

# FROM CATTLE DRIVES TO LABELING LEGISLATION: THE IMPLICATIONS OF MANDATORY COUNTRY OF ORIGIN LABELING ON THE BEEF INDUSTRY

*“Being American is to eat a lot of beef steak, and boy, we’ve got a lot more beef steak than any other country, and that’s why you ought to be glad you’re an American.”—Kurt Vonnegut, Jr.*

## Comment

*Cassidy L. Woodard\**

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\* B.S.B.A. in International Business, University of Denver—Daniel’s College of Business, November 2011; J.D. Candidate, Texas Tech University School of Law, May 2015. Dedicated to the third and fourth generations of the Woodard Family to raise cattle in Colorado. Thank you for instilling me with the pride and passion for being the fifth.

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## I. INTRODUCTION

In the mid-1860s, rugged cowboys on horseback drove longhorn cattle north out of Texas.<sup>1</sup> The East had just finished battling the Civil War, and the returning soldiers began to crave beef in their diets.<sup>2</sup> To satisfy this demand, Texas ranchers moved their cattle from South Texas, where cattle were worth approximately \$3 per head, to towns like Abilene, Kansas, where cattle could be sold for as much as \$28 per head.<sup>3</sup> From Abilene, livestock traders purchased cattle and shipped them by railroad to Chicago, Illinois, for slaughter; from there, packers could ship the beef to the East as a retail product.<sup>4</sup> Not only did Texas ranchers thrive from this production system, but it also stimulated growth of the meat packing industry, which in turn increased demand for railroad expansion and fueled innovation across the nation.<sup>5</sup>

High demand for beef in the late nineteenth century eventually provoked disastrous meat packing conditions in Chicago—a city that earned the nickname “Packingtown” for its districts filled with stockyards and slaughterhouses, as described by Upton Sinclair in *The Jungle*.<sup>6</sup> Recognizing the necessity for immediate food-safety reform, Washington, D.C. lawmakers took action, and on June 30, 1906, President Theodore Roosevelt signed the Meat Inspection Act and the Pure Food and Drug Act into law.<sup>7</sup> Both Acts set the stage for future government regulation of the industry.<sup>8</sup>

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1. Stuart Estes, *The Legacy of the Cattle Drives: Pop Culture or Integral Innovation*, HIGH PLAINS J. (Sept. 2, 2013, 12:00 AM), [http://www.hpj.com/archives/article\\_6a1721eb-ab22-5a3e-a577-11f0555979e9.html](http://www.hpj.com/archives/article_6a1721eb-ab22-5a3e-a577-11f0555979e9.html).

2. *Id.*

3. *Id.*

4. See *American West—The Cattle Industry*, HIST. ON NET, [http://www.historyonthenet.com/American\\_West/cattle\\_industry.htm](http://www.historyonthenet.com/American_West/cattle_industry.htm) (last updated Aug. 4, 2014).

5. Estes, *supra* note 1.

6. Robert W. Cherny, *The Jungle and the Progressive Era*, GILDER LEHRMAN INST. AM. HIST., <http://www.gilderlehrman.org/history-by-era/politics-reform/essays/jungle-and-progressive-era> (last visited Jan. 10, 2015); see UPTON SINCLAIR, *THE JUNGLE* 141–42 (Barnes & Noble Classics 2005) (1906) (“This is no fairy story and no joke; the meat would be shovelled into carts, and the man who did the shovelling would not trouble to lift out a rat even when he saw one—there were things that went into the sausage in comparison with which a poisoned rat was a tidbit. There was no place for the men to wash their hands before they ate their dinner, and so they made a practice of washing them in the water that was to be ladled into the sausage. There were the butt-ends of smoked meat, and the scraps of corned beef, and all the odds and ends of the waste of the plants, that would be dumped into old barrels in the cellar and left there. Under the system of rigid economy which the packers enforced, there were some jobs that it only paid to do once in a long time, and among these was the cleaning out of the waste-barrels. Every spring they did it; and in the barrels would be dirt and rust and old nails and stale water—and cart load after cart load of it would be taken up and dumped into the hoppers with fresh meat, and sent out to the public’s breakfast.”).

7. Cherny, *supra* note 6.

8. See *id.* The Meat Inspection Act of 1906 set forth government inspection standards for meat packing plants. *Federal Meat Inspection Act of 1906*, NOLO: L. FOR ALL, <http://www.nolo.com/legal-encyclopedia/content/fed-meat-act.html> (last visited Jan. 10, 2015). Congress later strengthened the inspection process with other statutes, but the Meat Inspection Act of 1906, along with the Pure Food and Drug Act of 1906, initiated the framework that allowed federal agencies to regulate food production and the agricultural industry. See *id.*

Today, beef production tells a similar, yet more reassuring, story from pasture to plate.<sup>9</sup> Modern, rugged cowboys still care for cattle all across Texas; however, livestock trailers for live cattle and refrigerated trailers for retail beef products have replaced cattle drives and rail transportation utilized in the nineteenth century's greatest cowboy tales.<sup>10</sup> Moreover, clean, safe, and technologically advanced slaughterhouses—supporting rural communities across the Central Plains—have replaced dangerous and unsanitary districts like Chicago's Packingtown.<sup>11</sup>

Aside from remarkable improvements in meat quality and safety, the other notable distinction behind today's beef production involves the labeling of retail beef products.<sup>12</sup> In 2002, Congress enacted legislation to require retailers of a "covered commodity" to "inform consumers" as to the commodity's country of origin at the "final point of sale."<sup>13</sup> Known as Country of Origin Labeling (COOL), this labeling requirement sparked much controversy.<sup>14</sup>

Believing that COOL led United States consumers to unfairly discriminate against foreign beef, Canada and Mexico challenged the labeling program before the World Trade Organization (WTO) in 2012, and won.<sup>15</sup> To comply with WTO standards, the United States Department of Agriculture (USDA) reworked COOL by promulgating a rule on May 23, 2013.<sup>16</sup> Now, the USDA requires labels on packaged meat products to specify: (1) the country from which the animal was "born," (2) the country from which the animal was "raised," and (3) the country from which the animal was "slaughtered."<sup>17</sup>

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9. See *infra* notes 10–11 and accompanying text.

10. See PHILIP G. CHAMBERS & TEMPLE GRANDIN, GUIDELINES FOR HUMANE HANDLING, TRANSPORT AND SLAUGHTER OF LIVESTOCK 33–43 (Gunter Heinz & Thinnarat Srisuvan eds., 2001), available at <http://www.fao.org/docrep/003/x6909e/x6909e08.htm#CHAPTER%206%20Transport%20of%20livestock>. See generally BETTY FUSSELL, RAISING STEAKS: THE LIFE AND TIMES OF AMERICAN BEEF 200–01 (2008) (discussing the original invention of refrigerated railcars at the end of the nineteenth century, which later led to refrigerated trailers).

11. See FUSSELL, *supra* note 10, at 192–218 (discussing the development of slaughterhouses and their importance to beef production and local rural economies).

12. See 7 U.S.C. § 1638 (2012).

13. 7 U.S.C. § 1638a(a)(1) (2012).

14. See Ashley Pepler, Note, *Where Is My Food from? Developments in the WTO Dispute Over Country-of-Origin Labeling for Food in the United States*, 18 DRAKE J. AGRIC. L. 403, 405–10, 425–28 (2013) (providing a historical background on COOL issues from 2002 to 2013). On its face, this legislation serves a great benefit to consumers by providing information regarding the origin of their food. Jacquelyn Trussell, News, *The Birth Place of Food Products: Do You Know Where Your Food Comes from?*, 16 LOY. CONSUMER L. REV. 285, 289–91 (2004). Hidden between the lines, though, the benefits may not be worth the ultimate costs of maintaining records and handling goods. *Id.* at 291–93.

15. Appellate Body Report, *United States—Certain Country of Origin Labeling (COOL) Requirements*, ¶ 496, WT/DS384/AB/R (June 29, 2012).

16. Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. 31,367, 31,367 (May 24, 2013) (to be codified at 7 C.F.R. pts. 60 & 65). This Comment will refer to the rule as the "Born, Raised, Slaughtered" regime.

17. *Id.*

Unfortunately, the USDA's "Born, Raised, Slaughtered" regime raises as much complication and controversy as the legislation's original enactment.<sup>18</sup>

The beef industry remains decisively split over whether to support or oppose the Born, Raised, Slaughtered regime, promoted by the USDA as the solution to COOL's non-compliance with WTO trade standards.<sup>19</sup> The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA)—an organization made up solely of ranchers—supports the labeling requirement, arguing for the necessity of a labeling program to provide consumers with full disclosure and transparency of the origin of their meat products.<sup>20</sup> In stark contrast, the National Cattlemen's Beef Association (NCBA)—a grassroots organization representing more than 24,000 ranchers, feedlots, and meat packers—opposes COOL because it believes the requirement lacks effectiveness as a marketing program when considering the increased costs passed down to beef producers and consumers.<sup>21</sup> The sharp contrasts in these two viewpoints may predictably continue to divide the beef industry until a permanent resolution, amiable to the considerations of both sides, can be found.<sup>22</sup>

In Texas, state organizations and beef producers remain just as divided as the nationwide stance on COOL.<sup>23</sup> To support COOL and the Born, Raised, Slaughtered regime, the Independent Cattleman's Association of Texas pledged financial support to defend the legislation in federal court.<sup>24</sup> To oppose COOL,

18. See Eric Bradner, *Meat Packers Fight Country-of-Origin Labels*, POLITICO (Aug. 26, 2013, 3:59 PM), <http://www.politico.com/story/2013/08/meat-packers-fight-country-of-origin-labels-95918.html>.

19. See Burt Rutherford, *District Court Denies Preliminary Injunction in COOL Lawsuit*, BEEF MAG., Sept. 12, 2013, <http://beefmagazine.com/government/district-court-denies-preliminary-injunction-cool-lawsuit>.

20. Press Release, R-CALF USA, R-CALF USA Pleased with Final COOL Rule Released Today (May 23, 2013) [hereinafter Press Release, R-CALF USA], available at <http://www.r-calfusa.com/r-calf-usa-pleased-final-cool-rule-released-today>. Mike Schultz, R-CALF USA COOL Committee Chair, argues that the government-run program provides consumers with the trigger needed to demand product sourced from American cattle. *Id.* R-CALF USA agrees not only with the Born, Raised, Slaughtered regime's ban on commingling, but also with the need for such a detailed, multi-country label to disclose all information to consumers, as recommended by the WTO. *Id.*

21. Scott George, *The Fallacy of COOL*, CATTLE CALL (June 6, 2013), <http://www.thecattlecall.wordpress.com/2013/06/06/the-fallacy-of-cool>. NCBA questions the idea of "a mandatory labeling program run by the federal government is not the way [ranchers] want to showcase [their] product and add value." *Id.* Scott George, former NCBA President and current Wyoming rancher, values true labeling programs, such as Certified Angus Beef, because private individuals successfully run the programs with a specific interest in promoting a brand of beef to meet the needs of the consumer. *Id.* In contrast, George argues that COOL does not achieve a similar result by merely disclosing where an animal was born, raised, and slaughtered. *Id.*

22. Compare Press Release, R-CALF USA, *supra* note 20 (presenting arguments to support COOL), with George, *supra* note 21 (presenting arguments to oppose COOL).

23. See Rob Hotakainen, *Ranchers Have a Beef with Country-of-Origin Labels*, SEATTLE TIMES, Aug. 4, 2013, <http://seattletimes.com/avantgo/2021505705.html>; *Independent Cattleman's Association of Texas Pledges to Defend Country of Origin Labeling*, J. PEARLAND (Sept. 20, 2013, 7:00 AM), [http://www.yourhoustonnews.com/pearland/opinion/independent-cattleman-s-association-of-texas-pledges-to-defend-country/article\\_471a1d1b-1181-595e-8ab5-ae5f471c7532.html](http://www.yourhoustonnews.com/pearland/opinion/independent-cattleman-s-association-of-texas-pledges-to-defend-country/article_471a1d1b-1181-595e-8ab5-ae5f471c7532.html) [hereinafter *Independent Cattleman's Association*].

24. See *Independent Cattleman's Association*, *supra* note 23. Similar pledges have been made across the nation. See *USCA Continues COOL Tour*, U.S. CATTLEMEN'S ASS'N (Dec. 19, 2013), <http://www.us>

Bob McCan, a fifth generation rancher from Victoria, Texas, and NCBA President, has openly shared the challenges the Born, Raised, Slaughtered regime presents to his operation, which relies heavily on a supply of imported Mexican cattle due to its close proximity to the Mexico border.<sup>25</sup> For example, his ranch, with roughly 4,000 head of cattle, faces increased handling costs to segregate United States cattle from Mexican cattle throughout each chain of the production process.<sup>26</sup> Texas ranchers, like McCan, understandably face such challenges due to the beef industry's reliance on imports of Mexican feeder cattle during times of drought.<sup>27</sup> Logically, due to Texas's close proximity to Mexico, Texas shares a significant proportion of this reliance.<sup>28</sup> Texas, as the nation's leading beef producer, feeds approximately 6 million head of cattle annually, which constitutes around 28% of the United States' fed cattle supply.<sup>29</sup> Therefore, any issues that impact beef production, like COOL and the Born, Raised, Slaughtered regime, hold particular importance in Texas.<sup>30</sup>

Both foreign and domestic political pressure exists to resolve the challenges brought forth by COOL and the Born, Raised, Slaughtered regime.<sup>31</sup> Internationally, the Government of Canada announced in 2013 that our nation's insistence upon upholding COOL in its current form constitutes a "protectionist policy," not in compliance with the WTO's international trade standards.<sup>32</sup> Canada has consistently argued that mandatory COOL discriminates because (1) United States consumers discredit purchasing foreign-origin products, such as beef or pork born in Canada; and (2) it decreases demand for its exports and damages its industries.<sup>33</sup> Accordingly, Canada intends to place retaliatory tariffs on imported United States commodities, pending approval from the

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cattlemen.org/Templates/Press\_Room/2013\_Press\_Room/12-20USCA-Continues-COOL-Tour.html. The United States Cattlemen's Association has raised funds for the legal defense of COOL by hosting a "tour" of events across the country, including in Montana, South Dakota, North Dakota, Washington, and Virginia. *Id.*

25. Hotakainen, *supra* note 23.

26. *Id.*

27. Derrell S. Peel, *Cow-Calf Corner: Recent Changes in U.S.-Mexican Cattle and Beef Trade*, CATTLEMAN UPDATE (Dec. 9, 2013), [http://tsca.org/news\\_blog/2013/12/09/cow-calf-corner-recent-changes-in-us-mexican-cattle-and-beef-trade-body-conditioning-scores-the-more-things-change-the-more-they-stay-the-same/#.Urm1f0srwJ](http://tsca.org/news_blog/2013/12/09/cow-calf-corner-recent-changes-in-us-mexican-cattle-and-beef-trade-body-conditioning-scores-the-more-things-change-the-more-they-stay-the-same/#.Urm1f0srwJ).

28. *See, e.g., id.*

29. TEX. CATTLE FEEDERS ASS'N, <http://www.tcfa.org> (last visited Apr. 5, 2015). Access to grain, cattle, and a mild, dry climate make Texas the ideal location for cattle feeding. *See Beefacts*, CATTLE FEEDER'S RESOURCE GUIDE, 2014, at 59, 59–77, available at <http://www.tcfa.org/assets/resource-guide/2014/viewer/desktop/#page/1>.

30. *See supra* notes 23–29 and accompanying text.

31. *See, e.g.*, Press Release, Government of Canada: Foreign Affairs, Trade and Development Canada, Statement by Ministers Fast and Ritz on U.S. Country of Origin Labelling (June 7, 2013) [hereinafter Statement by Ministers Fast and Ritz], available at [http://www.international.gc.ca/media\\_commerce/comm/news-communiques/2013/06/07a.aspx](http://www.international.gc.ca/media_commerce/comm/news-communiques/2013/06/07a.aspx); Bradner, *supra* note 18.

32. Statement by Ministers Fast and Ritz, *supra* note 31. Generally, the WTO bans any sort of domestic policy that creates an arbitrary and unnecessary obstacle to trade. *See infra* Part II.C.

33. John W. Boscariol & Brenda C. Swick, *Canada Preparing to Impose a 100% Surtax on Imports from the United States*, MCCARTHY TETRAULT (Oct. 7, 2013), [http://www.mccarthy.ca/article\\_detail.aspx?id=6470](http://www.mccarthy.ca/article_detail.aspx?id=6470).

WTO.<sup>34</sup> These retaliatory tariffs may be placed on a wide variety of key United States exports, ranging from animal products, grains, and produce; to processed foods and alcohol; to non-agricultural, manufactured goods.<sup>35</sup> In total, the retaliatory tariffs, once implemented, may cost United States businesses, both agricultural and non-agricultural, approximately \$1.1 billion.<sup>36</sup> Canada justifies imposing the tariffs because its beef and pork industries stand to lose \$639 million and \$500 million per year respectively—more than \$1 billion total—as the effects of the Born, Raised, Slaughtered regime set in.<sup>37</sup> Only time, and the WTO, will tell if these consequences come to fruition.<sup>38</sup>

Domestically, opponents of COOL have also attempted to prevent enforcement of the Born, Raised, Slaughtered regime.<sup>39</sup> Eight meat industry trade associations filed suit in the United States District Court for the District of Columbia for preliminary injunctive relief, which the court denied on September 11, 2013.<sup>40</sup> After losing at the district court, the meat trade associations took their arguments to the United States Court of Appeals for the District of Columbia Circuit.<sup>41</sup>

This Comment presents the law and underlying facts that the agricultural industry must consider when making an informed opinion regarding COOL and its subsequent Born, Raised, Slaughtered regime.<sup>42</sup> Part II begins with the background and historical analysis of COOL from its enactment in 2002 to the current Born, Raised, Slaughtered regime.<sup>43</sup> Part III evaluates the importance of foreign supply to United States beef production and the challenges the Born, Raised, Slaughtered regime presents.<sup>44</sup> Part IV studies the effectiveness of the Born, Raised, Slaughtered regime in light of the local food movement sweeping over the United States.<sup>45</sup> Part V surveys the strain that COOL and the Born,

34. *Id.*; Statement by Ministers Fast and Ritz, *supra* note 31.

