

**Challenging US Country of Origin
Labelling at the World Trade
Organization:
The Law, The Issues and The Evidence**

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Basic Lessons from Country of Origin Labelling (COOL)

Protectionists **NEVER** go away:

- They are resourceful
- They always try to have their vested interests cloaked in the guise of benefiting the public
- It is never “free trade” but managed trade with rules – and protectionists are adept at exploiting the rules to their advantage

Country of Origin Labelling (COOL)

- In the 2002 US Farm Bill there was a provision for the mandatory Country of Origin Labelling of some products - beef, lamb, pork, seafood, vegetables, peanuts.
- Took until 2009 to come into force – expanded to cover chicken and goat meat.
- Applies to both domestic and foreign products
- Applies to products sold in supermarkets
- In meat it applies to both muscle cuts and ground product
- US supermarkets must be able to verify their labels

Country of Origin Labelling (COOL)

- In the case of meat products the animal must be born, raised and processed in the US to qualify as a 'Product of the United States'
- Animals from mixed origin supply chains must be labelled as such
- Products from mixed origin supply chains have to be segregated from Products of the United States
- Foreign origin product must be 'near consumer ready' and can be labelled without verification back from the exporter's plant gate (e.g. Product of Canada).

Country of Origin Labelling (COOL)

- In the case of meat - 4 labelling categories
 - a) USA Origin
 - b) Multiple Countries of Origin
 - c) Imported for Immediate Slaughter
 - d) Meat from Foreign Sources
- USA Origin - from animals exclusively born, raised, and slaughtered in the United States

Country of Origin Labelling (COOL)

- Multiple Countries of Origin - If an animal was not born and/or raised in the United States and was not imported for immediate slaughter it may be designated as **Product of the United States, Country X**, and/or Country Y where Country X and Country Y represent the actual or possible countries of foreign origin.

Country of Origin Labelling (COOL)

- Imported for Immediate Slaughter - If an animal was imported into the United States for immediate slaughter (within 14 days) the resulting meat products derived from that animal shall be designated as **Product of Country X and the United States**.
- 2009 regulations (the Final Rule) allows the mixing of *Multiple Countries of Origin* and *Imported for Immediate Slaughter* and the use of either label.
- Ground beef allows “may contain” type labelling.

Country of Origin Labelling (COOL)

- Justified on the basis of ‘Consumer’s Right to Know’
- Lobbied for by some US producer groups - for livestock, producers in the northern plains
- Tacked onto the US 2002 Farm Bill by a few powerful Senators from great plains and midwest States
- Took from 2002-2009 to be implemented
- Delayed as long as possible by the bureaucracy

