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Canada Challenges the U.S. Over the Country of Origin Labeling Provision

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On October 7, 2009, Canada announced that it had asked the World Trade Organization (WTO) to intervene in a dispute with the U.S. over U.S. mandatory country-of-origin labeling (COOL) provisions in Farm Bill 2008. Canada wants a WTO trade dispute panel to strike down country-of-origin requirements it says are making it difficult for Canadian cattle and hog exporters to compete fairly. Canada's request will be considered at the October 23, 2009 meeting of the WTO's Dispute Settlement Body (DSB).

Canada initially requested WTO consultations with the U.S. on COOL in December 2008, as it believed COOL provisions in U.S. Farm Bill 2008 were creating undue trade restrictions, to the detriment of Canadian exporters. Canada claimed that the mandatory U.S. COOL provisions appeared to be inconsistent with the U.S. obligations under the WTO Agreement. Mexico, Peru and Nicaragua soon followed with similar requests to the WTO.

Consultations with Canada were held in Washington, DC on December 16, 2008 as well as supplemental consultations on June 5, 2009 with a view to reaching a satisfactory resolution of the matter. Unfortunately, the consultations failed to settle the dispute.

The U.S. and Canada are each other's largest agricultural trading partners. In 2008, bilateral agricultural trade totaled approximately $37 billion. Reducing obstacles to trade has contributed to mutually beneficial supply chains, making both countries more competitive domestically and internationally. But, the Honorable Stockwell Day, Canadian Minister of International Trade said recently that "The U.S. COOL requirements are so onerous that they affect the ability of our cattle and hog exporters to compete fairly in the U.S. market . . . . That is why our government has no choice but to request a WTO panel . . . ." In response to Canada's October 7, 2009 request to establish a dispute settlement panel at the WTO, Agriculture Secretary Tom Vilsack said, in part, "We believe that our implementation of COOL provides information to consumers in a manner consistent with our World Trade Organization commitments. Countries have agreed since long before the existence of the WTO that country of origin labeling is a legitimate policy. It is common for other countries to require that goods be labeled as to their origin."

According to the Canadian Cattlemen's Association (CCA), COOL has cost Canadian cattle producers over $250 million in the past year as a result of lost sales of Canadian cattle to U.S. feedlots and packers. According to USDA-FAS, October 13, 2009 import estimates from Canada to the U.S., as of the end of August 2009, while beef/veal and live

cattle/calves imports from Canada have dropped 1.6% and 32%, respectively from the same period a year ago, the value of these imports has dropped by 9.6% and 35.9%, respectively. Some believe that this reduction is more associated with the weak U.S. and global economy rather than the effects of the U.S. COOL program. Also, it appeared that Canada was delaying the request to the WTO so as to not confuse their purportedly reduced competiveness in U.S. markets with reduced demand as a result of the U.S. and global economic weakness.

Generally speaking, U.S. horticulture product producers like the COOL program and livestock producers do not like the program. Livestock producers contend that while COOL provisions increase costs with the increased record keeping tracking requirements, the program fails to make an economic difference to demand.

The National Cattlemen's Beef Association (NCBA) said recently that Canada's decision to move forward with their complaint against U.S. COOL regulations is unfortunate, due to the potential retaliatory action that could be taken against U.S. beef. The U.S. imports and adds value to Mexican and Canadian livestock through U.S. feedlots, processing and infrastructure; and the U.S. exports this value-added finished product back to Mexican and Canadian consumers. Any disruptions to either of these markets will have a significant economic impact on the U.S. cattle industry. Unfortunately, it's becoming clear that COOL has damaged these critically important trading relationships, and is not putting any additional money into the pockets of cattlemen.

Selected officers of the R-CALF group called NCBA’s attack on COOL downright deceptive. The R-Calf association was and is one of the principle supporters of the COOL program. The R-Calf group contends, in part, that the very large number of cattle imported from Mexico and Canada contribute significantly to the horrendous trade deficit with these two countries. They contend that the U.S. cattle industry is a long-term net loser when it comes to trade with Canada and Mexico.

Dispute Settlement Panel

According to the WTO, dispute settlement is the central pillar of the multilateral trading system. Disputes in the WTO are essentially about broken promises. WTO members have agreed that if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgments. Dispute settlement procedures were established under the old General Agreement of Tariffs and Trade (GATT). Time tables were added under the WTO. The WTO appoints a disinterested panel to a Dispute Settlement Body (DSB) which is allowed about a year (without appeals) to complete an investigation and issue a report. If an appeal is filed, the DSB is allowed 60-90 days to review the appeal and issue a final decision.

While it’s impossible to try to even guess what the DSB will find, it appears doubtful that Congress will delete the COOL provisions from the farm bill, at least not in the foreseeable future. If the DSB rules against the U.S., even after appeals, Canada, at the discretion of the DSB, may be allowed to impose import tariffs on imported U.S. goods up to an amount determined by the DSB.

Meanwhile on Monday, October 13, 2009, the Office of the U.S. Trade Representative (USTR) announced that the

U.S. has asked the WTO to establish a dispute settlement panel regarding the EU's restrictions on imports of U.S. poultry. The U.S. has asked the panel to review whether the EU's ban on the import and marketing of poultry meat and poultry meat products processed with pathogen reduction treatments (PRTs) judged safe by U.S. and European food safety authorities is consistent with the EU's WTO obligations.

So, in the end, it appears that the WTO is working as it is supposed to, providing an arbitration body to review trade disputes and thereby promote trade rather than forcing countries to rely on lengthy international trade litigation.

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