35. Boscariol & Swick, *supra* note 33; Statement by Ministers Fast and Ritz, *supra* note 31.

36. Carina Perkins, *Canada Launches WTO Action over US COOL*, GLOBALMEATNEWS.COM (Aug. 22, 2013), <http://www.globalmeatnews.com/Industry-Markets/Canada-launches-WTO-action-over-US-COOL>.

37. Boscariol & Swick, *supra* note 33.

38. *See WTO Sets Date for Hearing on COOL*, MEATPOULTRY.COM (Jan. 24, 2014), [http://www.meatpoultry.com/articles/news\\_home/Global/2014/01/WTO\\_sets\\_date\\_for\\_hearing\\_on\\_C.aspx?ID=%7BB4528895-061C-4E99-8CFE-72778770B01C%7D&cck=1](http://www.meatpoultry.com/articles/news_home/Global/2014/01/WTO_sets_date_for_hearing_on_C.aspx?ID=%7BB4528895-061C-4E99-8CFE-72778770B01C%7D&cck=1).

39. *See infra* Part II.E.3.

40. *See generally* *Am. Meat Inst. v. USDA*, 968 F. Supp. 2d 38 (D.D.C. 2013) (denying a preliminary injunction), *aff'd*, 746 F.3d 1065 (D.C. Cir.), *reh'g en banc granted, opinion vacated*, No. 13-5281, 2014 WL 2619836 (D.C. Cir. Apr. 4), *judgment reinstated*, 760 F.3d 18 (D.C. Cir. 2014). The plaintiffs in *American Meat Institute v. USDA* include some of North America's leaders in the meat industry: American Meat Institute, American Association of Meat Processors, Canadian Cattlemen's Association, Canadian Pork Council, National Cattlemen's Beef Association, National Pork Producers Council, North American Meat Association, and Southwest Meat Association. *See id.* at 42–43.

41. *See Am. Meat Inst.*, 760 F.3d at 21; Sarah Gonzalez, *Court to Weigh Injunction in Country of Origin Labeling Case*, AGRI-PULSE COMM., INC. (Jan. 9, 2014), <http://www.agri-pulse.com/Court-to-weigh-injunction-in-Country-of-Origin-Labeling-case-01-09-2014.asp>; *infra* Part II.E.3.

42. *See infra* Parts II–VI.

43. *See infra* Part II.

44. *See infra* Part III.

45. *See infra* Part IV.

Raised, Slaughtered regime place upon the United States' relationships with international agricultural trading partners.<sup>46</sup> Finally, Part VI makes recommendations for satisfying the needs of each stakeholder involved, and Part VII concludes with an analogy of how Texas's traditional cattle drives may coexist with the sophisticated demands of the twenty-first century.<sup>47</sup>

## II. BACKGROUND AND HISTORY OF COOL IN THE UNITED STATES

The United States imposes COOL at the federal level in two different ways: through tariff laws and farm bills.<sup>48</sup> First, the McKinley Tariff Act of 1890 mandated that "all articles of foreign manufacture" disclose their country of origin before importation into the United States.<sup>49</sup> This labeling policy traces back to the post-Civil War desire to promote sales of American goods.<sup>50</sup> Second, the COOL at issue in this Comment originated in the 2002 Farm Bill and mandates that all retailers label "covered" food products with their country of origin, regardless of whether the product has a foreign or domestic source.<sup>51</sup> The following sections discuss this requirement in detail.<sup>52</sup>

### A. Congressional Enactment of COOL

The COOL provisions of the 2002 Farm Bill mandated that "retailers" at the "final point of sale" inform consumers of "covered commodities" as to the country their food originated from.<sup>53</sup> This section discusses COOL's early requirements, its purpose, and the contrasting responses of the agricultural industry and consumers.<sup>54</sup>

#### 1. The Requirements of COOL

The 2002 enactment of COOL set forth relatively simple labeling requirements for beef products.<sup>55</sup> In fact, mandatory compliance with COOL

46. See *infra* Part V.

47. See *infra* Parts VI–VII.

48. Peter Chang, Note, *Country of Origin Labeling: History and Public Choice Theory*, 64 FOOD & DRUG L.J. 693, 707 (2009). Some states impose their own COOL requirements on certain food commodities, but federal COOL clearly preempts any overlapping state labeling requirements. *Id.* at 709.

49. *Id.* at 695; see 19 U.S.C. § 1304(a) (2012) ("[E]very article of foreign origin . . . imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.").

50. Chang, *supra* note 48, at 695.

51. See *infra* Part II.A–B.

52. See *infra* Part II.A–B.

53. 7 U.S.C. § 1638a(a)(1) (2012). This enactment served as an amendment to the Agricultural Marketing Act of 1946. Trussell, *supra* note 14, at 285.

54. See *infra* Part II.A.1–3.

55. Compare 7 U.S.C. § 1638a(a) (setting forth the basic requirements for COOL), with *id.* § 1638a(a)(2) (detailing the specific labeling requirements for various country of origin combinations for beef



did not go into effect until September 2004, providing adequate time for the agricultural industry to adjust its practices to better implement the labeling program.<sup>56</sup> The express statutory language set the burden of labeling food commodities on the retailer, who impliedly must impose this duty onto its suppliers in order to know which labels to apply.<sup>57</sup> Two further details regarding COOL in 2002 remain noteworthy.<sup>58</sup> First, mandatory COOL has never applied to restaurants or food service establishments.<sup>59</sup> This exemption creates a different standard between products sold at the grocery store versus meals served at a restaurant.<sup>60</sup> Second, COOL has never applied to processed food items.<sup>61</sup> For example, labels on fresh strawberries must comply with COOL while labels on strawberries sold in a non-perishable form—such as breakfast cereals with dried strawberries as an ingredient—need not comply.<sup>62</sup>

Of critical importance, the 2002 enactment of COOL provided little guidance regarding the actual labeling of the commodities from the various locations of origin.<sup>63</sup> Section 1638a(a)(2)(A) merely specified that beef may be labeled with a United States country of origin if it was “derived from an animal that was [] exclusively born, raised, and slaughtered in the United States.”<sup>64</sup> Further, the country of origin had to be displayed “by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.”<sup>65</sup> Other than these details, very little additional guidance existed on how producers could comply with COOL, leaving many questions unanswered in the eyes of agricultural producers.<sup>66</sup>

## 2. The Purpose of COOL

In enacting COOL into the 2002 Farm Bill, Congress sought to implement a methodology for educating consumers about where their food comes from.<sup>67</sup>

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products). When compared to today’s Born, Raised, Slaughtered regime, the 2002 COOL requirements appear even simpler. Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. 31,367, 31,367–69 (May 24, 2013) (to be codified at 7 C.F.R. pts. 60 & 65).

56. Trussell, *supra* note 14, at 286.

57. 7 U.S.C. § 1638a(a)(1).

58. *See id.* § 1638a(b).

59. *See id.*

60. *See, e.g., id.*

61. *See* 7 U.S.C. § 1638(2)(B) (2012).

62. *Compare id.* § 1638(2)(A)(v) (designating “a perishable agricultural commodity” as a “covered commodity” under COOL), *with id.* § 1638(2)(B) (excluding “an ingredient in a processed food item” from designation as a “covered commodity” under COOL).

63. *See* 7 U.S.C. § 1638a(a)(2).

64. *Id.* § 1638a(a)(2)(A).

65. *Id.* § 1638a(c)(1).

66. *See, e.g.,* Steve Brake, *Here’s How I Feel About COOL*, BEEF (July 1, 2003), [http://beefmagazine.com/mag/beef\\_heres\\_feel\\_cool](http://beefmagazine.com/mag/beef_heres_feel_cool).

67. 148 CONG. REC. H1537–40 (daily ed. Apr. 24, 2002) (statement of Rep. Hooley), *available at* <http://www.gpo.gov/fdsys/pkg/CREC-2002-04-24/pdf/CREC-2002-04-24-pt1-PgH1537-7.pdf>.

Upon arguing for the legislation, Representative Darlene Hooley of Oregon promoted that mandatory COOL allows consumers (1) to “buy American” by supporting American agriculture and (2) to know their food is grown in a safe place.<sup>68</sup> Further, representatives argued that consumers benefit from COOL by observing that their food products pass through United States inspection standards and by knowing they consume higher quality American products.<sup>69</sup> These initial considerations remained a driving force behind COOL’s implementation in years following, even though this language may not have been accurately reflected in the statute.<sup>70</sup>

### 3. *The Responses to COOL*

After COOL’s enactment, diverging opinions emerged due to discrepancies between COOL’s minimal added value to food products when compared to the heavy regulation imposed on the agricultural industry.<sup>71</sup> From the consumer perspective, studies conducted after COOL’s enactment showed that consumers became generally supportive of mandatory COOL on various products such as beef.<sup>72</sup> Advocates for COOL pointed out that consumers perceive United States-labeled meat products to be “safer and of higher quality” than imported meat.<sup>73</sup> The key limitations to this finding, however, included that consumers would only be willing to pay a premium for mandatory COOL if United States beef continued to meet their high expectations.<sup>74</sup> In this manner, consumers would appreciate COOL for providing country of origin information “as a proxy measure for quality and safety.”<sup>75</sup> Without this perception and expectation, limits most likely existed to the increased costs that consumers would spend on a labeling program.<sup>76</sup>

From the perspective of the beef and agricultural industries, criticism has constantly existed regarding COOL’s effectiveness as a marketing program.<sup>77</sup> At the outset of COOL’s implementation, feedlots, packers, processors, and retailers feared the new labeling, record keeping, and operating costs that could

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68. *Id.*

69. *Id.*

70. *See infra* Part II.B–C.

71. George, *supra* note 21.

72. *See* Wendy J. Umberger, *Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?*, CHOICES, 4th Quarter 2004, at 15, available at <http://www.choicesmagazine.org/2004-4/cool/2004-4-04.pdf> (evaluating the results of three separate surveys conducted in the two years following COOL’s enactment on consumer perceptions of mandatory COOL on meat products).

73. *Id.*

74. *Id.* For example, if an outbreak of a food-borne illness arose in beef originating from the United States, then consumers would probably find little value in paying a premium for mandatory COOL. *Id.*

75. Jill E. Hobbs, Presentation at the Policy Dispute Information Consortium 9th Agricultural and Food Policy Information Workshop: Traceability and Country of Origin Labelling 5 (Apr. 25, 2003), available at <http://pdic.tamu.edu/farmpolicy/hobbs.pdf>.

76. Umberger, *supra* note 72.

77. *See supra* note 21 and accompanying text.

potentially burden their operations.<sup>78</sup> Although COOL appeared to be a “straightforward concept,” tracking cattle stood to become a daunting task.<sup>79</sup> The costs of implementing COOL posed particularly difficult challenges in places like Texas where “cattle are often bought and sold several times and move through a complex and diverse set of stocker and feedlot production systems with much assembly, sorting[,] and commingling.”<sup>80</sup> Coupled with initial uncertainty as to consumer willingness to pay for COOL, this new legislation quickly became a hotly contested issue.<sup>81</sup>

### B. Amendments and Enforcement of COOL

Recognizing some flaws in COOL, Congress amended its provisions in the 2008 Farm Bill.<sup>82</sup> With this amendment, Congress sought to: (1) clarify issues regarding a product’s physical label, (2) establish four categories for the possible combinations of countries of origin for meat products, (3) set forth new requirements for labeling ground meat, (4) address concerns regarding the costs of COOL’s implementation, (5) limit the USDA’s authority to audit entities and mandate more stringent record keeping than required by statute, and (6) limit penalties for noncompliance to those entities that make a good faith effort to satisfy the COOL requirements.<sup>83</sup>

#### 1. 2008 Amendments to COOL

The 2008 amendment of COOL detailed additional labeling requirements for the various country of origin designations.<sup>84</sup> First, § 1638a(a)(2)(B)(i) specified that meat deriving from an animal that was “not exclusively born, raised, and slaughtered in the United States . . . may designate the country of origin of such covered commodity as all of the countries in which the animal may have been born, raised, or slaughtered.”<sup>85</sup> Therefore, a steer born in Mexico and raised and slaughtered in the United States would be labeled “Product of United States and Mexico.”<sup>86</sup> Second, by adding

78. David P. Anderson & Oral Capps, Jr., *Country-of-Origin Labeling and the Beef Industry*, CHOICES, 4th Quarter 2004, at 5, available at <http://www.choicesmagazine.org/2004-4/cool/2004-4-01.pdf>.

79. See Derrell S. Peel, *Implementation of Country of Origin Labeling (COOL) in the Beef Industry*, CHOICES, 4th Quarter 2008, at 35, 36, available at [http://www.choicesmagazine.org/magazine/pdf/article\\_44.pdf](http://www.choicesmagazine.org/magazine/pdf/article_44.pdf).

80. *Id.* at 37.

81. Anderson & Capps, Jr., *supra* note 78.

82. See 7 U.S.C. § 1638 (2012).

83. See 153 CONG. REC. E1681 (daily ed. Aug. 2, 2007) (statement of Rep. Peterson), available at <http://www.gpo.gov/fdsys/pkg/CREC-2007-08-02/pdf/CREC-2007-08-02-pt1-PgE1681-5.pdf>.

84. See 7 U.S.C. § 1638a(a)(2) (2012). The 2008 COOL amendment remains the current statutory language. 7 U.S.C. § 1638.

85. 7 U.S.C. § 1638a(a)(2)(B)(i).

86. See, e.g., *id.* A steer that was born and raised in Mexico and slaughtered in the United States could also bear a label with “Product of United States and Mexico.” *Id.* If a retailer had product from both of these

§§ 1638a(d)(2)(A)–(B), Congress specified that records from the “normal conduct of the business” must be sufficient to provide the required labeling notification of the country of origin.<sup>87</sup> Importantly, this additional section effectively prohibited the USDA from imposing more burdensome record-keeping requirements when implementing COOL.<sup>88</sup> Moving ahead to current enforcement of COOL, the 2008 amendments play an important role in the statutory limitations that forced the USDA into the Born, Raised, Slaughtered regime.<sup>89</sup>

## 2. 2009 Enforcement of Mandatory COOL

To assist the beef industry in implementing COOL, the USDA’s Agricultural Marketing Service (AMS) issued a rule on January 15, 2009, which interpreted COOL’s requirements.<sup>90</sup> Specifically, this rule detailed the appropriate labels for meat products derived from multiple countries of origin.<sup>91</sup> The labeling system specified four different labeling categories:

- (1) “Product of the United States” for meat derived from an animal born, raised, and slaughtered in the United States, or present in the United States on or before July 15, 2008;
- (2) “Product of the United States, Country X, and [] Country Y” for meat derived from an animal born and raised in Country X and (if applicable) Country Y and imported into the United States more than two weeks before slaughter (including, for example, feeder cattle finished in the United States);
- (3) “Product of Country X and the United States” for meat derived from an animal imported from Country X to be slaughtered within two weeks; and

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steers, the beef could still be packaged with the same label even though the steers were raised in different locations. *Id.* This practice constituted a “commingling allowance,” which the Born, Raised, Slaughtered regime banned. Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. 31,367, 31,369 (May 24, 2013) (to be codified at 7 C.F.R. pts. 60 & 65).

87. 7 U.S.C. § 1638a(d)(2)(A) (“Records maintained in the course of the normal conduct of the business of such person, including animal health papers, import or customs documents, or producer affidavits, may serve as such verification.”).

88. *See id.* § 1638a(d)(2)(B) (“The Secretary may not require a person that prepares, stores, handles, or distributes a covered commodity to maintain a record of the country of origin of a covered commodity other than those maintained in the course of the normal conduct of the business of such person.”).

89. *See* REMY JURENAS & JOEL L. GREENE, CONG. RESEARCH SERV., RS22955, COUNTRY-OF-ORIGIN LABELING FOR FOODS AND THE WTO DISPUTE ON MEAT LABELING 23 (2013), available at <http://fas.org/sgp/crs/misc/RS22955.pdf>; *infra* Part VI.C.

90. Mandatory Country of Origin Labeling of Beef, 74 Fed. Reg. 2,658, 2,658–59 (Jan. 15, 2009) (to be codified at 7 C.F.R. pts. 60 & 65).

91. *Id.*

(4) “Product of Country X” for meat derived from animals slaughtered outside the United States and imported as finished meat products from Country X.<sup>92</sup>

Further, even though the 2009 rule acknowledged that the USDA may not require additional record keeping, it still mandated that “any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly . . . must make available information to the subsequent purchaser about the country[ ] of origin and method of production, as applicable, of the covered commodity.”<sup>93</sup> This record keeping provision created a sensitive pressure point for the beef industry because prior to COOL, the industry did not have to “transmit country-of-origin information to the subsequent purchaser [or] maintain records sufficient to identify the immediate prior source and immediate subsequent recipient of the animal.”<sup>94</sup> Nevertheless, the 2009 rule became effective on March 16, 2009, and met the deadline set by the 2008 Farm Bill for implementation.<sup>95</sup>

### C. Round 1: International Challenges to COOL

Established on January 1, 1995, as a forum in which governments may come together to negotiate trade agreements, the WTO settles trade disputes and operates trade rules.<sup>96</sup> The WTO takes particular interest in trade barriers that block access to open markets for its 159 member countries.<sup>97</sup> To act upon this interest, a series of negotiated trade agreements provide the basic legal grounds for the WTO’s regulation of international trade.<sup>98</sup> For example, the WTO Agreement on Technical Barriers to Trade (TBT Agreement) aims to prevent the arbitrary use of “unnecessary obstacles” to trade.<sup>99</sup> The TBT Agreement determines how to evaluate “regulations, standards, testing and certification procedures” to prevent protectionism while maintaining the rights of members to use measures for legitimate policy objectives.<sup>100</sup> Using the TBT Agreement as a governing body of international law, WTO member countries challenged COOL’s validity as a protectionist policy.<sup>101</sup>

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92. *Id.*; see First Amended Complaint at 12, *Am. Meat Inst. v. USDA*, 968 F. Supp. 2d 38 (D.C. Cir. 2013) (No. 1:13-CV-1033-KBJ), 2013 WL 4786371.