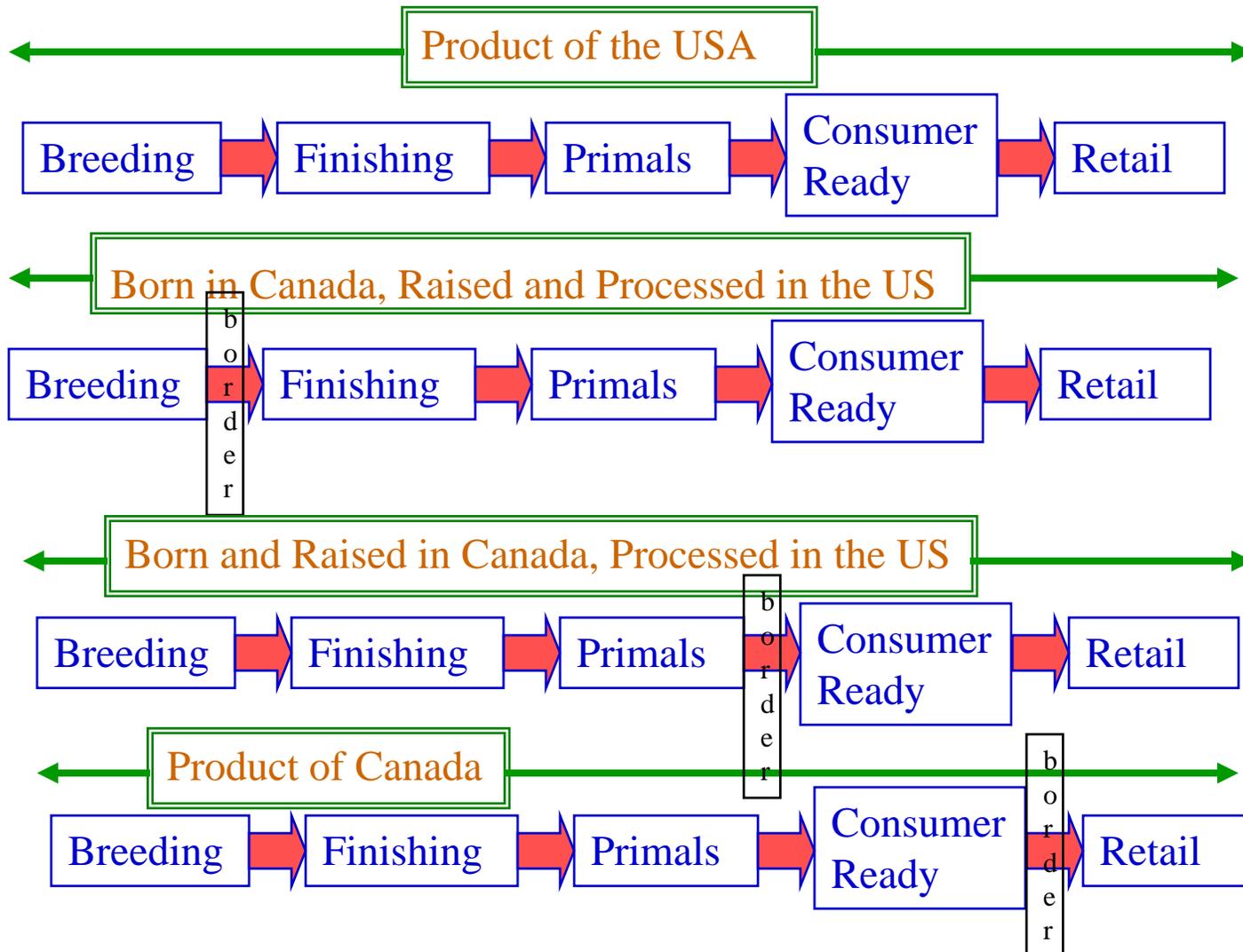
Country of Origin Labelling

- Do consumers value country of origin labelling?
- Intrinsically valued for ethnocentric reasons?
- Or as a quality signal?
- Or as a food safety signal?
- Previous consumer research is mixed on the purpose and potential value of COOL for consumers
- Widely cited (by COOL advocates) Loureiro and Umberger (2003) – 38-50% premium for US beef. It is not credible, would have been done by the private sector without COOL

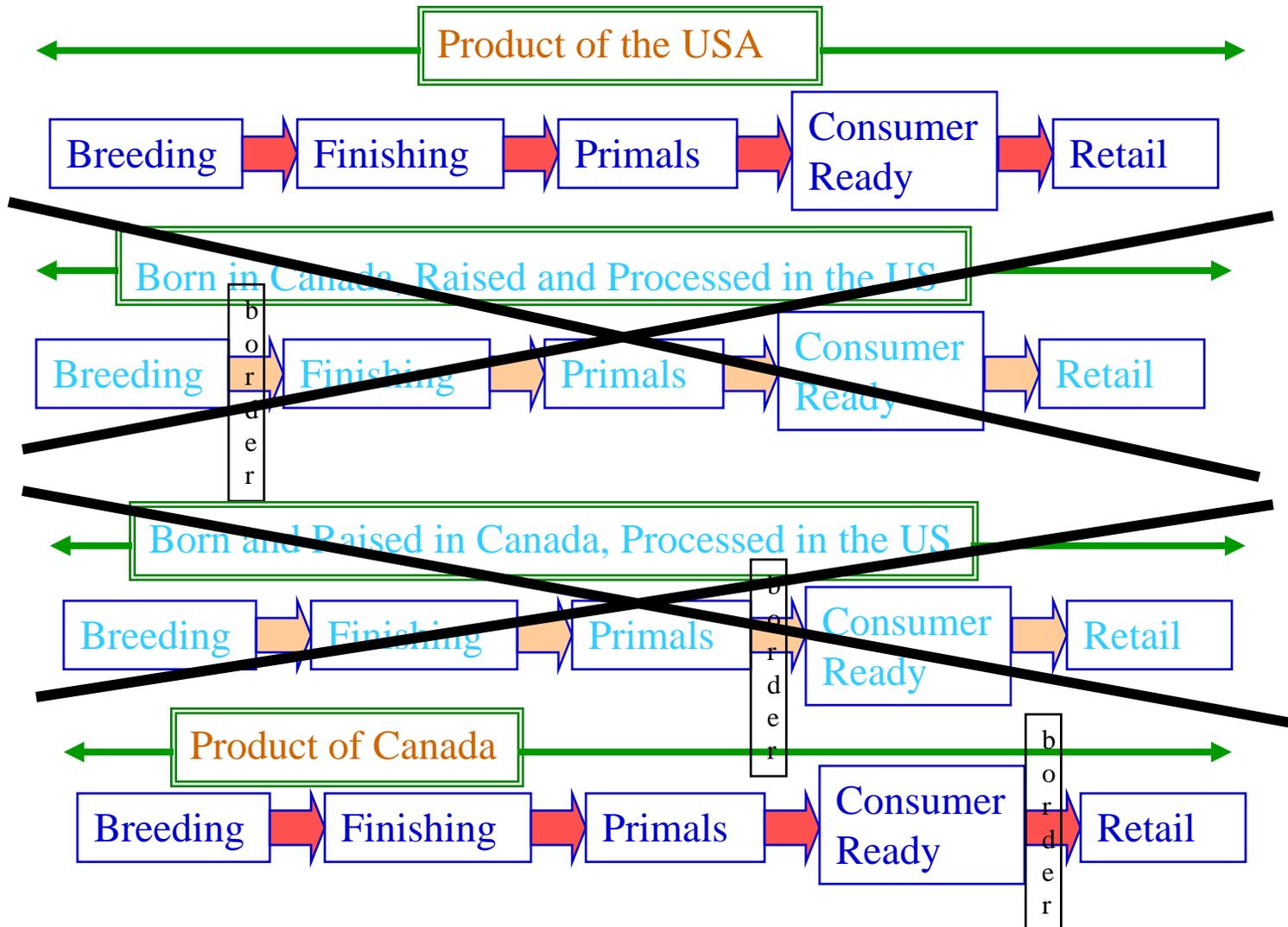
The Effect of COOL on North American Supply Chains

