely will fall in the estimated range of US $2.5 billion, a reduction of US $1.4 billion, or 36 percent from the upper range estimate presented in the proposed rule (Federal Register, 2008).

Appendix 4: January 15, 2009 Final Rule

Changes to the law since the interim final rule include:

Definitions

- A definition was added for "Commingled covered commodities" (Federal Register, 2009).
- The definition of "ground beef" was modified to include chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders, and also includes products defined by the term "hamburger" (Federal Register, 2009).
- The definition of "lamb" was modified to include mutton (Federal Register, 2009).
- The "NAIS-compliant system" was deleted (Federal Register, 2009).
- A definition for "pre-labeled" was added, which means a covered commodity that has country-of-origin, and, as applicable, method-of-production information, and that name and location of the manufacturer, packer, or distributer (Federal Register, 2009).
- The definition of "produce" was modified to mean harvested when related to peanuts, ginseng, pecans, and macadamia nuts (Federal Register, 2009).

Labeling covered commodities of United States origin

- The interim final rule contained an express provision allowing US-origin covered commodities to be further processed or handled in a foreign country and retain their US origin. This provision was deleted (Federal Register, 2009).

Country-of-origin notification for muscle cuts

- A provision that allowed product from the US to be included with a mixed-origin label received extensive comments from livestock producers and congressmen. Most did not want the label "Product of the US" to be diluted by being mixed with other commodities. As the legislation is in place to provide market information to consumers, "US" was not removed from the mixed-origin labeling provision. Instead, some additional modifications were put in place for clarity (Federal Register, 2009).

Marketing

- Abbreviations when dealing with perishable agricultural commodities (peanuts, pecans, ginseng, and macadamia nuts for state, regional, or locality label designations [what is this?]), as approved by CBP rules, may be used (Federal Register, 2009).

Record keeping

- Record keeping has been reduced to ease the administrative burden. Under the August 1, 2008, interim final rule, retailers were required to maintain records for a period of 1 year. Now records must be maintained in the normal course of business (Federal Register, 2009).

Cost and benefits estimates

- Benefits: The agency's conclusion remains unchanged, which is that the economic benefits will be small and will accrue mainly to those consumers who desire country-of-origin information (Federal Register, 2009).
- Costs: First-year incremental costs for directly affected firms are estimated at US $2.6 billion, an increase of $0.1 billion over the interim final rule due to the inclusion of fish and shellfish (Federal Register, 2009).

Appendix 5: Secretary of Agriculture, Tom Vilsack's Letter to Industry Representatives, February 20, 2009

(See following pages)

February 20, 2009

Dear Industry Representative:

This letter pertains to the implementation of the mandatory Country of Origin Labeling (COOL) Final Rule (74 FR 2658). Regulations implementing the Country of Origin Labeling legislation contained in the 2008 Farm Bill are important to providing consumers with additional information about the source of food products and to helping producers differentiate their products.

Though it is important for the COOL Final Rule to go into effect in a timely manner and for the rule to proceed with the March 16, 2009, implementation date, there are certain components of the Final Rule promulgated by the previous Administration that raise legitimate concerns.

In particular, I am concerned about the regulation's treatment of product from multiple countries, exemptions provided to processed food, and time allowances provided to manufacturers for labeling ground meat products.

In light of these concerns, I am suggesting, after the effective date of the final rule, that the industry voluntarily adopt the following practices to ensure that consumers are adequately informed about the source of food products:

Labeling of product from multiple countries of origin
In order to provide consumers with sufficient information about the origin of products, processors should voluntarily include information about what production step occurred in each country when multiple countries appear on the label. For example, animals born and raised in Country X and slaughtered in Country Y might be labeled as 'Born and Raised in Country X and Slaughtered in Country Y'. Animals born in Country X but Raised and Slaughtered in Country Y might be labeled as 'Born in Country X and Raised and Slaughtered in Country Y'.

Processed Foods
The definition of processed foods contained in the Final Rule may be too broadly drafted. Even if products are subject to curing, smoking, broiling, grilling, or steaming, voluntary labeling would be appropriate.

Inventory Allowance
The language in the Final Rule allows a label for ground meat product to bear the name of a country, even if product from that country was not present in a processor's inventory, for up to 60 days. This provision allows for labels to be used in a way that does not clearly indicate the

product's country of origin. Reducing the time allowance to ten days would limit the amount of product with these labels and would enhance the credibility of the label.

The Department of Agriculture will be closely reviewing industry compliance with the regulation and its performance in relation to these suggestions for voluntary action. Depending on this performance, I will carefully consider whether modifications to the rule will be necessary to achieve the intent of Congress.

Thank you for your thoughtful consideration.

Sincerely,

Thomas J. Vilsack
Secretary

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