93. Mandatory Country of Origin Labeling of Beef, 74 Fed. Reg. at 2,663.

94. First Amended Complaint, *supra* note 92, at 6.

95. Mandatory Country of Origin Labeling of Beef, 74 Fed. Reg. at 2,658.

96. *Understanding the WTO: Who We Are*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/whatis\\_e/who\\_we\\_are\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm) (last visited Jan. 10, 2015).

97. *Id.*

98. *Id.*

99. *Technical Barriers to Trade*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm) (last visited Jan. 10, 2015).

100. *Id.*

101. See *infra* Part II.C.1.

*1. Canada's and Mexico's Contentions Against COOL*

After COOL went into effect in 2009, Canada and Mexico filed a complaint with the WTO, alleging that requiring product labels to name a country of origin failed to comply with the TBT Agreement.<sup>102</sup> Specifically, Canada and Mexico challenged COOL as it pertained to beef and pork because both industries experience significant integration across North America.<sup>103</sup> Both Canada and Mexico rely upon the sale of cattle to United States feedlots and packing plants.<sup>104</sup> Canada, in particular, rightly feared that COOL would lead to decreased demand for Canadian livestock resulting from the anticipated cost increase for labeling and tracking imported livestock.<sup>105</sup> To solidify this argument, Canada and Mexico turned to WTO legal authority.<sup>106</sup>

Of primary importance to this WTO dispute, Canada and Mexico challenged COOL as a protectionist measure in violation of Articles 2.1 and 2.2 of the TBT Agreement.<sup>107</sup> First, Article 2.1 ensures that “products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.”<sup>108</sup> Canada and Mexico pointed out that mandatory COOL compliance adds expenses to segregate product from imported livestock from the remainder of the production chain.<sup>109</sup> Therefore, higher costs adversely impact the competitiveness of meat products from imported livestock in the United States marketplace, thus creating less

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102. Request for Consultations by Canada, *United States—Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/1 (Dec. 4, 2008). Following the initiation of the dispute, twelve additional countries and the European Union joined the litigation against the United States as third-party participants. Appellate Body Report, *supra* note 15, ¶ 11. Notably, Brazil, China, Japan, and South Korea entered the dispute; these nations constitute four of the United States’ top ten trading partners for all goods, not just agricultural goods. *Id.*; *Foreign Trade: Top Trading Partners—September 2014*, U.S. CENSUS BUREAU, <http://www.census.gov/foreign-trade/statistics/highlights/toppartners.html> (last visited Nov. 23, 2014). Canada and Mexico, the initiators of the WTO complaint, are the United States’ first and third top trading partners, respectively. *Id.*

103. Appellate Body Report, *supra* note 15, ¶ 3.

104. *Id.*

105. Press Release, Foreign Affairs, Trade and Development Canada, Canada Wins World Trade Organization Case on U.S. Country-of-Origin Labelling (Nov. 18, 2011, 11:30 AM), *available at* [http://www.international.gc.ca/media\\_commerce/comm/news-communiqués/2011/349.aspx?lang=eng](http://www.international.gc.ca/media_commerce/comm/news-communiqués/2011/349.aspx?lang=eng). In all respects, Canada’s fear became a reality in October 2013 when Tyson Foods announced it would no longer purchase Canadian fed cattle. Braedon Clark, *U.S.—Canada Meat Labeling Dispute Hurting Sask. Producers*, HUMBOLDT J. (Nov. 13, 2013), <http://www.humboldtjournal.ca/article/20131113/HUMBOLDT0101/131119953-1/humboldt01/us-canada-meat-labeling-dispute-hurting-sask-producers>. In total, lost cattle sales to the United States cost Canadian producers \$600 million per year, even before Tyson Foods made its October 2013 announcement. *Id.*

106. See Agreement on Technical Barriers to Trade, Apr. 15, 1994, 1868 U.N.T.S. 120, arts. 2.1 & 2.2, *available at* [http://www.wto.org/english/docs\\_e/legal\\_e/17-tbt.pdf](http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf) [hereinafter TBT Agreement].

107. Appellate Body Report, *supra* note 15, ¶ 4.

108. TBT Agreement, *supra* note 106, art. 2.1.

109. Appellate Body Report, *supra* note 15, ¶ 4.

favorable treatment than accorded to United States livestock.<sup>110</sup> Second, Article 2.2 of the TBT Agreement mandates:

[T]echnical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.<sup>111</sup>

Canada and Mexico argued that because the objective of COOL was to protect domestic industries and promote and enable purchases of United States products, the United States had not fulfilled a legitimate objective by enacting COOL legislation.<sup>112</sup> Ultimately, the arguments set forth by Canada and Mexico held significant merit.<sup>113</sup>

## 2. The WTO's Decision Regarding COOL

Both the WTO Dispute Resolution Panel and the WTO Appellate Body unequivocally agreed that mandatory COOL violated the TBT Agreement.<sup>114</sup> With respect to alleged violations of Article 2.1 of the TBT Agreement, the WTO Dispute Resolution Panel initially found that because COOL “treats imported livestock differently than domestic livestock,” it “modifies the conditions of competition in the US market to the detriment of imported livestock by creating an incentive in favour of processing exclusively domestic livestock and a disincentive against handling imported livestock.”<sup>115</sup> The WTO Appellate Body then held that, particularly with muscle cuts of meat, COOL violates Article 2.1 because “it accords less favourable treatment to imported livestock than to like domestic livestock.”<sup>116</sup> The WTO noted that issues arise

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110. *Id.*

111. TBT Agreement, *supra* note 106, art. 2.2.

112. Appellate Body Report, *supra* note 15, ¶ 4.

113. *See infra* Part II.C.2.

114. Panel Report, *United States—Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/R (Nov. 18, 2011); Appellate Body Report, *supra* note 15, ¶ 496. The Dispute Settlement Body establishes the WTO Dispute Resolution Panel, which is made up entirely of WTO members. *Understanding the WTO: Settling Disputes*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp1\\_e.htm#appeals](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm#appeals) (last visited Jan. 10, 2015). The Dispute Settlement Body considers cases and chooses whether to accept or reject the findings of the Dispute Resolution Panel. *Id.* After a case is decided, the Dispute Settlement Body also “monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.” *Id.* The Dispute Settlement Body sets up and oversees the WTO Appellate Body. *Id.* Appeals in the WTO Dispute Settlement Process must be based on issues of legal interpretation or other points of law. *Id.*

115. Appellate Body Report, *supra* note 15, ¶¶ 265, 292.

116. *Id.* ¶ 350.

when requiring producers to collect country of origin information while not effectively revealing all of that information to the consumer on the labels.<sup>117</sup> With respect to alleged violations of Article 2.2 of the TBT Agreement, the WTO Appellate Body held that the objective of COOL, as promoted by the United States, is to provide information to the consumer regarding a product's origin.<sup>118</sup> The Appellate Body then refused to finish the legal analysis of Article 2.2 violations due to a lack of undisputed facts on the record.<sup>119</sup> The WTO set a May 23, 2013, deadline for the United States to bring COOL into compliance with the WTO's trade standards, leaving the USDA ten months to restructure COOL.<sup>120</sup>

*D. The United States' Response to COOL's International Invalidity*

To bring COOL into compliance with WTO standards, the USDA released a proposed rule called the Born, Raised, Slaughtered regime on May 23, 2013.<sup>121</sup> The Born, Raised, Slaughtered regime requires meat products to "specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin destination."<sup>122</sup> Four new labeling standards for meat products exist:

- (1) "Born, Raised, and Slaughtered in the United States" for products from animals exclusively of U.S. origin;
- (2) "Born in Country X, Raised and Slaughtered in the United States" for product from animals imported from another country as feeder cattle;
- (3) "Born and Raised in Country X, Slaughtered in the United States" for product from animals imported as fed cattle for immediate slaughter; and
- (4) "Product of Country X" for product from animals imported as finished products ready for retail.<sup>123</sup>

Ultimately, the Born, Raised, Slaughtered regime bans the commingling of packaged meats with different countries of origin at production stages into a single retail package.<sup>124</sup> For example, steaks from animals born in Mexico,

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117. Pepler, *supra* note 14, at 426–27. COOL supporters now cite that the Born, Raised, Slaughtered regime complies with the WTO decision because it effectively reveals all of the collected country of origin information to the consumer. *Id.*

118. Appellate Body Report, *supra* note 15, ¶ 496.

119. *Id.*

120. John Maday, *WTO Sets Deadline for COOL Compliance*, DROVERS CATTLE NETWORK (Dec. 5, 2012, 5:22 PM), <http://www.cattlenetwork.com/news/industry/wto-sets-deadline-cool-compliance>.

121. Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. 31,367, 31,367 (May 24, 2013) (to be codified at 7 C.F.R. pts. 60 & 65).

122. *Id.*

123. *Id.* at 31,368–69.

124. *Id.* Upon removing this commingling allowance, the USDA argued that "consumers benefit from more specific labels." *Id.* at 31,369. The Born, Raised, Slaughtered regime was created as a direct result of



raised in the United States, and slaughtered in the United States must be packaged separately than steaks from animals born and raised in Mexico and slaughtered in the United States.<sup>125</sup> By requiring these products to detail all three locations of the production chain, the USDA asserts that consumers acquire more detailed knowledge regarding the origins of their food.<sup>126</sup> The USDA expects that packers, processors, and retailers will incur most of the costs of implementing COOL's new labeling program.<sup>127</sup> When considering the costs to make label changes and ban the commingling of products, the USDA estimated that the Born, Raised, Slaughtered regime could incur up to \$192.1 million in implementation costs.<sup>128</sup> The USDA provided a six-month grace period for producers to bring their operations into compliance, and the Born, Raised, Slaughtered regime officially became effective on November 23, 2013.<sup>129</sup>

### *E. Consequences of the "Born, Raised, Slaughtered" Regime*

To the detriment of the beef industry, the Born, Raised, Slaughtered regime caused even further controversy regarding COOL.<sup>130</sup> Once again, Canada challenged COOL's validity before the WTO with an entirely new set of arguments against the Born, Raised, Slaughtered regime.<sup>131</sup> Further, Canada threatened to impose retaliatory tariffs on United States imports that could cripple domestic industries.<sup>132</sup> Lastly, meat industry associations filed suit against the USDA with various allegations against the validity of COOL and the Born, Raised, Slaughtered regime.<sup>133</sup> The following sections discuss each of these individual consequences.<sup>134</sup>

#### *1. Round 2: Another WTO Dispute Over COOL*

After the United States' alleged noncompliance with the WTO's recommendation to align COOL with international trade standards, Canada

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the commingling ban simply because no other labeling option existed during the time the WTO did not allow the previous labeling system. *Id.*

125. *See, e.g., id.* at 31,369.

126. *Id.* at 31,374.

127. *Id.*

128. *Id.* at 31,368.

129. *Id.* at 31,369. During this six-month grace period, AMS was to "conduct an industry education and outreach program concerning the provisions and requirements of [the] rule." *Id.* Additional information on how to comply with the Born, Raised, Slaughtered regime can be found on the AMS website. *Country of Origin Labeling*, AGRIC. MARKETING SERVICE, U.S. DEPARTMENT AGRIC., <http://www.ams.usda.gov/cool> (last visited Jan. 10, 2015).

130. *See infra* Part II.E.1–3.

131. *See infra* Part II.E.1.

132. *See infra* Part II.E.2.

133. *See infra* Part II.E.3.

134. *See infra* Part II.E.1–3.

requested the formation of another WTO compliance panel to review the validity of the Born, Raised, Slaughtered regime.<sup>135</sup> Canada argued that COOL, even in its current form, remains an “unfair trade practice[]” that severely damages the Canadian beef industry and decreases jobs available for Canadian workers.<sup>136</sup> Already, Tyson Foods, Inc., the nation’s largest meat processor, stopped purchasing Canadian fed cattle in October 2013 due to the higher costs of complying with COOL when foreign cattle must be tracked and segregated.<sup>137</sup> Current estimates predict the Canadian beef industry loses up to \$90–\$100 per head in light of COOL’s new Born, Raised, Slaughtered regime.<sup>138</sup> Canada held a compelling case against the United States once again, and on February 18–19, 2014, a public hearing took place at the WTO in Geneva, Switzerland.<sup>139</sup> As a result, the WTO shot down the Born, Raised, Slaughtered regime as an invalid restriction on international trade.<sup>140</sup> The United States, however, appealed.<sup>141</sup> Therefore, when looking at the timeline for the WTO Dispute Settlement Process, the WTO may not reach a final decision until 2015.<sup>142</sup>

## 2. Retaliatory Tariffs—More Important than Just Tariffed Swivel Seats

Because the Canadian agricultural industry faces serious and devastating losses, the Canadian government plans to protect its industry using all means possible.<sup>143</sup> Canada released a list of products on which it plans to impose retaliatory tariffs, pending the WTO’s approval.<sup>144</sup> The retaliatory tariffs could cost the United States \$1–\$2 billion.<sup>145</sup> Targeted products range from manufactured goods—such as swivel seats, wooden office furniture, and

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135. Perkins, *supra* note 36.

136. *Id.* (quoting Canada’s International Trade Minister, Ed Fast, and Agriculture Minister, Gerry Ritz).

137. *Tyson Foods Stops Buying Canada Slaughter Cattle as Costs Rise*, REUTERS (Oct. 25, 2013), available at <http://in.reuters.com/article/2013/10/24/tyson-canada-cattle-idINL1N0IE24O20131024>. The increased expenses for COOL compliance include product costs, product segregation, and production breaks. *Id.* The expenses of the Born, Raised, Slaughtered regime will be discussed in further detail later. See *infra* Part III.C.

138. Kelvin Heppner, *U.S. Buyers Stop Purchasing Canadian Cattle*, PORTAGE ONLINE (Oct. 16, 2013), [http://www.portageonline.com/index.php?option=com\\_content&task=view&id=34239&Itemid=526](http://www.portageonline.com/index.php?option=com_content&task=view&id=34239&Itemid=526).

139. Perkins, *supra* note 36; see *WTO Sets Date for Hearing on COOL*, *supra* note 38. A public hearing serves as one of the first stages of the WTO Dispute Settlement Process. *Understanding the WTO: Settling Disputes*, *supra* note 114. At this hearing, both Canada and the United States will present their arguments. See, e.g., *id.* Any third parties with an interest in the dispute will also present their case. *Id.*

140. Panel Report, *United States—Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/RW (Oct. 20, 2014) [hereinafter COOL Panel Report]; Nirmala Menon, *WTO Panel Decides Against U.S. in Meat-Labeling Dispute*, WALL ST. J. (Aug. 21, 2014), <http://online.wsj.com/articles/wto-panel-decides-against-u-s-in-meat-labeling-dispute-1408645566>.

141. Damian Paletta, *U.S. Appeals WTO Meat-Label Ruling*, WALL ST. J., Nov. 28, 2014, <http://www.wsj.com/articles/u-s-appeals-wto-meat-label-ruling-1417209053>.

142. See *Understanding the WTO: Settling Disputes*, *supra* note 114.

143. Statement by Ministers Fast and Ritz, *supra* note 31.

144. *Id.*

145. Boscarior & Swick, *supra* note 33.

mattresses—to agricultural goods that are key exports of the United States’ agricultural industry—such as meats, dairy products, produce, grains, wine, and processed food products.<sup>146</sup> Due to the United States’ reliance on a successful and peaceful trade relationship with Canada, resolving the conflict at hand and preventing retaliatory tariffs should be a priority.<sup>147</sup>

### 3. American Meat Institute v. United States Department of Agriculture

In an attempt to prevent implementation of the Born, Raised, Slaughtered regime, nine meat industry associations filed suit in the United States District Court for the District of Columbia.<sup>148</sup> In *American Meat Institute v. United States Department of Agriculture*, the plaintiffs asserted three claims against the USDA’s rule: (1) the Born, Raised, Slaughtered regime violates their First Amendment right to free speech and to refrain from speaking at all, (2) it exceeds the authority granted to the USDA in the 2008 Farm Bill, and (3) it violates the arbitrary and capricious standard for agency action in the Administrative Procedure Act.<sup>149</sup>

The district court denied American Meat Institute’s (AMI) request for a preliminary injunction.<sup>150</sup> Particularly, the court did not find that AMI could demonstrate its likelihood of success on the merits of its claim or that it would suffer irreparable harm.<sup>151</sup> First, with regard to AMI’s First Amendment claim, the court found that the Born, Raised, Slaughtered regime was “reasonably related to the [USDA’s] interest in preventing deception of consumers,” satisfying the *Zauderer* standard.<sup>152</sup> To dispose of AMI’s administrative law arguments, the court applied *Chevron*’s two-step standard.<sup>153</sup> The court found that the USDA acted within its statutory authority to promulgate the Born, Raised, Slaughtered regime.<sup>154</sup> Second, regarding the beef industry’s

146. *Id.*

147. *See infra* Part III.A.1.

148. First Amended Complaint, *supra* note 92, at 5–8. After the initiation of this lawsuit, ranching groups that supported COOL joined the litigation as defendants and intervenors. Tom Lutey, *Ranch Groups Prepare for Fight over Food Labels*, MONT. STANDARD, Sept. 7, 2013, [http://mtstandard.com/news/local/state-and-regional/ranch-groups-prepare-for-fight-over-food-labels/article\\_170317aa-1764-11e3-b7b4-0019bb2963f4.html](http://mtstandard.com/news/local/state-and-regional/ranch-groups-prepare-for-fight-over-food-labels/article_170317aa-1764-11e3-b7b4-0019bb2963f4.html).

149. First Amended Complaint, *supra* note 92, at 4–5.

150. *Am. Meat Inst. v. USDA*, 968 F. Supp. 2d 38, 76 (D.D.C. 2013) (denying a preliminary injunction), *aff’d*, 746 F.3d 1065 (D.C. Cir.), *reh’g en banc granted, opinion vacated*, No. 13-5281, 2014 WL 2619836 (D.C. Cir. Apr. 4), *judgment reinstated*, 760 F.3d 18 (D.C. Cir. 2014).

151. *Id.* at 75. These two elements are required to issue a preliminary injunction. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The court also found that AMI did not demonstrate the other two factors: the balance of harms and the public interest factors. *Am. Meat Inst.*, 968 F. Supp. 2d at 74–75; *see Winter*, 555 U.S. at 20. Because AMI focused its argument on the first two factors, the court focused its analysis on those two factors as well. *Am. Meat Inst.*, 968 F. Supp. 2d at 75.