- Transaction cost theory suggests that through competition the most efficient supply chains will survive
- The real effect of COOL will be to alter the relative efficiency of the ways of organizing North American supply chains for beef and pork

North American Supply Chains



North American Supply Chains in the Long Run



North American Supply Chains in the Long Run

- Mixed country of origin supply chains will decline or disappear
- A higher cost 'US Origin' supply chain will emerge
- Lower cost 'Product of Canada' supply chains will expand
- A new unlabelled segregated mixed country of origin supply chain may emerge for HRI market
- Canadian/Mexican offshore market shares will expand at the expense of the US

North American Supply Chains in the Long Run

- COOL is having an adverse impact on Canada's ability to market livestock in the United States limiting:
 - the number of plants and days those plants will accept Canadian cattle and hogs
 - The number of feeders that will buy feeder cattle and pigs.

US Packer Procurement of "C" Cattle Under COOL



COOL and Trade Law

- Can COOL be challenged by Canada at the WTO? – yes?
- **But** – can we win?
- The appropriate WTO sections where a challenge can be mounted are:
 - GATT Article IX – Marks of Origin
 - TBT Articles 2.2 and 2.4
 - ❖ Codex - General Standard for the Labelling of Prepackaged Foods

It Will Be Difficult for the US to Deny COOL's Trade Effects – Korea 2001

- Korea has stepped back from a new country-of-origin labelling rule for meat that U.S. officials argued would have completely choked off U.S. beef and pork exports to Korea.
- Korea last month agreed to delay implementation of the rule by one year, after Secretary of Agriculture Dan Glickman and Deputy U.S. Trade Representative Richard Fisher told Korean officials that the U.S. could not implement the rule as written and so could not export beef and pork to Korea, which is the third largest market for U.S. beef exports.

COOL - **Not** in US Exports Markets! - 2001

- In a meeting with Korean Ambassador Yang Sung Chui, Fisher hinted that the move by Korea could provoke a challenge in the World Trade Organisation, alleging that the rule was inconsistent with the Agreement on Rules of Origin ...
- The Korean rule would have introduced mandatory country-of-origin labeling for foreign beef and pork, and defined country-of-origin as the country where the live animal resided for six months prior to slaughter in the case of cows, and for two months prior to slaughter in the case of hogs. The concern from the US meat industry was that there was currently no system for tracking passage of beef and pork from feedlot to slaughterhouse and through the packing process. *Inside US Trade, Jan 25, 2001*

GATT Article IX – Marks of Origin

- No precedents – until now has not been controversial
- From the original 1947 text – unchanged
- Really put in place to protect import competing firms from foreign firms *passing off* inferior products and consumers from fraud

GATT Article IX – Marks of Origin

- Article IX (2): The contracting parties recognize that, in adopting and enforcing laws and regulations relating to marks of origin, the *difficulties and inconveniences* which such measures may cause to the commerce and industry of exporting countries *should be reduced to a minimum*, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications. [*Emphasis added*]

COOL and Trade Law

- The real intent of Article IX was to protect consumers from fraud
 - A label that indicated a product from India came from France
 - Made in USA – Usa is a town in Japan
- **“difficulties and inconveniences ... should be reduced to a minimum”** – obvious to non-lawyers that COOL does not meet the criteria
- Lawyers?? – what are the legal interpretations of *difficulties*, *inconveniences* and *minimum*?