152. *Am. Meat Inst.*, 968 F. Supp. 2d at 51 (quoting *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985)).

153. *Id.* at 53; *see Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.* 467 U.S. 837, 843 (1984).

154. *Am. Meat Inst.*, 968 F. Supp. 2d at 55–56.

irreparable harm, the court found that the harm AMI discussed presented an indirect threat insufficient to meet the burden for a preliminary injunction.<sup>155</sup> Although AMI's arguments did not succeed, litigation on the case continued in the United States Circuit Court for the D.C. Circuit.<sup>156</sup>

Initially, the D.C. Circuit panel agreed with the district court's findings.<sup>157</sup> But the panel recommended that the case be reheard en banc to reevaluate the First Amendment considerations at play.<sup>158</sup> Specifically, the court turned to "[w]hether, under the First Amendment, judicial review of mandatory disclosure of 'purely factual and uncontroversial' commercial information, compelled for reasons other than preventing deception, can properly proceed under [the *Zauderer* standard] or whether such compelled disclosure is subject to review under [the *Central Hudson* standard]."<sup>159</sup> In July 2014, the D.C. Circuit, en banc, rejected application of the stricter *Central Hudson* standard and affirmed the district court—a decision this Comment discusses in more detail below.<sup>160</sup>

### III. THE REALITY OF THE BURDEN CAUSED BY THE "BORN, RAISED, SLAUGHTERED" REGIME

President Dwight D. Eisenhower once said, "Farming looks mighty easy when your plow is a pencil and you're a thousand miles from the corn field."<sup>161</sup> The same concept applies to beef production; many consumers know very little about beef production from farms to supermarkets.<sup>162</sup> For example, in direct response to the segregation challenges COOL placed on Bob McCan's ranch in Victoria, Texas, Joel Joseph, chairman of the Made in the USA Foundation in Los Angeles, commented, "If he doesn't want to segregate his cattle, then he

155. *Id.* at 71–72; see *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam).

156. *Am. Meat Inst. v. USDA*, No. 13-5281, 2014 WL 2619836, at \*1 (D.C. Cir. Apr. 4, 2014) (per curiam); *Am. Meat Inst.*, 968 F. Supp. 2d at 76 (order denying preliminary injunction).

157. *Am. Meat Inst. v. USDA*, 746 F.3d 1065, 1067 (D.C. Cir.), *reh'g en banc granted, opinion vacated*, No. 13-5281, 2014 WL 2619836 (D.C. Cir. Apr. 4), *judgment reinstated*, 760 F.3d 18 (D.C. Cir. Apr. 4).

158. *Am. Meat Inst.*, 2014 WL 2619836, at \*1 (vacating the judgment from March 28, 2014, and ordering rehearing en banc).

159. *Id.*; see also *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985) ("We recognize that unjustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech. But we hold that an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers."); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 565 (1980) ("[T]he First Amendment mandates that speech restrictions be 'narrowly drawn.' The regulatory technique may extend only as far as the interest it serves. The State cannot regulate speech that poses no danger to the asserted state interest, nor can it completely suppress information when narrower restrictions on expression would serve its interest as well." (citations omitted)).

160. *Am. Meat Inst.*, 760 F.3d at 20; see *infra* Part VI.A.

161. *Dwight D. Eisenhower Quotes*, BRAINY QUOTE, [http://www.brainyquote.com/quotes/authors/d/dwight\\_d\\_eisenhower.html](http://www.brainyquote.com/quotes/authors/d/dwight_d_eisenhower.html) (last visited Jan. 10, 2015).

162. *Consumer Image Index*, BEEF CHECKOFF, <http://www.beefretail.org/consumerimageindex.aspx> (last visited Jan. 10, 2015). "Only 22% of the general population feels knowledgeable about beef production." *Id.*

shouldn't get cattle from Mexico."<sup>163</sup> Unfortunately, the answer to COOL is not as simple as this advice.<sup>164</sup> To address such comments, this Part discusses the burdens the Born, Raised, Slaughtered regime places on beef producers, revealing why underlying knowledge about beef production plays an important role in understanding COOL.<sup>165</sup> Therefore, this Part evaluates (1) the importance of the foreign beef supply to domestic beef production; (2) the challenges the commingling ban places on beef production; and (3) the additional implementation costs, which ranchers, producers, and consumers must share.<sup>166</sup> Hitting these discussion points is essential because a cattleman from Texas appreciates ranching advice from a city dweller in Los Angeles almost as much as a vegan appreciates the annual Blue Ribbon Bacon Festival in Des Moines, Iowa.

#### *A. The Importance of Foreign Livestock to United States Beef Production*

Since the implementation of the North American Free Trade Agreement (NAFTA) in 1993, the livestock, and especially beef, markets of the United States, Canada, and Mexico have experienced significant "vertical integration."<sup>167</sup> The continually decreasing size of the United States cattle herd forces domestic producers to rely on imports of live cattle for a variety of needs, including breeding cattle, feeder cattle, fed cattle, and dairy cattle.<sup>168</sup> In fact, on average, approximately 8%–20% of the United States' total meat production derives from foreign-born origins.<sup>169</sup> As reliance upon vertical integration of the beef industry increases trade, concerns arise with regard to tracking and labeling products to comply with COOL.<sup>170</sup> In order to successfully implement the Born, Raised, Slaughtered regime, a labeling program, like COOL, must consider the significant role international trade plays in United States beef production.<sup>171</sup>

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163. See Hotakainen, *supra* note 23.

164. See *infra* Part III.A–C.

165. See *infra* Part III.A–C.

166. See *infra* Part III.A–C.

167. Michael J. McConnell et al., *U.S. Red Meat Production from Foreign-Born Animals*, 3 *AGRIC. SCI.*, no. 2, 2012, at 201.

168. *Id.* at 202; James Andrews, *Imports and Exports: The Global Beef Trade*, *FOOD SAFETY NEWS* (Nov. 18, 2013), <http://www.foodsafetynews.com/2013/11/imports-and-exports-the-beef-trade/#.Uss66P0srwI>. The United States cattle herd has decreased to 1950s levels with approximately 90 million head, down from the peak herd size of 115 million head in the 1980s. *Id.*

169. Kenneth Mathews et al., *How Much U.S. Meat Comes from Foreign Sources?*, U.S. DEPARTMENT AGRIC.: ECON. RES. SERVICE (Sept. 20, 2012), <http://www.ers.usda.gov/amber-waves/2012-september/how-much-us-meat.aspx#.Uuh7bf16gzY>.

170. See McConnell et al., *supra* note 167, at 201.

171. See *id.* at 207.

### 1. Canada

Cattle trade between Canada and the United States perfectly exemplifies the vertical integration of North American beef production.<sup>172</sup> Many similarities exist between beef production in the two countries, and Canadian cattle provide a key contribution to the United States' ability to produce the world's best beef.<sup>173</sup> In fact, to fill slaughterhouse and feedlot capacity in the United States, producers import fed cattle to send to immediate slaughter and feeder cattle to finish in feedlots and stocker programs.<sup>174</sup> In 2008, before COOL went into effect, the United States imported approximately 1.6 million head of Canadian cattle, valued at nearly \$1.5 billion.<sup>175</sup> After COOL went into effect, that number dropped to approximately 1.1 million head in 2009, valued at nearly \$1.1 billion.<sup>176</sup> When considering that Canada's cow herd totals only 3.7 million head, these export figures seem staggering.<sup>177</sup> Therefore, any decrease in United States reliance on Canadian cattle production logically induces headaches for Canadian cattlemen.<sup>178</sup> Those headaches worsen when looking at the effects of decreased demand for Canadian cattle on Canada's economy, such as the overall decline in prices for fed cattle across the largest cattle-producing regions of the country.<sup>179</sup> Further, in the long term, the overall size of the Canadian cow herd has declined because the lower prices encourage ranchers to pursue other professions, such as growing crops.<sup>180</sup> Consequently, with disruptions like COOL to the Canadian cattle industry, few can blame Canada for taking action to get the United States "to keep the status quo."<sup>181</sup>

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172. *See id.* at 201.

173. *See id.* at 202. Both the United States and Canada operate similar breeding programs and feeding regimens with similar goals to produce "high-quality, grain-fed beef." *Id.*

174. *See id.* at 202–03.

175. *Id.*

176. *Id.*

177. Nevil Speer, *Industry at a Glance: U.S. vs. Canada—Operation Size & Cow Inventory*, BEEF (July 2, 2013), <http://beefmagazine.com/cattle-industry-structure/industry-glance-us-vs-canada-operation-size-cow-inventory>. In comparison, the United States cow herd contains approximately 29 million head. *Id.*

178. *See* Clark, *supra* note 105.

179. *See* Lee L. Schulz et al., *Trade-Related Policy and Canadian-U.S. Fed Cattle Transactions Basis*, 36 J. AGRIC. & RESOURCE ECON. 313, 323–24 (2011), available at <http://ageconsearch.umn.edu/bitstream/117174/2/JARE,Aug2011,%2306,pp313-325,Schulz.pdf>.

180. *See* Interview by Lyndsey Smith with Brian Perillat, Senior Mkt. Analyst, Canfax, in Arborg, Man. (Jan. 8, 2014), available at <http://www.realagriculture.com/2014/01/is-this-the-new-normal-size-of-the-canadian-cow-herd-brian-perillat-canfax/>.

181. Nirmala Menon, *Canada Cattle Producers Feeling the Heat from COOL*, WALL ST. J., Sept. 26, 2013, <http://blogs.wsj.com/canadarealtime/2013/09/26/canada-cattle-producers-feeling-the-heat-from-cool/> (quoting John Masswohl, director of government and international relations for the Canadian Cattlemen's Association).

## 2. Mexico

The United States' trade relationship with the Mexican cattle market differs slightly from the one between the United States and Canada.<sup>182</sup> Primarily, the United States imports feeder cattle from Mexico that Mexican producers breed specifically to sell to United States feedlots.<sup>183</sup> Additionally, because the United States holds a comparative advantage in finishing cattle in feedlots and processing cattle in slaughterhouses, Mexican producers—particularly those in northern regions near Texas—utilize their comparative advantage in running cow–calf operations.<sup>184</sup> The ability to capitalize on these comparative advantages makes the beef industry more efficient.<sup>185</sup>

The 2012 drought that depleted the Texas cow herd forced ranchers to rely heavily on Mexican imports to restock their operations.<sup>186</sup> Unfortunately, because COOL segregation costs decrease the profit in purchasing Mexican cattle, ranchers will stop purchasing them—similar to Tyson Foods' decision to stop buying Canadian fed cattle.<sup>187</sup> The Born, Raised, Slaughtered regime, therefore, harms the ability of Texas to replenish its cow herd and also harms Mexico by decreasing Texas's demand for Mexican cattle.<sup>188</sup> This fact has already damaged the Texas economy through the closing of beef packing plants—including a Cargill facility in Plainview, Texas, in February 2013 and L&H Packing Co. in San Antonio, Texas, in August 2014.<sup>189</sup> The shrinking U.S. cattle herd is to blame for starting to dry up beef production in the southwest part of the country.<sup>190</sup> Experts admit that herd rebuilding provides the short- and long-term solution for this problem, but USDA statistics fail to show that herd rebuilding has occurred; consequently, a rancher may wonder what role COOL plays in this scenario—potentially prohibiting the ability of West Texas to replenish feedlot supply with Mexican cattle.<sup>191</sup> The economy of Plainview, Texas, lost 2,000 jobs after the Cargill plant closed.<sup>192</sup> Therefore, particular attention should be paid to factors that influence the cattle trade relationship between Mexico and Texas, such as COOL.<sup>193</sup>

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182. See McConnell et al., *supra* note 167, at 202.

183. *Id.* at 202–03.

184. Peel, *supra* note 27.

185. *See id.*

186. Alan Bjerga, *Texas Ranchers at Odds on Labeling Livestock's Mexican Roots*, BLOOMBERGBUSINESSWEEK (Jan. 27, 2014), <http://www.businessweek.com/news/2014-01-27/texas-cattlemen-at-odds-on-disclosing-livestock-s-mexican-roots>.

187. *Id.*; *see infra* Part III.B.

188. See Bjerga, *supra* note 186.

189. Katie Allen, *History Lesson in Packing Plant Closures*, K-ST. RES. & EXTENSION (Aug. 12, 2014), [http://www.ksre.ksu.edu/news/story/plant\\_closures081214.aspx](http://www.ksre.ksu.edu/news/story/plant_closures081214.aspx).

190. *Id.*

191. *See, e.g., id.*

192. KCBD Staff, *Plainview Economy Recovering After Closing of Meat Packing Plant* KCBD (July 25, 2014), <http://www.kcbd.com/story/26115475/plainview-economy-recovering-after-closing-of-meat-packing-plant>.

193. *See supra* notes 182–88 and accompanying text.

*B. The Challenges to Implement COOL into the Beef Production Chain*

Tyson Foods' decision to halt purchases of Canadian fed cattle provides the best example of the challenges of complying with COOL's Born, Raised, Slaughtered regime.<sup>194</sup> Before October 2013, Tyson Foods purchased approximately 3,000 Canadian cattle per week, totaling upwards of 150,000 head a year.<sup>195</sup> Tyson Foods, the United States' biggest meat processor, bought both feeder cattle and fed cattle from Canada.<sup>196</sup> Under the previous COOL requirements, the packer could combine products from both Canadian feeder and fed cattle into a single retail package with a label stating, "Product of the United States and Canada."<sup>197</sup> COOL's new Born, Raised, Slaughtered regime changed the meat processor's ability to combine beef from Canadian feeder cattle with beef from Canadian fed cattle into a single retail package.<sup>198</sup>

Now, COOL's Born, Raised, Slaughtered regime essentially requires an additional layer of disclosure that bans the commingling of product beef producers previously enjoyed.<sup>199</sup> Meat processors must now segregate product from Canadian feeder cattle and product from Canadian fed cattle at each stage and location of beef production, which includes feedlots, slaughterhouses, and retail establishments.<sup>200</sup> This creates added costs to "separate, categorize and label products."<sup>201</sup> To accomplish these requirements, packers must utilize "additional product codes, production breaks and product segregation" to pass origin information on to retailers.<sup>202</sup> Packers consistently contend that this added work "drive[s] up costs and pose[s] a bookkeeping nightmare" to logistically break down carcasses and meat packaging.<sup>203</sup> Further, packers argue that these efforts all occur "without providing any incremental value to [their] customers."<sup>204</sup> Therefore, packers, like Tyson Foods, observed more value in eliminating one category of segregation by halting purchases of

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194. See Jen Skerritt, *Tyson Stops Buying Canadian Cattle Shipped to U.S. Beef Plants*, BLOOMBERGBUSINESSWEEK (Oct. 24, 2013), <http://www.businessweek.com/news/2013-10-24/tyson-stops-buying-canadian-cattle-shipped-to-u-dot-s-dot-beef-plants>; Brett Wessler, *COOL Rules Lead Tyson to Close Door on Canadian Cattle*, DROVERS CATTLE NETWORK (Oct. 24, 2013), <http://www.cattlennetwork.com/news/industry/cool-rules-lead-tyson-close-door-canadian-cattle>.

195. Skerritt, *supra* note 194.

196. *Id.*

197. *Id.*; see also 7 U.S.C. § 1638a (2012).

198. Wessler, *supra* note 194.

199. *Id.*

200. See *id.*; Skerritt, *supra* note 194.

201. See Wessler, *supra* note 194.

202. Skerritt, *supra* note 194 (quoting Tyson Spokesman, Worth Sparkman). Keep in mind that additional segregation costs will occur at the feedlot level to separate Canadian feeder cattle from United States and Mexican feeder cattle. See, e.g., *id.* (noting that the requirement to segregate cattle from birth to slaughter "signal[s] higher expenses").

203. Wessler, *supra* note 194.

204. *Id.* (quoting Tyson Spokesman, Worth Sparkman).



Canadian fed cattle, thereby again decreasing the United States' demand for Canadian cattle.<sup>205</sup>

*C. The Added Cost of Implementing COOL's "Born, Raised, Slaughtered" Regime*

As admitted by the USDA, the added requirements to track the country of origin of each cow increase the cost of beef production.<sup>206</sup> The Born, Raised, Slaughtered regime creates additional expenses in two ways: costs to change the product labels and costs to segregate different countries of origin due to the ban on commingling.<sup>207</sup> In total, the USDA estimated these costs could range from \$53.1 million to \$192.1 million.<sup>208</sup> No matter which end of this range the total costs fall, the bottom line remains that the United States meat industry will take a financial hit.<sup>209</sup>

Each individual or entity involved in United States beef production could bear costs of implementing COOL.<sup>210</sup> Initially, the packers could experience increased segregation costs to comply with the strict bookkeeping requirements necessary to ensure every package of product gets properly labeled.<sup>211</sup> The burden of covering these costs continues up and down the beef value chain.<sup>212</sup> For example, ranchers and cow-calf producers see this burden passed on to them through lower calf prices.<sup>213</sup> The total cost passed down to the consumer remains uncertain; however, cattle market analysts do expect consumers to share some portion of these implementation costs.<sup>214</sup> The fact that consumers share expenses associated with the Born, Raised, Slaughtered regime sets the stage to question whether consumer demand actually exists for COOL—a question this Comment explores in greater detail below.<sup>215</sup>

Due to the vertical integration between industries of Canada and the United States, it logically follows that Canadian producers incur some of COOL's implementation costs.<sup>216</sup> In anticipation of the Born, Raised,

205. *Id.*

206. See Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. 31,367, 31,368 (May 24, 2013) (to be codified at 7 C.F.R. pts. 60 & 65).

207. *Id.*

208. *Id.*

209. Katie Allen, *The Future of COOL*, K-ST. RES. & EXTENSION (Sept. 13, 2013), [http://www.ksre.k-state.edu/news/story/COOL\\_future091313.aspx](http://www.ksre.k-state.edu/news/story/COOL_future091313.aspx).

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. Steve Lynn, *Industry Has Beef with New Labeling Rule*, BIZWEST (Dec. 13, 2013), available at <http://www.ncbr.com/article/20131213/EDITION/131219967>. Already, the prices of cattle and beef have hit historic all-time highs in 2014. Theopolis Waters, *LIVESTOCK-CME Live Cattle Hit New High with Cash, Beef Prices*, REUTERS (July 25, 2014), available at <http://www.reuters.com/article/2014/07/25/markets-livestock-cattle-idUSL2N0Q02K920140725>.

215. See Lynn, *supra* note 214.

216. See Clark, *supra* note 105; *supra* Part III.A.1.

Slaughtered regime, the Canadian cattle market started to lose approximately \$50 per head in 2013.<sup>217</sup> This economic hit added to the \$25 to \$40 per-head losses already experienced in Canada when COOL originally went into effect in 2009.<sup>218</sup> In total, COOL costs Canadian cattle producers up to \$600 million per year.<sup>219</sup> Additional losses may occur as packers, like Tyson Foods, start to cut implementation costs by decreasing purchases of various foreign cattle categories.<sup>220</sup> Therefore, because the United States processes 70% of Canada's meat, the Canadian cattle industry expects to suffer further immediate harm.<sup>221</sup> The Canadian government only expects to reconcile this harm by imposing hefty retaliatory tariffs on American goods.<sup>222</sup> Therefore, COOL's implementation costs threaten the retaliatory tariffs as a "thickening" of the trade border between the two countries.<sup>223</sup>

#### IV. THE ROLE—IF ANY—OF THE “BORN, RAISED, SLAUGHTERED” REGIME IN THE LOCAL FOOD MOVEMENT

COOL's enactment helped fill a vital gap in consumer support of the local food movement—a movement centered upon knowledge concerning where food comes from.<sup>224</sup> Even when unable to shop at a farmer's market or participate in community-supported agriculture—both quintessential examples of direct farm-to-consumer transactions—consumers could still fulfill objectives of the local food movement by purchasing American products, as opposed to foreign goods, by reading the COOL labels.<sup>225</sup> A disconnect may exist between the local food movement, a movement focused on consuming food produced within a 250-mile radius of one's home, and COOL, a nationwide labeling program that identifies a commodity's original place of origin.<sup>226</sup> Reconciling this disconnect becomes simple when one remembers the underlying purpose of COOL: to require the disclosure of information to provide consumers with knowledge of where food comes from.<sup>227</sup> Therefore, this Comment's evaluation of COOL must also address COOL's role in the

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217. Menon, *supra* note 181.

218. *Id.*

219. Clark, *supra* note 105.

220. *Id.*

221. Dan Flynn, *Canada's Ag Minister Warns of 'Thickening' of Border Over COOL*, FOOD SAFETY NEWS (Nov. 5, 2013), <http://www.foodsafetynews.com/2013/11/canadas-ag-minister-warns-of-thickening-of-border/#.Us9kVv0srwJ>. On a side note, processing Canadian cattle in the United States sustains approximately 9,000 American jobs. *Id.*

222. *Id.*

223. *Id.*

224. *See supra* Part II.A.2.

225. 7 U.S.C. § 1638a (2012); Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POL'Y 45, 56–59 (2008).

226. 7 U.S.C. § 1638a; Coit, *supra* note 225, at 47.

227. *See supra* Part II.A.2.

local food movement.<sup>228</sup> To facilitate discussion, this Part addresses (1) the key concepts behind the local food movement, (2) consumers' demand for COOL, (3) an important caveat regarding how consumers utilize COOL, and (4) COOL's role in supporting the niche market of the local food movement.<sup>229</sup>

#### A. *The Basics of the Local Food Movement*

At the heart of the desire to label food with its country of origin lies the ever-growing local food movement.<sup>230</sup> The local food movement emphasizes the fact that because consumers are increasingly disconnected from the sources of their food, the relationships between people and nature become too impersonal.<sup>231</sup> Some even describe the local food movement as a “rebellion against globalization.”<sup>232</sup> Rather than support worldly food-production systems, local food consumers appreciate the connection created when pursuing knowledge of where their food comes from.<sup>233</sup> The supporters of local products cite several reasons for their patronage: some consumers feel that product quality and freshness increase dramatically when food travels fewer miles to get to their plates; some consumers feel that decreasing their “food miles” makes a positive impact on the environment and decreases energy consumption; and some consumers like to financially support local farmers rather than agricultural businesses involved in food production.<sup>234</sup> Whatever the reason for supporting local food, the movement holds undeniable popularity with marketing of local foods—valued at \$4.8 billion in 2008, according to a 2011 USDA report.<sup>235</sup>

#### B. *Consumer Demand for COOL from the Local Food Movement*

Consumer impressions of COOL and demand for COOL vary greatly depending on which side of the debate a consumer study aligns.<sup>236</sup> Opponents of COOL largely cite the findings of a 2012 consumer survey conducted by the Department of Agricultural Economics at Kansas State University (KSU).<sup>237</sup>

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228. See *infra* Part IV.A–D.

229. See *infra* Part IV.A–D.

230. Coit, *supra* note 225, at 48–49.

231. *Id.*

232. Emily Badger, *Debating the Local Food Movement*, CITYLAB (July 3, 2012), <http://www.theatlanticcities.com/arts-and-lifestyle/2012/07/debating-local-food-movement/2435/>.

233. *Id.*; see, e.g., Coit, *supra* note 225, at 48–49.

234. Coit, *supra* note 225, at 50–55.

235. Sarah A. Low & Stephen Vogel, *Direct and Intermediated Marketing of Local Foods in the United States*, U.S. DEPARTMENT AGRIC.: ECON. RES. SERVICE i, iii (2011), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097250>.

236. See *infra* notes 237–49 and accompanying text.

237. GLYNN T. TONSOR, JAYSON L. LUSK, TED. C. SCHROEDER, & MYKEL R. TAYLOR, KAN. STATE UNIV. DEP'T OF AGRIC. ECON. PUB. NO. AM-GTT-2012.6, MANDATORY COUNTRY OF ORIGIN LABELING: CONSUMER DEMAND IMPACT 1 (2012), available at [http://www.agmanager.info/livestock/policy/Tonsor\\_KSU\\_FactSheet\\_MCOOL\\_11-13-12.pdf](http://www.agmanager.info/livestock/policy/Tonsor_KSU_FactSheet_MCOOL_11-13-12.pdf).

This study found that only 23% of respondents knew mandatory COOL existed.<sup>238</sup> Further, even though participants would prefer COOL, individuals admitted never having used COOL's labels to make purchasing decisions.<sup>239</sup> Importantly, while preferring COOL to unlabeled alternatives, consumers indicated openness to other labels, such as a "Product of North America" label, as functionally equivalent to "Product of United States" labels.<sup>240</sup> The study also recognized that no changes in consumer demand for meat products took place after the implementation of mandatory COOL.<sup>241</sup> Conclusively, the study suggests that if COOL had true economic value, then a voluntary COOL program would already exist based on consumer demand.<sup>242</sup>

Supporters of COOL and the Born, Raised, Slaughtered regime point to studies that demonstrate a clear consumer preference for COOL.<sup>243</sup> First, a popular 2002 study of consumers in Chicago and Denver revealed that 75% of participants preferred to purchase meat products with COOL.<sup>244</sup> The reasons behind this preference included food quality, product freshness, producer support, and location.<sup>245</sup> Consumers were willing to pay a premium for COOL products, but only to a certain extent and only for certain meat products.<sup>246</sup> Second, a 1999 NCBA-commissioned study found that 91% of consumers would purchase United States beef over any foreign product, mostly to show loyalty to American products.<sup>247</sup> This statistic directly supports Canadian allegations that COOL decreases demand for products deriving from foreign cattle.<sup>248</sup> Third, in some instances, consumers have not only responded with the desire to know where their food comes from, but also 94% of consumers "believed it was their *right* to know the country of origin of their purchases."<sup>249</sup> Various consumer studies can be relentlessly cited, but the bottom line likely remains that consumer trends show a preference to COOL

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238. *Id.* at 2.

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* at 4.

243. See Wendy J. Umberger et al., *Country-of-Origin Labeling of Beef Products: U.S. Consumers' Perceptions*, J. FOOD DISTRIBUTION RES., Nov. 2003, at 103, 107, available at <http://ageconsearch.umn.edu/bitstream/27050/1/34030103.pdf>.

244. *Id.*

245. *Id.*

246. *Id.*

247. Chang, *supra* note 48, at 712. The 1999 study revealed that 13% of consumers would choose United States beef for food safety reasons and only 9% of consumers would purchase United States beef for its perceived higher quality. *Id.* Immediately after the 2003 discovery of bovine spongiform encephalopathy (BSE or "mad cow disease") in four Canadian cows, consumers would have been even more likely to avoid purchasing Canadian beef due to food safety concerns. See CNN Library, *Mad Cow Disease Fast Facts*, CNN HEALTH, <http://www.cnn.com/2013/07/02/health/mad-cow-disease-fast-facts/> (last updated July 7, 2014).

248. See *supra* Part III.A.1.

249. Carrie Ross, Note, *In the Hot House: Will Canada's WTO Challenge Slaughter U.S. COOL Regulations?*, 36 BROOK. J. INT'L L. 299, 310 (2010).

labels as a safety net, even if purchasing decisions sometimes fail to take COOL into account.<sup>250</sup>

### C. A Caveat to Consumer Demand for COOL

Aside from COOL's international trade issues, another sharp criticism of the labeling requirement is that consumers may use COOL as a measure of food quality and safety, even though the labels in no way make representations of these standards.<sup>251</sup> Over time, as consumers fear coming into contact with contaminated food, purchases of food according to its source of origin increase.<sup>252</sup> Therefore, a critical gap in COOL legislation raises the question as to how effectively COOL can be used to decrease one's probability of contracting a food-borne illness.<sup>253</sup> Accordingly, one should employ this method only when equipped with detailed knowledge regarding a country's food safety for each particular product at each particular time.<sup>254</sup> Further, COOL lacks additional attributes to be used as a food safety measure.<sup>255</sup> COOL cannot trace food anywhere beyond its country of origin and, therefore, cannot identify a contaminated product's specific origin—such as a particular packer, feeder, or rancher.<sup>256</sup> Consequently, consumers cannot be guaranteed success when using COOL as a food safety measure.<sup>257</sup>

### D. COOL's Value to the Niche Markets of the Local Food Movement

Without a doubt, COOL and its subsequent Born, Raised, Slaughtered regime satisfy some marketing goals.<sup>258</sup> COOL provides valuable information that allows consumers to purchase food while considering its country of origin.<sup>259</sup> Oftentimes, this benefits United States farmers and ranchers as

250. *Id.*

251. See Daniel J. Ikenson, *Uncool Rules: Second Thoughts on Mandatory Country of Origin Labeling*, CATO INST. (Jan. 16, 2004), <http://www.cato.org/publications/free-trade-bulletin/uncool-rules-second-thoughts-mandatory-country-origin-labeling>.

252. Wendy A. Johncheck, *An Examination of Whether U.S. Country of Origin Labeling Legislation Plays a Role in Protecting Consumers from Contaminated Food*, 21 STAN. L. & POL'Y REV. 191, 191 (2010). For example, consumers may still seek to avoid cantaloupe from Colorado after a 2011 listeria outbreak killed thirty-three people. See Tom McGhee, *Colorado Brothers Plead Guilty in Listeria Outbreak that Killed 33*, DENVER POST (Oct. 22, 2013, 11:31 AM), [http://www.denverpost.com/breakingnews/ci\\_24362315/colorado-brothers-plead-guilty-cantaloupe-listeria-outbreak-that](http://www.denverpost.com/breakingnews/ci_24362315/colorado-brothers-plead-guilty-cantaloupe-listeria-outbreak-that). Consumers may also fear processed chicken from China due to the country's poor "track record for food safety" and "frequent outbreaks of deadly avian influenza." See Stephanie Strom, *Chinese Chicken Processors Are Cleared to Ship to U.S.*, N.Y. TIMES, Aug. 20, 2013, <http://www.nytimes.com/2013/08/31/business/chinese-chicken-processors-are-cleared-to-ship-to-us.html?ref=foodsafety>.

253. Johncheck, *supra* note 252, at 192.

254. See *id.* at 208–09.

255. See *id.* at 209.

256. See *id.* at 210.

257. *Id.*

258. Trussell, *supra* note 14, at 290–91.

259. *Id.* at 289.

consumers seek to “buy local” and, consequently, “buy American,” as encouraged by the statute’s intent.<sup>260</sup> Similar to information available on non-agricultural goods, like cars and electronics, COOL allows consumers to “make informed decisions about the food they eat.”<sup>261</sup> Arguably, consumer demand may exist for COOL; however, that fact alone leaves room for an argument refuting the mandatory nature of the COOL provisions.<sup>262</sup>

As discussed previously, NCBA and ranchers opposed to COOL strongly discourage the labeling requirement as a mandatory program.<sup>263</sup> The 2012 KSU study demonstrated that consumers had not changed their demand for beef and that some remain unaware that COOL information exists.<sup>264</sup> Yet the legislature forces producers into a marketing program in which they do not always reap benefits from consumers.<sup>265</sup> These facts lead COOL opponents to side with the argument that COOL adds more value when driven by consumer demand as a voluntary labeling program.<sup>266</sup>

Voluntary COOL allows producers to purposefully differentiate the marketing of their products while preserving the rights of producers that do not target this niche market of consumers.<sup>267</sup> Undeniably, a niche market exists for the consumers who use COOL to make purchasing decisions, like those who support the local food movement.<sup>268</sup> Voluntary COOL could allow producers to add value by specifically targeting this niche market.<sup>269</sup> With voluntary COOL, other producers would be saved from incurring the forced implementation costs that add value only to those marketing to the niche market of country-of-origin conscientious consumers.<sup>270</sup> The USDA already provides the necessary structure and resources to create a voluntary COOL program, which this Comment discusses later.<sup>271</sup>

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260. *Id.* at 290; see Mia Shirley, Note, *Food Ordinances: Encouraging Eating Local*, 37 WM. & MARY ENVTL. L. & POL’Y REV. 511, 520 (2013); *supra* note 67.

261. Trussell, *supra* note 14, at 290.

262. *See supra* Part IV.B.

263. *See* George, *supra* note 21.

264. *See supra* Part IV.B.

265. *See* George, *supra* note 21.

266. AMI Op-Ed: “Let’s Put Consumers in the Driver’s Seat on Country-of-Origin Labeling”, AM. MEAT INST. (Aug. 5, 2005), <http://www.meatami.com/ht/display/ArticleDetails/i/3313/ipid/3671>.

267. *See id.*

268. Dawn Thilmany, *What are Niche Markets? What Advantages Do They Offer?*, in NICHE MARKETS: ASSESSMENT AND STRATEGY DEVELOPMENT FOR AGRICULTURE 1-1 (Western Extension Marketing Committee 2007), available at <http://cals.arizona.edu/arec/wemc/nichemarkets/NicheMarketscompletebook6-17-08.pdf>. “Niche markets consist of groups of consumers (market segments) within the larger marketplace who have similar demographic, buying behavior, and/or lifestyle characteristics.” *Id.*

269. *See, e.g., id.*

270. *See supra* Part III.C.

271. *See infra* Part VI.C.3; *see, e.g.,* *Welcome to the National Organic Program*, U.S. DEPARTMENT AGRIC., AGRIC. MARKETING SERVICE, <http://www.ams.usda.gov/AMSV1.0/nop> (last visited Jan. 10, 2015).

V. COOL'S NEW AND CONTINUED STRAIN ON INTERNATIONAL  
AGRICULTURAL TRADE

No matter the conclusions reached about COOL domestically, little doubt exists that difficult and overwhelming challenges exist to defend COOL in the international marketplace.<sup>272</sup> To analyze COOL's validity internationally, this Comment must first recognize the importance of globalized food production and agricultural trade to the United States agricultural industry and economy, which is discussed in Part A.<sup>273</sup> Second, Part B studies the presence of COOL in foreign countries and similar protectionist measures that were previously under international criticism.<sup>274</sup> Third, Part C analyzes the validity of the retaliatory tariffs threatened upon the United States for insisting to uphold COOL and the Born, Raised, Slaughtered regime.<sup>275</sup> Part VI of this Comment makes recommendations for validating COOL internationally.<sup>276</sup>

A. *International Agricultural Trade—Otherwise, We Cannot Feed the World*

Differing from supporters of the local food movement, another side of the spectrum supports the increasing globalization of food production and trade.<sup>277</sup> Globalizing the world food supply recognizes the notion that local food may not always be able to meet the needs of a growing world population.<sup>278</sup> Most notably, “[f]ood production must double by 2050 to meet the demand of the world’s growing population and innovative strategies are needed to help combat hunger.”<sup>279</sup> While the goals of the local food movement do hold merit, globalizing the world food supply and discouraging restrictions on trade also present crucial value in ensuring that “[w]in-win opportunities” exist for all.<sup>280</sup> Globalizing food production can allow farmers to concentrate resources in the most suitable locations worldwide.<sup>281</sup> This means producing

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272. See *infra* Part V.A–C.

273. See *infra* Part V.A.

274. See *infra* Part V.B.

275. See *infra* Part V.C.

276. See *infra* Part VI.

277. Pierre Desrochers, *The Locavores' Delusion: Truer Advertising for the Local Food Debate*, FAIR OBSERVER (Sept. 21, 2013), <http://www.fairobserver.com/article/locavores-delusion-truer-advertising-local-food-debate>.

278. *Id.*

279. Press Release, General Assembly, Food Production Must Double by 2050 to Meet Demand from World's Growing Population, Innovative Strategies Needed to Combat Hunger, Experts Tell Second Committee, U.N. Press Release GA/EF/3242 (Oct. 9, 2009), available at <http://www.un.org/News/Press/docs/2009/gaef3242.doc.htm>.

280. *Id.*; Don Hofstrand, *More on Feeding Nine Billion People by 2050*, AMRC RENEWABLE ENERGY & CLIMATE CHANGE NEWSL. (Agric. Mktg. Res. Ctr., Ames, IA), Jan. 2012, available at [http://www.agmrc.org/renewable\\_energy/renewable\\_energy/more-on-feeding-nine-billion-people-by-2050/](http://www.agmrc.org/renewable_energy/renewable_energy/more-on-feeding-nine-billion-people-by-2050/).