GATT Article IX – Marks of Origin

Article IX (4) states that COOL labelling is allowed “so long as the marking requirement does not seriously damage the imported products, *materially reduce their value, or unreasonably increase their cost.*”
[Emphasis added]

GATT Article IX – Marks of Origin

- seriously damage the imported product – not applicable
- *materially reduce their value* – obvious to non-lawyers that COOL does not meet the criteria
- *unreasonably increase their cost* - obvious to non-lawyers that COOL does not meet the criteria

Estimated Costs of COOL

Van Sickle et al. (2003)

- record keeping at the producer level not required.
Costs to the rest of the supply chain between \$69.9 and \$193.4 million

Sparks Co. (2003)

- estimated the total cost (implementation and record keeping) to be between \$3.6 and \$5.6 billion

Hayes and Myers (2003) - \$1 Billion (based on EU).

Estimated Costs of COOL

- Grier and Khol (2003)
 - Predicted \$4 billion loss in economic activity for US pork industry
- Brewster et al. (2004)
 - Prices must increase from 4% to 4.5% for producers to be indifferent
- Rude et al. (2006)
 - US producers and consumers worse off
 - US pork prices up 4%
 - Canadian processors and consumers better off
 - Canadian hog prices down 13%
 - ROW exports up 65%

GATT Article IX – Marks of Origin

- *materially reduce their value* – what is the legal interpretation of **materially**?
- *unreasonably increase their cost* – what is the legal interpretation of **unreasonably**?
- No precedents
- Panel will likely choose Article IX rather than the TBT Agreement as the place where it is appropriate to rule – deals explicitly with Marks of Origin

Technical Barriers to Trade

- The US might claim that the labelling regulations applying to products of mixed origin supply chains are not Marks of Origin – labelled products don't cross international borders
- Then a challenge could be made under the TBT

Technical Barriers to Trade

- Article 2.2 of the TBT agreement states:
Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating *unnecessary obstacles to international trade*. For this purpose, technical regulations shall not be more trade-restrictive than necessary to *fulfil a legitimate objective*, taking account of the risks non-fulfilment would create. [Emphasis Added]

Technical Barriers to Trade

- Legitimate Objectives:
 - national security requirements X
 - the prevention of deceptive practices X
 - ❖ USDA denial (grading)
 - protection of human health or safety X
 - ❖ Homeland Security/USDA vehement denial
 - animal or plant life or health X
 - the environment X
- COOL does not appear to qualify
- Unnecessary obstacle to international trade

Technical Barriers to Trade

- The TBT's Article 2.4 states:
Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.
- Codex standards do exist

Technical Barriers to Trade

- CODEX General Standard for the Labelling of Prepackaged Foods
- Section 4.5 – *Country of Origin*
 - Section 4.5.1 states: The country of origin of the food shall be declared if its omission would mislead or deceive the consumer.
 - Section 4.5.2 states: When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered the country of origin for the purposes of labelling.
- If a Panel rules on this basis Canada should win

Evidence

- A TBT Challenge depends on legal arguments
- An GATT Article IX (Marks of Origin) Challenge will require evidence that:
 - COOL has **materially reduced the value** of Canadian animals entering mixed supply chains
- Based on before and after COOL
- Given the short run – focus on prices
- Sawka (2010) could not confirm the hypothesis for beef using simple statistical tests
- Will require resources for sophisticated empirical analysis

CONCLUSIONS

- COOL is a protectionist policy
- Marks of Origin (Article IX) have not been a contentious issue
 - There are no precedents
 - Nothing has changed since 1947
- Thus, the crux of an Article IX challenge at the WTO depends on how the WTO Panel interprets the key phrases:
 - *Materially reduce*
 - *Unreasonably increase*
 - *Difficulties*
 - *Inconveniences*
 - *Minimum*

CONCLUSIONS

- If a Panel accepts a challenge based on the TBT (and Codex) Canada will have a strong case
- If Article IX is the basis of a challenge then evidence that COOL has materially reduced the value of animals entering mixed supply chains will be required
- Don` t underestimate **PROTECTIONISTS!**

Thank You

The laws concerning corn may everywhere be compared to the laws concerning religion. The people feel themselves so much interested in what relates either to their subsistence in this life, or to their happiness in a life to come, that *government must yield to their prejudices, and, in order to preserve the public tranquillity, establish that system which they approve of. It is upon this account, perhaps, that we so seldom find a reasonable system established with regard to either of those two capital objects* [emphasis added]

Adam Smith, 1776