281. Desrochers, *supra* note 277.

more food with less land, water, and pesticides.<sup>282</sup> Further, a basic reality remains that urbanization and, consequently, beneficial economic growth, is “fundamentally incompatible” with the local food movement.<sup>283</sup> Sole reliance on the local food movement does not align with urbanization because urbanization, and the ability to pursue non-agrarian professions, depends on amiable long-distance trade.<sup>284</sup> Therefore, the mission of the WTO—to prevent unnecessary trade barriers between nations—becomes crucial to solving the world-food-production equation.<sup>285</sup>

The importance of agricultural trade—both exports and imports—to the United States remains virtually indescribable.<sup>286</sup> Reliance on the ability to export began in the early colonial days, with tobacco and cotton production, and continues today with reliance on exporting grains, oilseeds, and processed foods.<sup>287</sup> In 2012, for every dollar sold in agricultural exports, an additional \$1.27 stimulated the United States economy.<sup>288</sup> In total, \$141.3 billion in United States agricultural exports produced \$320.8 billion in economic output in 2012 and sustained 929,000 full-time private-sector jobs.<sup>289</sup> In coming years, agricultural exports are expected to remain just as crucial, with exports of agricultural products in 2014 forecasted at \$135 billion.<sup>290</sup>

Americans demand fresh fruits and vegetables every season of the year, not just during harvest, which is why agricultural imports remain just as critical to our economy as agricultural exports.<sup>291</sup> Of the \$113 billion in agricultural goods the United States will import in 2014, \$16 billion of those imports will be fresh fruits and vegetables, totaling 14% of United States agricultural imports.<sup>292</sup> Despite growth in the local food movement, Americans realistically cannot become agriculturally self-sufficient year round.<sup>293</sup> Therefore, as

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282. *Id.*

283. Badger, *supra* note 232.

284. *Id.* Importantly, “instead of each tending our own plot of rural land for a living, cities have enabled us to specialize as lawyers and bakers and engineers, while we’ve turned farming itself into a specialty.” *Id.*

285. *Overview*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/whatis\\_e/wto\\_dg\\_stat\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm) (last visited Jan. 10, 2015).

286. U.S. DEP’T OF AGRIC.: ECON. RESEARCH SERV., EFFECTS OF TRADE ON THE U.S. ECONOMY [hereinafter EFFECTS OF TRADE ON U.S. ECONOMY], *available at* <http://www.ers.usda.gov/data-products/agricultural-trade-multipliers/effects-of-trade-on-the-us-economy.aspx#.Um1YCKUswI> (last updated Feb. 13, 2014).

287. *Id.*

288. *Id.*

289. *Id.*

290. U.S. DEP’T OF AGRIC.: ECON. RESEARCH SERV. & FOREIGN AGRIC. SERV., AES-79, OUTLOOK FOR U.S. AGRICULTURAL TRADE 1 (Aug. 29, 2013) [hereinafter OUTLOOK FOR TRADE, *available at* <http://usda.mannlib.cornell.edu/usda/ers/AES//2010s/2013/AES-08-29-2013.pdf>].

291. Mark Fischetti, *U.S. Demand for Fruits and Vegetables Drives Up Imports*, SCI. AM., Aug. 20, 2013, at 96, 96, *available at* <http://www.scientificamerican.com/article/us-demand-for-fruits-and-vegetables-drives-up-imports/>.

292. OUTLOOK FOR TRADE, *supra* note 290, at 13.

293. See Christina DiMartino, *U.S. Fruit and Vegetable Imports Growing Larger by the Year*, PRODUCE NEWS (Dec. 9, 2012), <http://www.producenews.com/markets-and-trends/9248-u-s-fruit-and-vegetable->



revealed by United States agricultural import and export figures, maintaining healthy relationships with our trade partners remains of the utmost importance.<sup>294</sup>

### B. *The Validity of Foreign Protectionist Measures in the WTO*

Evaluating COOL's current validity also involves stepping back to explore similar protectionist measures around the world.<sup>295</sup> Interestingly, countries besides the United States have enacted and enforced similar COOL legislation without critical muster from trade partners.<sup>296</sup> Further, analogous protectionist regimes exist in foreign nations that provide interesting comparisons to COOL in the United States, such as Germany's Beer Purity Law.<sup>297</sup> This section discusses each in turn.<sup>298</sup>

#### 1. *COOL Worldwide*

A 2003 report by the United States General Accounting Office found that forty-eight of the United States' fifty-seven major trade partners required COOL similar to that in the United States.<sup>299</sup> These countries include several of the United States' top trading partners and biggest opponents of United States COOL, including Canada, Mexico, China, and Japan.<sup>300</sup> As expected, countries with COOL requirements import a significant total of the world's agricultural trade, including fourteen of the WTO's top fifteen agricultural importers, accounting for 67% of the world's agricultural imports.<sup>301</sup> Like the United States, nine other countries also require COOL on all meats, fruits, and vegetables.<sup>302</sup> Consequently, the use of COOL in other countries serves as a valuable argument for COOL supporters.<sup>303</sup>

Notably, mandatory COOL exists in two of the countries most involved in litigation against United States COOL—Canada and Mexico.<sup>304</sup> Canada

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imports-growing-larger-by-the-year; Fischetti, *supra* note 291 (providing explanatory graphics regarding the increase of United States produce imports since 1998).

294. See generally EFFECTS OF TRADE ON U.S. ECONOMY, *supra* note 286 (discussing the effects of trade regulation on patterns of trade).

295. See *infra* Part V.B.1–2.

296. See *infra* Part V.B.1.

297. See *infra* Part V.B.2.

298. See *infra* Part V.B.1–2.

299. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-780, COUNTRY-OF-ORIGIN LABELING: OPPORTUNITIES FOR USDA AND INDUSTRY TO IMPLEMENT CHALLENGING ASPECTS OF THE NEW LAW 23 (2003), available at <http://www.gao.gov/assets/240/239254.pdf>.

300. Pepler, *supra* note 14, at 412–14. All four of these countries were parties in the 2009 WTO disputes against the United States. See Appellate Body Report, *supra* note 15, at 1.

301. Pepler, *supra* note 14, at 410–11.

302. *Id.* at 411. These nine countries include Argentina, Australia, Japan, Korea, Portugal, Spain, Switzerland, Turkey, and the United Arab Emirates. *Id.* at n.57.

303. See Press Release, R-CALF USA, *supra* note 20.

304. Pepler, *supra* note 14, at 412–14.

requires COOL on various imported food products, but exempts domestic food from labeling itself as such.<sup>305</sup> Further, Canadian COOL emphasizes labeling on prepackaged products while the United States specifically exempts processed foods.<sup>306</sup> Mexico, another country relevant to this Comment, requires COOL in some respects but, with regard to meat products, the requirements differ slightly.<sup>307</sup> For example, while frozen, processed, and ground meats must all comply with COOL in Mexico, fresh meats in the form of retail cuts or carcasses must only be labeled if produced domestically.<sup>308</sup> Consequently, even though mandatory COOL exists in some forms in Canada and Mexico, those programs lack the comprehensive regulatory scheme seen in United States COOL, which may justify the challenges currently faced in implementing COOL into the United States.<sup>309</sup>

## 2. *The German Beer Purity Law—Struck Down as a Protectionist Measure*

In 1987, the Court of Justice of the European Communities infamously struck down Germany's long-standing use of "Reinheitsgebot," known as the German Beer Purity Law.<sup>310</sup> Dating back to 1516, the German Beer Purity Law aimed to keep beer "pure" by only allowing the sale of beer made with barley, hops, and water.<sup>311</sup> To Germans, the law historically served a valuable food safety role to keep German beer "all natural," which led to a more "wholesome and flavorful product."<sup>312</sup> Essentially, the German Beer Purity Law became a prohibition on food additives in beer, and only allowed an imported product if it did not label itself as "beer."<sup>313</sup> Because these standards long prevented foreign brewers, who relied on additional, additive-like ingredients to produce beer, from exporting to Germany, the law eventually became targeted as a

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305. See CANADIAN FOOD INSPECTION AGENCY, COUNTRY OF ORIGIN LABELLING FOR FOOD PRODUCTS, available at <http://www.inspection.gc.ca/food/information-for-consumers/fact-sheets/country-of-origin/eng/1329519448771/1329519600512> (last visited Jan. 10, 2015).

306. *Id.*; 7 U.S.C. § 1638(2)(B) (2012). Interestingly, this requirement presents a striking similarity to COOL in the United States tariff laws in the McKinley Tariff Act of 1930, discussed previously. See *supra* notes 48–50 and accompanying text.

307. See Pepler, *supra* note 14, at 414; see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-781SP, COUNTRY-OF-ORIGIN LABELING FOR CERTAIN FOODS—SURVEY RESULTS (2003) [hereinafter SURVEY RESULTS], available at <http://www.gao.gov/special.pubs/gao-03-781sp/food15.html> (listing the types of products that have COOL requirements domestically and at the retail level).

308. SURVEY RESULTS, *supra* note 307.

309. CANADIAN FOOD INSPECTION AGENCY, *supra* note 305; see also SURVEY RESULTS, *supra* note 307 (detailing the lack of comprehensive, detailed requirements for labeling under foreign COOL programs).

310. Case 178/84, *Re Purity Requirements for Beer*: E.C. Comm'n v. Ger., 1987 E.C.R. 1227, 1 C.M.L.R. 780, 787–800 (1987); *German Beer Primer for Beginners: Why German Beer Is Special*, GERMAN BEER INST., <http://www.germanbeerinstitute.com/beginners.html> (last visited Dec. 3, 2014) [hereinafter *German Beer Primer for Beginners*]. The WTO did not formally exist until 1995. *Understanding the WTO: Who We Are*, *supra* note 96.

311. *German Beer Primer for Beginners*, *supra* note 310, at 4.

312. *Id.*

313. *Re Purity Requirements for Beer*, 1 C.M.L.R. at 792–93.

restriction to free trade.<sup>314</sup> In 1987, the court held that an import restriction on additive ingredients could only be validated by a technological or health justification.<sup>315</sup> When scientific research behind the law could not be found, Germany was no longer able to deny a beer label to foreign products.<sup>316</sup> In other words, without relevant scientific evidence, the German Beer Purity Law favored the domestic beer industry and created an invalid restriction on free trade to foreign industries.<sup>317</sup> Similarly, like the German Beer Purity Law, COOL does not present the health-based or safety-based justification.<sup>318</sup> Notwithstanding this similarity, COOL at least allows importation of foreign product by treating it under the same standard as a domestic product.<sup>319</sup> This does not necessarily show that COOL becomes protectionist on its face, but COOL's qualities as a protectionist policy arise from the way consumers treat the product when making a purchasing decision.<sup>320</sup>

### C. *In the Face of Retaliatory Tariffs—The Damage of COOL*

A retaliatory tariff is “a tariff imposed to pressure another country into removing its own tariffs or making trade concessions.”<sup>321</sup> Whenever used, retaliatory tariffs risk imposing devastating economic harm to the United States.<sup>322</sup> For example, extensive use of retaliatory tariffs in the 1930s, authorized by the Smoot-Hawley Tariff Bill of 1930, contributed to the Great Depression.<sup>323</sup> The General Agreement on Tariffs and Trade (GATT) in 1947, the predecessor to the WTO, aimed to prevent the return of retaliatory tariffs to the global trade scenario.<sup>324</sup> For these reasons, the WTO only allows trade retaliation, such as retaliatory tariffs, in situations in which there has been a violation of clearly established trade rules.<sup>325</sup>

#### 1. *Devastation from Other Retaliation Scenarios*

Past instances of retaliatory tariffs have demonstrated the tactic's ability to cripple a sector of the agricultural industry in the United States.<sup>326</sup> For

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314. *German Beer Primer for Beginners*, *supra* note 310, at 4.

315. *Re Purity Requirements for Beer*, 1 C.M.L.R. at 792–93.

316. *Id.* at 797–99.

317. *Id.* at 799.

318. *See supra* Part II.A.

319. *See supra* Part II.C.

320. *See supra* Part II.C.

321. BLACK'S LAW DICTIONARY 1593 (9th ed. 2009).

322. *See infra* Part V.C.1.

323. Benjamin H. Liebman & Kasaundra M. Tomlin, *Safeguards and Retaliatory Threats*, 51 J.L. & ECON. 351, 352 (2008).

324. *Id.* at 353.

325. *See id.*

326. *See* Christopher Conkey et al., *Mexico Issues Tariff List in U.S. Trucking Dispute*, WALL ST. J. (Mar. 19, 2009, 12:01 AM), <http://online.wsj.com/news/articles/SB123739445919172781>.

example, in March 2009, Mexico announced its imposition of retaliatory tariffs on various United States imports due to a failure to comply with NAFTA obligations to allow Mexican trucks access to deliver products in the United States.<sup>327</sup> The retaliatory tariffs, authorized by the NAFTA Dispute Settlement Panel, imposed approximately 5%–25% duties on various food and non-agricultural products.<sup>328</sup> Mexico eventually phased out the retaliatory tariffs, but only after the initiation of a pilot program for Mexican trucks crossing the border.<sup>329</sup> Even so, this small debacle still affected \$2.4 billion in United States exports.<sup>330</sup>

An additional example of the dangers from retaliatory tariffs arises from a WTO dispute between the United States and Brazil over cotton.<sup>331</sup> In 2002, Brazil challenged the United States' payments of cotton subsidies, claiming that the subsidies distorted cotton trade and cotton imports, which harmed Brazil's lucrative industry.<sup>332</sup> Originally, in 2009, the WTO authorized retaliation in the form of 12%–100% tariffs on 102 different goods, totaling \$800 million in trade.<sup>333</sup> Brazil paused enforcement of that retaliation in a 2010 memorandum of understanding (MOU) with the United States.<sup>334</sup> This MOU specified that (1) the United States pay Brazil \$147.3 million per year to support a special fund to develop Brazil's cotton industry, and (2) the two countries work together to initiate a framework for a mutually agreeable solution on the dispute.<sup>335</sup> Part of the mutually agreeable framework involved an expectation for the United States to readdress the "trade-distorting" subsidies that ignited this trade dispute in the first place, which could not be accomplished until the United States passed a new farm bill.<sup>336</sup> Until that time, Brazil anxiously chomped at the bit to initiate retaliatory tariffs instead, while the United States spent millions trying to otherwise keep Brazil happy.<sup>337</sup> Luckily for the United States, the 2014 Farm Bill temporarily avoids expensive retaliatory action.<sup>338</sup> If only the same could be accomplished with COOL.

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327. *See id.*

328. *See id.*; INT'L TRADE ADMIN., CURRENT RETALIATORY ACTIONS: MEXICO TRUCKING RETALIATION [hereinafter MEXICO TRUCKING RETALIATION], available at [http://www.trade.gov/mas/ian/tradedisputes-enforcement/retaliations/tg\\_ian\\_002094.asp](http://www.trade.gov/mas/ian/tradedisputes-enforcement/retaliations/tg_ian_002094.asp) (last updated July 29, 2013).

329. MEXICO TRUCKING RETALIATION, *supra* note 328.

330. *Id.*

331. INT'L TRADE ADMIN., CURRENT RETALIATORY ACTIONS: U.S.—BRAZIL WTO DISPUTE OVER U.S. COTTON, available at [http://www.trade.gov/mas/ian/tradedisputes-enforcement/retaliations/tg\\_ian\\_002094.asp](http://www.trade.gov/mas/ian/tradedisputes-enforcement/retaliations/tg_ian_002094.asp) (last updated July 29, 2013).

332. *See id.*

333. *Id.*

334. RANDY SCHNEPF, CONG. RESEARCH SERV., R43336, STATUS OF THE WTO BRAZIL—U.S. COTTON CASE 3 (2014), available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43336.pdf>.

335. *Id.* at 3–4.

336. *See id.* at 4.

337. *See, e.g., Brazil Cotton Growers Pessimistic on U.S. Subsidies Dispute*, FOX BUS. (Jan. 14, 2014), <http://www.foxbusiness.com/industries/2014/01/14/brazil-cotton-growers-pessimistic-on-us-subsidies-dispute-1854270035/>.

338. *See* SCHNEPF, *supra* note 334, at 4.

## 2. Canada's Ability to Impose Retaliatory Tariffs

Barring an outside legal solution to prevent harm to the Canadian beef industry, Canada's threat to impose retaliatory tariffs on the United States becomes real and dangerous.<sup>339</sup> Fortunately for the United States, even though the Canadian Minister of Agriculture already announced the targeted commodities, Canada will seek WTO approval before retaliating.<sup>340</sup> Unfortunately for the United States, Canada stands to suffer real and devastating harm to its domestic beef industry, and this fact will eventually be substantiated with even more devastating statistics in the time to come.<sup>341</sup> As previously discussed, losses in the Canadian cattle market have reached upwards of \$75 per head in just four years since COOL's 2009 implementation—industry-wide losses appear to total more than \$600 million per year.<sup>342</sup> Even further and more permanent harm may present a more serious issue.<sup>343</sup> The Canadian Cattlemen's Association (CCA) predicts that the damage from COOL's Born, Raised, Slaughtered regime will dissuade ranchers from involvement in beef production in the future.<sup>344</sup> Therefore, analysts expect COOL to continue to negatively impact the size of the Canadian cattle herd.<sup>345</sup> Considering Canada's previous success in challenging COOL in the WTO and the uphill battle to defend the Born, Raised, Slaughtered regime's even harsher labeling requirements than the original COOL legislation, Canada probably holds strong arguments for obtaining WTO permission to impose retaliatory tariffs.<sup>346</sup> When that does occur, the United States economy can expect retaliatory tariffs affecting approximately \$1.1 billion in United States commodities.<sup>347</sup>

## VI. CATTLE DRIVES AHEAD—HOW TO SATISFY THE COWBOYS, THE CONSUMERS, AND THE BUREAUCRATS

Unfortunately, no simple answers exist for proceeding with mandatory COOL and the accompanying Born, Raised, Slaughtered regime.<sup>348</sup> The harsh reality remains that COOL's enactment likely never intended to generate more than a decade's worth of commotion—locally, nationally, or internationally.<sup>349</sup> Further, the often-forgotten reality becomes that we no longer live in the

339. See *infra* Part VI.

340. Statement by Ministers Fast and Ritz, *supra* note 31.

341. Terryn Shiells, *Cattle Industry Seen Likely to Shrink if COOL Stays*, CANADIAN CATTLEMEN (Nov. 28, 2013), <http://www.canadiancattlemen.ca/daily/cattle-industry-seen-likely-to-shrink-if-cool-stays>.

342. Clark, *supra* note 105; Menon, *supra* note 181.

343. Shiells, *supra* note 341.

344. *Id.*

345. *Id.*

346. See *supra* Part II.

347. Perkins, *supra* note 36.

348. See *infra* Part VI.A–D.

349. See *supra* Part II.A–B.

stomach-churning times of troublesome meat packing conditions, as revealed by Sinclair's *The Jungle*.<sup>350</sup> Although government regulation alleviated the meat-safety concerns of the early 1900s, forcing private industry into a non-health or safety-based marketing program risks pushing the boundaries of government regulation too far.<sup>351</sup> This Part addresses potential remedies that may ease some concerns COOL's Born, Raised, Slaughtered regime raises to the beef industry.<sup>352</sup>

#### A. American Meat Institute v. United States Department of Agriculture

The D.C. Circuit let a healthy start to remedying the burdensome Born, Raised, Slaughtered regime slip away.<sup>353</sup> The court, en banc, reheard *American Meat Institute v. USDA* on May 19, 2014.<sup>354</sup> The plaintiffs, eight meat trade associations, sought declaratory and injunctive relief on constitutional grounds, which the district court originally denied.<sup>355</sup>

On appeal, AMI argued that the district court made a critical error in First Amendment jurisprudence by denying its request for a preliminary injunction.<sup>356</sup> The plaintiffs urged that *Central Hudson's* standard for heightened scrutiny applied to this compelled disclosure of free speech, rather than the *Zauderer* standard.<sup>357</sup> The *Zauderer* standard sets forth that the government may require a provider of a good or service to disclose certain factual information if the requirement is (1) not unduly burdensome and (2) "reasonably related to the State's interest in preventing deception of consumers."<sup>358</sup> AMI argued that the government did not have an interest substantial enough to justify COOL's burdensome application.<sup>359</sup> If *Central Hudson* applied, compelled commercial speech would become eligible for heightened protection if the speech concerned lawful activity that was not misleading.<sup>360</sup> *Central Hudson* would require COOL to meet an

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350. See SINCLAIR, *supra* note 6, at 141–42.

351. See, e.g., George *supra* note 21.

352. See *infra* Part VLA–D.

353. *Am. Meat Inst. v. USDA*, 760 F.3d 18, 20–27 (D.C. Cir. 2014) (en banc).

354. *Id.* at 18.

355. *Id.* at 18–19.

356. Opening Brief for Appellants at 3–4, *Am. Meat Inst.*, 760 F.3d 18 (No. 13-5281), 2014 WL 1512518.

357. *Id.*; see also *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651 (1985) (laying out the *Zauderer* standard); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 565–66 (1980) (implementing a higher burden of proof to show commercial speech is narrowly tailored to advance a substantial government interest). As applied through another D.C. Circuit case, *Spirit Airlines, Inc. v. Department of Transportation*, AMI pointed out that "compelled disclosures of fact" only survive First Amendment challenges when it is aimed at misleading commercial speech and is related to the government's interest in protecting deceived consumers. Opening Brief for Appellants, *supra* note 356, at 19 (citing *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 687 F.3d 403, 412 (D.C. Cir. 2012)).

358. *Zauderer*, 471 U.S. at 651.

359. Opening Brief for Appellants, *supra* note 356, at 16.

360. *Cent. Hudson*, 447 U.S. at 566.

“insurmountable” burden to show that the USDA “narrowly tailored” the Born, Raised, Slaughtered regime to advance a substantial government interest.<sup>361</sup> AMI contended that the Born, Raised, Slaughtered regime satisfied neither of the two standards; it did not suffice that the USDA simply tried to comply with the 2012 WTO order and wanted to provide consumers with knowledge of where their food came from.<sup>362</sup>

The D.C. Circuit disagreed.<sup>363</sup> The court unequivocally clarified the ambiguity between the two tests by overruling all of its past decisions that questioned *Zauderer*’s application.<sup>364</sup> It outlined *Zauderer* as applicable to instances where the government mandates disclosure of “purely factual and uncontroversial information” that prevents deception in commercial speech—including COOL.<sup>365</sup> Therefore, in applying *Zauderer*, the court looked to “the adequacy of the interest motivating the country-of-origin labeling scheme.”<sup>366</sup> Unfortunately, the Supreme Court has not yet indicated what type of governmental interest may suffice under *Zauderer* beyond an interest in correcting misleading or confusing commercial speech.<sup>367</sup> Accordingly, the court turned to several factors that it thought could make the government’s interest substantial:

[T]he context and long history of country-of-origin disclosures to enable consumers to choose American-made products; the demonstrated consumer interest in extending country-of-origin labeling to food products; and the individual health concerns and market impacts that can arise in the event of a food-borne illness outbreak.<sup>368</sup>

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361. Opening Brief for Appellants, *supra* note 356, at 30; *see also Cent. Hudson*, 447 U.S. at 566 (setting forth a higher burden of proof on the government).

362. Opening Brief for Appellants, *supra* note 356, at 3–4.

363. *Am. Meat Inst. v. USDA*, 760 F.3d 18, 20 (D.C. Cir. 2014) (en banc). The D.C. Circuit panel disposed of AMI’s administrative law arguments fairly easily, which the en banc court affirmed. *Am. Meat Inst. v. USDA*, 746 F.3d 1065, 1069–71 (D.C. Cir.), *reh’g en banc granted, opinion vacated*, No. 13-5281, 2014 WL 2619836 (D.C. Cir. Apr. 4), *judgment reinstated*, 760 F.3d 18 (D.C. Cir. 2014). Essentially, the Born, Raised, Slaughtered regime banned the common practice of commingling product with production stages at different countries of origin—altering the production practices of beef producers. *See supra* Part III.B. Yet, that order came from the USDA’s marketing division. Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. 31,367–69 (May 24, 2013) (to be codified at 7 C.F.R. pts. 60 & 65). Because the AMS only holds authority to promulgate marketing rules, AMI argued that allowing AMS to capture the ability to dictate production practices goes beyond statutory authority and undermines COOL legislation entirely. Opening Brief for Appellants, *supra* note 356, at 41–42. Interestingly, during the case’s original oral arguments, AMI’s attorney focused ample time on walking the panel through this argument. Oral Argument at 29:50, *Am. Meat Inst.*, 760 F.3d at 18, *available at* <http://www.cadc.uscourts.gov/recordingsrecordings.nsf/DocsByRDate?OpenView&count=100&SKey=201405>. These contentions, however, proved wildly unsuccessful—unfortunately. *Am. Meat Inst.*, 746 F.3d at 1060–71.

364. *Am. Meat Inst.*, 760 F.3d at 22.

365. *Id.* at 21 (quoting *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651 (1985)).

366. *Id.* at 23.

367. *Id.*

368. *Id.*

To the court, it remained perfectly reasonable that Congress sought to assist consumers in selecting food products continuously subject to the United States government's direct scrutiny and monitoring.<sup>369</sup> Therefore, the disclosure required by the Born, Raised, Slaughtered regime remained a reasonable means to accomplish a desired end result.<sup>370</sup>

*American Meat Institute* presents the perfect opportunity to readdress the exact types of governmental interest that may compel mandated disclosure.<sup>371</sup> Opponents of COOL point to an argument that disclosure only satisfies the "idle curiosity" of consumers.<sup>372</sup> Yet, the court turned to the "historical pedigree" of COOL to justify Congress's substantial interest.<sup>373</sup> This justification fails to consider what the government's substantial interest in complying with the United States' international trade obligations should be.<sup>374</sup> It also fails to consider government, producer, and consumer interests in avoiding retaliatory tariffs.<sup>375</sup> Plus, as previously discussed in this Comment, the reasoning that COOL can be used as a food safety measure remains fundamentally flawed—like the constitutional implications posed by the decision.<sup>376</sup>

Judge Brown's dissent properly categorized the danger to the law on compelled commercial speech in the majority opinion.<sup>377</sup> She pointed out:

[T]he bottom line is if *Central Hudson* applies, [AMI] should prevail; if *Zauderer* applies only to deception, [AMI] should prevail; if *Zauderer* applies only to consumer protection, health and safety, and deception, [AMI] should prevail. The only way [AMI does not] prevail is if this Court concludes that *Zauderer* applies to any interest, no matter how articulated, no matter how speculative.<sup>378</sup>

After picking apart the major points the majority relied upon to establish the presence of a substantial governmental interest, Judge Brown made a stand for the reality of the burdens the Born, Raised, Slaughtered regime placed upon the beef industry:

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369. *Id.* at 24–25.

370. *Id.* at 26.

371. *See, e.g., id.* at 23. Interesting questions arise with this when considering the implications this COOL decision may have on the movement in labeling genetically modified organisms (GMOs). *See* Mateusz Perkowski, *COOL Ruling Could Impact a GMO Label Lawsuit*, CAPITAL PRESS (Aug. 5, 2014, 11:18 AM), [http://www.capitalpress.com/Nation\\_World/Nation/20140805/cool-ruling-could-impact-a-gmo-label-lawsuit#.U\\_kED0tjods](http://www.capitalpress.com/Nation_World/Nation/20140805/cool-ruling-could-impact-a-gmo-label-lawsuit#.U_kED0tjods). Legal battles over GMO labeling might fall squarely within a similar framework. *Id.* This litigation could be on the horizon. *Id.*

372. *Am. Meat Inst.*, 760 F.3d at 23.

373. *Id.*

374. *See supra* Part V.

375. *See supra* Parts II.E.2, V.C.

376. *See supra* Part IV.C.

377. *See Am. Meat Inst.*, 760 F.3d at 37–39 (Brown, J., dissenting).

378. *Id.* at 37 (quoting Transcript of Oral Argument at 39, *Am. Meat Inst.*, 760 F.3d at 18).



One need only look at the parties and amici to recognize this rule benefits one group of American farmers and producers, while interfering with the practices and profits of other American businesses who rely on imported meat to serve their customers. . . .

Of course the victors today will be the victims tomorrow, because the standard created by this case will virtually ensure the producers supporting this labeling regime will one day be saddled with objectionable disclosure requirements (perhaps to disclose cattle feed practices; how their cattle are raised; whether their cattle were medically treated and with what; the environmental effects of beef production; or even the union status or wage levels of their employees). Only the fertile imaginations of activists will limit what disclosures successful efforts from vegetarian, animal rights, environmental, consumer protection, or other as-yet-unknown lobbies may compel.<sup>379</sup>

The very core of this case screams for further review and consideration from the Supreme Court—not only because it “hack[ed] the First Amendment down to fit in the government’s hip pocket,” but because it left behind remaining dangers for beef producers and consumers across the country.<sup>380</sup>

### *B. Repeal COOL and the “Born, Raised, Slaughtered” Regime*

Mandatory compliance with the Born, Raised, Slaughtered regime commenced in November 2013; however, even in 2014 justification still exists for halting its enforcement.<sup>381</sup> The United States has already lost, for a second time, at the WTO.<sup>382</sup> When asked about congressional efforts to amend COOL, USDA Secretary Tom Vilsack even responded that the WTO provided the best method for evaluating COOL.<sup>383</sup> Now that the United States knows the WTO’s evaluation, it should take action.<sup>384</sup> The United States has subjected an entire industry to up to \$192.1 million in implementation costs, only to have the policy challenged and, once again, struck down by the WTO two years later, making for interesting economic logic.<sup>385</sup> In fact, on January 29, 2014, several of the plaintiffs in *American Meat Institute* publicly called for an economic analysis of the Born, Raised, Slaughtered regime.<sup>386</sup> In June 2014, a newly formed COOL Reform Coalition wrote to Congress asking it to take action on

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379. *Id.* at 52 (internal citations omitted).

380. *See id.* at 54.

381. *See* Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. 31,367, 31,367 (May 24, 2013) (to be codified at 7 C.F.R. pts. 60 & 65); Menon, *supra* note 140.

382. COOL Panel Report *supra* note 140; *see* Menon, *supra* note 140.

383. Jenny Hopkinson, *Tom Vilsack: More than Agriculture at Stake in Farm Bill*, POLITICO (Nov. 14, 2013, 12:41 PM), <http://www.politico.com/story/2013/11/pro-agriculture-launch-99874.html>.

384. *See* Menon, *supra* note 140.

385. *Id.*; Mandatory Country of Origin Labeling of Beef, 78 Fed. Reg. at 31,367.

386. Lydia Zuraw, *Farm Bill: No Repeal of Country-of-Origin Labeling*, FOOD SAFETY NEWS (Jan. 29, 2014), <http://www.foodsafetynews.com/2014/01/no-country-of-origin-labeling-repeal-in-farm-bill/>.

COOL before the WTO once again found the legislation non-compliant and trade-distorting.<sup>387</sup> And after the D.C. Circuit decided *American Meat Institute*, 112 members of Congress wrote to Secretary Vilsack to address their concerns.<sup>388</sup> Admittingly, “[i]f the WTO finds the COOL rule to be non-compliant, the resulting consequences could have a detrimental impact on our economy,” and “Congress must be prepared to act and find a solution that maintains a healthy relationship with our trading partners and protects the American economy.”<sup>389</sup> Depending on the reaction of the United States in the coming year, the beef industry could incur even more implementation costs and new retaliatory tariffs, thereby wasting the previous resources already poured into COOL.<sup>390</sup>

Immediately after the USDA finalized the Born, Raised, Slaughtered regime, Canada announced its intention to impose retaliatory tariffs.<sup>391</sup> Canadian officials plan to pay particular attention to those Congressional members that have either helped or harmed the possible delay or repeal of COOL.<sup>392</sup> Accordingly, commodities upon which retaliatory tariffs apply will align with the important commodities to the states from which opposing congressmen hail.<sup>393</sup> John Masswohl, CCA Director of Government and International Relations, asserts that, in this manner, Canadian retaliation can vary by product and geographic location.<sup>394</sup> With such an extensive list of possible targeted commodities, industries with absolutely no relation to meat production may suffer just out of spite.<sup>395</sup> Therefore, even repealing COOL

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387. PR Newswire, *Broad Industry Coalition Asks Congress to Prevent WTO Non-Compliance on COOL*, DIGITAL J. (June 26, 2014), <http://www.digitaljournal.com/pr/2019171>.

388. News Desk, *Congress Members Ask USDA to Drop COOL if WTO Disapproves*, FOOD SAFETY NEWS (Aug. 1, 2014), [http://www.foodsafetynews.com/2014/08/congress-members-ask-usda-to-drop-cool-if-wto-disapproves/#.U\\_kOKUtjods](http://www.foodsafetynews.com/2014/08/congress-members-ask-usda-to-drop-cool-if-wto-disapproves/#.U_kOKUtjods).

389. *Id.*

390. *See supra* Part II.E.

391. Lee-Anne Goodman, *Canada-U.S. Meat War? Ottawa Threatens 'Retaliatory Measures' Over New Labelling Rules*, HUFFINGTON POST (May 23, 2013, 1:55 PM), [http://www.huffingtonpost.ca/2013/05/23/us-canada-meat-labelling\\_n\\_3327323.html](http://www.huffingtonpost.ca/2013/05/23/us-canada-meat-labelling_n_3327323.html).

392. *Canadian Officials Watching WTO More than U.S. Farm Bill*, WNAX RADIO 570 (Jan. 28, 2014), <http://wnax.com/news/180081-canadian-officials-watching-wto-more-than-u-s-farm-bill/> [hereinafter CANADIAN OFFICIALS WATCHING WTO].

393. *Id.* Hypothetically, because United States Representative Mike Conaway from Texas has openly voiced his opposition to COOL and has encouraged its repeal, the Government of Canada may not seek to impose a retaliatory tariff that would have a particular harm on one of Texas's exports to Canada. *See, e.g.*, Jenny Hopkinson, *Not So Cool: USDA's COOL Regulation—Harkin Lauds Allergies in Schools Guide*, POLITICO (Oct. 31, 2013, 10:06 AM), <http://www.politico.com/morningagriculture/1013/morningagriculture12089.html>. Interestingly, recent news stories mentioning congressional support of COOL do not usually reveal specific names or home states of those supporting members of Congress. *See, e.g.*, *Negotiators Return Conference Report on Farm Bill*, FARM FUTURES (Jan. 27, 2014), <http://farmfutures.com/story-negotiators-return-conference-report-farm-bill-0-107932>.

394. *Canadian Officials Watching WTO*, *supra* note 392.

395. *See* Statement by Ministers Fast and Ritz, *supra* note 31. The United States wine industry faces retaliatory tariffs on its very “lucrative” wine exports to Canada, totaling \$434 million in 2012. Ben Bouckley, *Canada Warns U.S. COOL Rules Could Hit Lucrative California Wine Exports*, BEVERAGE DAILY (Nov. 5, 2013), <http://www.beveragedaily.com/Regulation-Safety/Canada-warns-US-COOL-rules-could-hit-lucrative->

could equal less retaliatory tariffs from Canada once it receives WTO permission for the retaliation.<sup>396</sup> The timeline of political pressure on Congress and the USDA indicates that the tides have started to turn against COOL, which raises the question of what the last push will be to force political action.<sup>397</sup>

### C. Start at the Root—Reconsider COOL from a Legislative Standpoint

After a delay or repeal of the current COOL legislation, Congress should keep three fundamental factors in mind when readdressing the United States' need for COOL.<sup>398</sup> Unfortunately, due to a desperate need to get any farm policy established, Congress opted to pass the Farm Bill without any changes to COOL.<sup>399</sup> In making this decision, representatives asked themselves: “Do we want a farm bill, or do we want to take an issue that could potentially blow the whole process sky high?”<sup>400</sup> Passing the Farm Bill with no change to COOL creates a roadblock for COOL opponents.<sup>401</sup> Past NCBA President Scott George even called the situation “a railroad track with a runaway train coming down that’s called retaliation.”<sup>402</sup> If not repealed, COOL opponents, like NCBA, still do not plan to halt their fight over changing COOL legislatively anytime soon.<sup>403</sup>

Even before the Born, Raised, Slaughtered regime arose, COOL opponents argued that COOL required a re-work.<sup>404</sup> Because COOL’s legislation offers no alternative to requiring different labels for foreign and domestic meat products, little flexibility exists for the USDA to promulgate a regulation that complies with both the statutory requirements of COOL and the United States’ international trade obligations.<sup>405</sup> Unfortunately, the Farm Bill passed both Houses of Congress on February 4, 2014, without any legislative changes to the COOL provisions.<sup>406</sup> Therefore, any legislative changes to

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California-wine-exports. The Wine Institute, representing more than 1,000 California wineries, wrote to Congress last fall pleading for COOL compliance with WTO standards. *Id.* California’s wine industry greatly fears being caught in a trade war that has nothing to do with wine. *Id.*

396. *See supra* Part II.E.2.

397. *See* Kelsey Johnson, *Supply Issues Mean America’s COOL Attitude Is Starting to Change*, W. PRODUCER (Aug. 21, 2014), <http://www.producer.com/2014/08/supply-issues-mean-americas-cool-attitude-is-starting-to-change/>.

398. *See infra* Part VI.C.1–3.

399. Janell Thomas, *Country of Origin Labeling Creates Sticky Situation for Livestock Interests*, FARM FUTURES (Jan. 29, 2014), [http://farmfutures.com/story-country-origin-labeling-creates-sticky-situation-livestock-interests-0-107977-spx\\_0](http://farmfutures.com/story-country-origin-labeling-creates-sticky-situation-livestock-interests-0-107977-spx_0).

400. *Id.* Representatives like Frank Lucas, House Agriculture Committee Chairman, chose to pass a farm bill now rather than delay the bill further by debating COOL any longer. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. JURENAS & GREENE, *supra* note 89, at 23.

405. *See id.*

406. Ron Nixon, *Senate Passes Long-Stalled Farm Bill, with Clear Winners and Losers*, N.Y. TIMES, Feb. 4, 2014, [http://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html?\\_r=0](http://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html?_r=0).

COOL require separate Congressional action.<sup>407</sup> The remainder of this section sets forth recommendations to improve COOL legislation—if the opportunity to amend the provision were to arise.<sup>408</sup>

### *1. Invest in Research Now to Pay Dividends in the Long Run*

Whether arguing for or against COOL, activists cite countless consumer research studies to support their arguments.<sup>409</sup> Generally, a consensus stands that consumers appreciate COOL.<sup>410</sup> But gaps exist in determining several other factors: how often consumers use COOL to make purchasing decisions; how much consumers will pay for COOL; how consumer demand for COOL changes with products and geographic locations; how consumer demand changes according to gender, class, and race; and how much value the Born, Raised, Slaughtered regime creates over COOL's original enactment.<sup>411</sup> Before subjecting the beef industry to even more costly legal battles, stakeholders deserve a thorough and comprehensive research study to help determine exactly where COOL should move from this point forward.<sup>412</sup>

Amending COOL from a legislative standpoint would provide Congress with the opportunity to allocate funds for consumer research on COOL's Born, Raised, Slaughtered regime.<sup>413</sup> More specifically, a non-biased and non-partisan consumer research study can provide a basis for COOL to more effectively serve the needs of consumers while also considering the reasonable capabilities of the beef industry.<sup>414</sup> By funneling all consumer research through a single comprehensive source, the beef industry could benefit from knowing exactly what consumers desire.<sup>415</sup>

### *2. Consumer Education Remains Key*

A possible method to reconcile COOL's decreased demand for foreign beef may involve establishing a consumer education program.<sup>416</sup> Only 22% of Americans feel personally educated about United States beef production.<sup>417</sup> Because this disparate figure likely indicates that few understand how the beef industries of the United States, Canada, and Mexico are vertically integrated into a single production system, educating consumers may play a valuable role

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407. *See id.*

408. *See infra* Part VI.C.1–3.

409. *Supra* notes 237, 243 and accompanying text.

410. *Supra* text accompanying note 249.

411. *See supra* Part IV.B.

412. *See supra* Part IV.B.

413. *See, e.g., Stages of the Congressional Budget Process*, HOUSE REPRESENTATIVES COMMITTEE ON BUDGET, <http://budget.house.gov/budgetprocess/stages.htm> (last visited Jan. 10, 2015).

414. *See supra* Parts III.B–C, IV.B.

415. *See supra* notes 409–12 and accompanying text.

416. *See infra* notes 417–19 and accompanying text.

417. *Consumer Image Index*, *supra* note 162.

in COOL's current international issues.<sup>418</sup> Perhaps consumers can move past negative notions of foreign beef and start to view beef as a "Product of North America."<sup>419</sup> Filling these gaps in consumer knowledge about Canadian-born and Mexican-born cattle may demonstrate that the United States can reach across dividing lines and cooperate with international trade policies.<sup>420</sup>

Fortunately, a basic framework already exists as a model for consumer education projects.<sup>421</sup> The Beef Checkoff Program invests producer funds into consumer marketing and research programs that increase the demand for beef.<sup>422</sup> Through the Beef Promotion and Research Act of 1985, a dollar-per-head assessment of each domestic and imported cattle sale finances the Beef Checkoff Program.<sup>423</sup> These "checkoff dollars" remain carefully monitored by the Cattlemen's Beef Board and the USDA, but ultimately fund programs that serve a crucial role in promoting beef products.<sup>424</sup> Because COOL presents a rather sensitive topic amongst beef producers, this Comment does not necessarily argue that checkoff dollars should be used in this manner.<sup>425</sup> The Beef Checkoff Program simply provides an excellent framework to establish a similar checkoff-type program.<sup>426</sup> For example, perhaps a dollar-per-head assessment could be placed on imports of live cattle, thereby only imposing a monetary burden on those receiving a noted benefit.<sup>427</sup> After all, a dollar-per-head assessment may be a small price when compared to the millions of dollars spent on implementation, litigation, and retaliatory tariffs.<sup>428</sup>

Understandably, the establishment of a consumer education program just for COOL may only occur in a perfect world.<sup>429</sup> Even so, utilizing some simple steps from the Beef Checkoff Program's playbook could make a difference.<sup>430</sup> For example, the program could use Internet resources and social media to reach consumers by sharing the story of North America's vertically integrated system of beef production.<sup>431</sup> With the power of the Internet, educating

418. See *supra* Part III.A.

419. See *supra* Part III.A.

420. See *supra* Part II.E.1.

421. See *Beef Checkoff Questions and Answers*, CATTLEMEN'S BEEF BOARD, <http://www.beefboard.org/enews.asp?id=10936> (last visited Jan. 13, 2015) [hereinafter CATTLEMEN'S BEEF BOARD].

422. *Id.*

423. *Id.*; see Beef Promotion and Research Act of 1985, 7 U.S.C. §§ 2901–2911 (1985).

424. See CATTLEMEN'S BEEF BOARD, *supra* note 421.

425. See *supra* Part I (providing an overview of the sensitivity of COOL amongst beef producers). The author merely uses the Beef Checkoff Program as a model and understands the implications of using checkoff dollars in such a situation.

426. See, e.g., CATTLEMEN'S BEEF BOARD, *supra* note 421.

427. See, e.g., *id.*

428. See *supra* Part II.E.

429. See *supra* notes 421–28 and accompanying text.

430. See, e.g., *Promotion*, CATTLEMEN'S BEEF BOARD, <http://www.beefboard.org/promotion/checcpromotion.asp> (last visited Jan. 13, 2015).

431. *Id.* (providing links to educational resources).

American consumers on such topics has the potential to make a big difference.<sup>432</sup>

### 3. Utilize Flexible and Discretionary Labels

Any legislative amendment of COOL should consider that alternative options exist aside from enforcing a mandatory labeling program to disclose each country of origin.<sup>433</sup> First, § 1638a(a)(1) leaves very little room for flexibility on the information that must be revealed on a label.<sup>434</sup> The statute establishes a bottom line requirement that “a retailer . . . shall inform consumers . . . of the country of origin of the covered commodity.”<sup>435</sup> Upon promulgating a rule to comply with WTO standards, the USDA really had few options to work with to stay within this statutory authority.<sup>436</sup> Because the statute absolutely mandates no less than revealing the *country* of origin on each label, a real solution to the rigidity of the Born, Raised, Slaughtered regime must start at the legislative roots.<sup>437</sup> Aside from eliminating COOL, Congress should explore other labeling options for the substantive content of the labels after conducting the requisite consumer research to learn exactly what will work.<sup>438</sup> For example, even though a “Product of North America” label may satisfy consumer demand and maintain the integrity of beef producers, the option is not possible under the current statutory language.<sup>439</sup> Amendments to the COOL provisions should instead reflect a more flexible option with malleable statutory language for the USDA to work with.<sup>440</sup>

Second, without a doubt, opportunity exists to make COOL a voluntary marketing program, not a mandatory labeling requirement.<sup>441</sup> With no health or food-safety basis backing COOL, little justification exists for imposing the costs of a mandatory labeling requirement on an entire industry.<sup>442</sup> In fact, true value may exist in COOL when the program becomes voluntary and driven by consumer demand.<sup>443</sup>

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432. *Id.*

433. *See infra* notes 434–55 and accompanying text.

434. 7 U.S.C. § 1638a(a)(1) (2012).

435. *Id.*

436. *Id.*; *see supra* Part II.D.

437. 7 U.S.C. § 1638a(a)(1).

438. *See* TONSOR, LUSK, SCHROEDER, & TAYLOR, *supra* note 237, at 3.

439. *Id.*; 7 U.S.C. § 1638a(a)(1).

440. *See supra* notes 434–39 and accompanying text.

441. *See* George, *supra* note 21 (reflecting the NCBA stance that a marketing program like COOL should be driven by consumer demand).

442. *See* TONSOR, LUSK, SCHROEDER, & TAYLOR, *supra* note 237, at 3.

443. *See infra* notes 444–55 and accompanying text.

After COOL's 2002 enactment, multiple efforts were made to amend mandatory COOL into a "voluntary, market-driven labeling program."<sup>444</sup> Hearings took place on the subject in 2003 with little success.<sup>445</sup> In 2004, the United Fresh Produce Association went as far as actually drafting a model "Food Promotion Act of 2004" as a suggestion for replacing COOL with a voluntary program.<sup>446</sup> Then, in 2005, fifteen senators supported the Meat Promotion Act, which failed, but ultimately pointed out intriguing opportunities for a voluntary COOL program.<sup>447</sup>

Importantly, the proposed Meat Promotion Act pointed out how "[s]uccessful models already exist" for implementing a voluntary COOL program.<sup>448</sup> The USDA's National Organic Program provides an excellent example of a basic framework from which voluntary COOL may begin.<sup>449</sup> For example, like organics, producers who appreciate COOL as a value-added label, participate by using a certified COOL label, verified by the USDA, to represent that their product derives from a certain country.<sup>450</sup> Benefits from such a program could become astounding because COOL would be driven by consumer demand.<sup>451</sup> Voluntary COOL would not discriminate against groups, products, or countries.<sup>452</sup> Opponents of COOL only need to join the movement if their consumers so demand.<sup>453</sup> Lastly, it would be more difficult for foreign countries to challenge voluntary COOL as a protectionist measure to international trade.<sup>454</sup> With such benefits, voluntary COOL seems to present a simple, easy, and practical solution that maintains the integrity of all stakeholders involved.<sup>455</sup>

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444. UNITED FRESH FRUIT & VEGETABLE ASS'N, FOOD PROMOTION ACT OF 2004: SUMMARY ANALYSIS 1; Drovers News Source, *COOL Gains Momentum in Senate*, DROVERS CATTLE NETWORK (Jan 17, 2011, 2:22 PM), <http://www.cattlenetwork.com/cattle-news/latest/cool-gains-momentum-in-senate-113900934.html>.

445. *See generally* Press Release, House Comm. on Agric., U.S. House of Representatives, Committee Holds Hearing to Review Mandatory Country of Origin Labeling (Oct. 16, 2003), *available at* <https://agriculture.house.gov/press-release/committee-holds-hearing-review-mandatory-country-origin-labeling> (discussing the hearings relating to COOL).

446. UNITED FRESH FRUIT & VEGETABLE ASS'N, *supra* note 444. This example was very thorough and even noted that voluntary COOL only works when value is seen in a "new 'official' USDA designed 'USA' label." *Id.* at 2.

447. Drovers News Source, *supra* note 444.

448. *Id.*

449. *See, e.g., National Organic Program: What Is Organic?*, U.S. DEPARTMENT OF AGRIC.: AGRIC. MARKETING SERVICE, <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateC&navID=NationalOrganicProgram&leftNav=NationalOrganicProgram&page=NOPConsumers&description=Consumers&acct=nopgeninfo> (last modified Oct. 17, 2012).

450. *Id.*

451. TONSOR, LUSK, SCHROEDER, & TAYLOR, *supra* note 237, at 2; Drovers News Source, *supra* note 444; George, *supra* note 21.

452. *See* TONSOR, LUSK, SCHROEDER, & TAYLOR, *supra* note 237, at 2-3.

453. Drovers News Source, *supra* note 444.

454. *See supra* Part II.E.1.

455. *See supra* notes 451-54 and accompanying text.

*D. Are International Trade Rules Out of Date?*

The possible limitations on COOL from international trade obligations raise an opportunity to discuss the success or potential failure of trade rules.<sup>456</sup> As globalization increases, some scholars argue that trade rules fail to maintain pace with domestic concerns.<sup>457</sup> For example, with COOL, the United States faces a difficult challenge balancing domestic and international interests.<sup>458</sup> Arguments can be made both ways: domestic consumers have a right to demand COOL, and international trade partners have a right to challenge protectionist measures that harm their own industries.<sup>459</sup> Understandably, strong deference should be given to domestic needs; however, when international trade obligations can lead to domestic harm, like retaliatory tariffs, answers become less clear.<sup>460</sup> Therefore, how should international trade rules be able to limit the capabilities of domestic legislation?<sup>461</sup> Even more questions arise regarding COOL justification when looking at similar COOL programs in other international trade powerhouses like Canada and Mexico.<sup>462</sup> As seen with the German Beer Purity Law, a fine line separates what constitutes a protectionist measure depending on the underlying facts.<sup>463</sup> In the coming year, decisions made regarding COOL could impact how to answer such issues with international trade regulations.<sup>464</sup>

VII. CONCLUSION—YIELDING CATTLE DRIVES TO TODAY’S DEMANDS?

COOL legislation has hardly existed in the United States for more than a decade, yet the commotion ignited by its regulatory presence stands to forever change the landscape of picturesque Texas cattle drives.<sup>465</sup> Rather than remain unified as an industry of hard-working and proud beef producers, supporters and opponents of COOL divided and poured funding, and thus fuel, into the commotion.<sup>466</sup> The original Texas cowboys of the 1860s hardly could have imagined such a pressure point on their young and developing beef industry.<sup>467</sup>

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456. See *supra* Part E.1. This discussion alone could constitute its own comment, but the author instead chose to provide an overview of all issues at play with COOL, not just its implications to international trade.

457. See Sungjoon Cho & Claire R. Kelly, *Are World Trading Rules Passé?*, 53 VA. J. INT’LL. 623, 624 (2013).

458. See *supra* Parts IV–V.

459. See *supra* Parts IV–V.

460. See *supra* Parts IV–V.

461. See *supra* Part VI.

462. See *supra* Part V.B.1. Keep in mind that, comparatively, COOL in the United States presents the current problems because it is more comprehensive than COOL in other countries. See *supra* Part V.B.1.

463. See *supra* Part V.B.2.

464. See *supra* Part II.E.

465. See *supra* Part I.

466. See *supra* Part II.E.

467. See *supra* notes 1–5 and accompanying text.



At the same time, these rugged Texas cowboys of the 1860s could not have imagined COOL, its purpose, and its demand because of the numerous changes that have developed the beef industry into today's success.<sup>468</sup> To them, the need for COOL would have been unfathomable.<sup>469</sup> To Chicago slaughterhouses overcome by unsanitary conditions, the technological ability to track, segregate, and label products with a source of origin was a futuristic dream.<sup>470</sup> To that more agrarian and less globalized society, the local food movement was a way of life, not a societal shift to strive for once urbanization provided the luxury of pursuing other professions.<sup>471</sup> And to a nation unburdened by international trade agreements, economic harm to the industries of other countries was hardly on the radar of powerful political leaders.<sup>472</sup> Now, in the twenty-first century's beef industry, sensitivity must be taken to address each of these three changes.<sup>473</sup> The question becomes what needs to give in order for beef production, as we know it today, to coexist with the demands of the world's current regulatory approach.<sup>474</sup>

Fortunately, several options can remedy the challenges COOL presents to us.<sup>475</sup> First, the Supreme Court should hear *American Meat Institute v. USDA* to readdress the application of *Zauderer* and *Central Hudson* and to remedy the risks thrown onto the beef industry with such burdensome regulation.<sup>476</sup> Second, Congress must assist by repealing or amending the COOL provisions to tackle the Born, Raised, Slaughtered regime at the roots.<sup>477</sup> Hopefully, if not repealed, Congress will allow the industry to devote time and resources to research and consumer education, while also enabling the possibility that COOL could become more flexible and less mandatory.<sup>478</sup> Third, the current challenges to COOL raise discussion points regarding the functional operation of international trade rules.<sup>479</sup> In the end, the beef industry deserves to be proud of the roots of traditional Texas cattle drives.<sup>480</sup> Ranchers across the country can embrace those roots, yet must still look ahead to the shifts in beef production that may need to balance with tradition in order to adapt to modern regulatory burdens on the horizon.<sup>481</sup> As times change, beef producers'

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468. See, e.g., *supra* notes 9–13 and accompanying text.

469. See *supra* notes 1–5 and accompanying text.

470. See *supra* Part I.

471. See *supra* Part IV.

472. See *supra* Part V.

473. See *supra* Part II.E.

474. See *supra* Part II.E.

475. See *supra* Part VI.

476. See *supra* Part VI.A.

477. See *supra* Part VI.B.

478. See *supra* Part VI.C.1–3.

479. See *supra* Part VI.D.

480. See *supra* notes 1–5 and accompanying text.

481. See *supra* notes 9–11 and accompanying text.

resilience can ensure that, like previous generations, today's beef industry continues for generations to come.<sup>482</sup>

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482. See *supra* notes 1–5 and accompanying text.