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“PRODUCT OF THE U.S.A.” LABELING IN THE BEEF INDUSTRY: ECONOMIC PROTECTION OR CONSUMER PROTECTION?

[Agriculture \(/full-blog/category/Agriculture\)](#)

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American consumers are willing to pay a 19 percent premium for U.S. grass-fed beef to support animal welfare, environmental sustainability, and local economies.^[i] These ethically-minded consumers specifically search for the “Product of the U.S.A.” label on their meat and meat products with the belief that the label is exclusive to meat born, raised, and harvested in the U.S.^[ii] However, a loophole in the United States Department of Agriculture’s (USDA) labeling policy allows multinational companies to disguise imported meat as a “Product of the U.S.A.” by having it ‘processed’ at a USDA-inspected facility, and allows them to charge American consumers premiums in exchange for low-cost foreign meat and meat products.^[iii] This policy has undercut efforts to support the grass-fed movement in local communities and financially harmed domestic cattle ranchers adhering to grass-fed protocol.^[iv]

First, it is important to establish whether this type of deceptive practice is even meaningful, materially speaking. Do American consumers care whether their grass-fed beef comes from the United States or from a different country? Arguably, even for those ethically minded consumers, it should not matter whether one is supporting animal welfare and environmental sustainability at home or abroad because it is good for the planet in general.^[v] Additionally, there is the argument that consumers care more about price than the country of origin,^[vi] and that the “Product of the U.S.A.” label is simply a marketing tool used by domestic ranchers to eliminate foreign competition, rather than to protect Consumer rights.^[vii]

Yet, research by the University of Kentucky and the University of Alberta shows that the origin of meat is a deciding factor for many American consumers.^[viii] A 2010 Consumer Union poll also indicated that 93 percent of respondents want country of origin labeling (COOL) on their meat products.^[ix] Even if domestic ranchers use the “Product of the U.S.A.” label as a marketing tool for their grass-fed meat, an argument can still be made that consumers have a right to accurate information concerning the origin of their meat.



credit (<https://grassrunfarms.com/grass-fed-beef-products/>)

In June 2018, advocates for domestic grass-fed beef petitioned the USDA claiming that the current 'processed' standard for "Product of the U.S.A." labels fails in its objective to provide consumers with specific, useful information on domestic origin.^[x] It also allows multinational food processing companies to mislead American consumers into paying premiums for low-cost foreign meat and meat products.^[xi] They seek to change the policy to a born, raised, and harvested in the U.S. standard.^[xii] In other words, "labels should be approved with the understanding that the ingredients are of domestic origins."^[xiii] They argue that that the current regulation is inconsistent with the 1906 Federal Meat Inspection Act (FMIA) and the Tariff Act of 1930 (Tariff Act).^[xiv]

The petition to the USDA claims that the proposed change would make the USDA regulation more consistent with the FMIA and the Tariff Act.^[xv] The FMIA's labeling provision is governed by the Tariff Act, which states that "every article of foreign origin...imported into the United States shall be marked in a conspicuous place...in such a manner as to indicate to an ultimate purchaser... the country of origin of the article."^[xvi] A federal district court found that the financial harm on domestic ranchers "is fairly traceable to the [USDA]'s actions."^[xvii] Other courts have consistently affirmed that the spirit of FMIA's labeling provision is to benefit consumers, rather than economic protectionism.^[xviii]

Nevertheless, there is still a heated debate as to whether giving domestic ranchers an exclusive domestic label would be consistent with international law. The World Trade Organization (WTO), under the Technical Barrier to Trade Agreement, allows countries to enact measures to ensure food safety, but it explicitly prohibits any measure that gives domestic products an unfair advantage.^[xix]

The USDA made two attempts in the past to create COOL requirements for meat. In March 2009, the USDA finalized a regulation stating that meat "derived from an animal that was slaughtered in another country shall retain [its] origin... through retail sale," or sale to the end consumer.^[xx] In 2013, the USDA revised the COOL regulation to require labels that showed each step of production where the animal was born, raised, and slaughtered.^[xxi] Both times Canada and Mexico challenged the USDA regulation in the WTO arguing that COOL violated international law, and both times the WTO agreed, finding that "COOL treats imported livestock less favorably than U.S. livestock."^[xxii] The WTO emphasized that, although providing consumers with specific useful information on origin is a legitimate objective, it could not be more trade restrictive than necessary.^[xxiii] As a result, Congress repealed the COOL requirements for beef in 2015 to avoid retaliatory tariffs.^[xxiv]

Opponents of the 2018 petition argue that the proposed change is "a misguided attempt to restore [COOL] by circumventing the legislative process."^[xxv] They accuse American ranchers of fearing competition and claim that the petition is primarily motivated by economic protection rather than a desire to protect consumers.^[xxvi] They suggest that domestic producers should instead try to build their own brand name rather than rely so heavily on "Product of the U.S.A." labels.^[xxvii]

Ultimately, it is more likely than not that the proposed changes conform to international law. Establishing an exclusive label for domestic ranchers may be the least trade-restrictive way of providing consumers with accurate, useful information on the domestic origin of meat. Although forcing domestic ranchers to rely on brand name might be even less trade-restrictive, this approach is not likely to be consistent with FMIA or the Tariff Act. Regardless of whether the proposal conforms with international law, President Trump is renegotiating trade agreements with other countries to bring flexibility to COOL regulations, and his administration has shown that it will not shy away

from a trade war or from violating international law.^[xviii]As the movement for domestic labeling continues to grow, and consumers become more concerned with the origin of their meat, a reform to the USDA's policy may occur in the near future. Only time can tell.

[i] Umberger, Wendy J., Et Al., *Country-Of-Origin Labeling Of Beef Products: U.S. Consumers' Perceptions*, *Journal of Food Distribution Research*, 34(03) J. of Food Distribution Res. 103, 103 (2003).

[ii] Joe Fassler, *How Rampant Mislabeling Puts America's Grass-Based Cattle Producers Out of Business*, *The New Food Economy* (July 16, 2018), <https://newfoodeconomy.org/grass-fed-beef-labeling-fraud-country-origin/>.

[iii] Amanda Radke, *Petition Aims to Change Labeling Laws for U.S. Beef*, *Tri-State Livestock News* (Aug. 9, 2018), <https://www.tsln.com/news/petition-aims-to-change-beef-labeling-laws/>.

[iv] Will Harris, *From What Country Are You Buying Your Beef?*, *White Oak Pastures: In The Moment* (May 23, 2018), <http://blog.whiteoakpastures.com/in-the-moment/from-what-country-are-you-buying-your-beef#0003.0000.0000.0000.0000.0000.0000.0000.0000.0000>.

[v] Fassler, *supra* note ii.

[vi] *Id.*

[vii] Jolene Hamilton, *Beef COOL Debate During Farm Bill Town Hall Meeting*, *La Junta Tribune-Democrat* (Sept. 19, 2018), <http://www.lajuntatribunedemocrat.com/news/20180919/beef-cool-strikes-debate-during-farm-bill-town-hall-meeting>.

[viii] Lim, Kar H., Et Al., *U.S. Consumers' Preference and Willingness to Pay for Country-of-Origin-Labelled Beef Steak and Food Safety Enhancements* (June, 2012), <https://ageconsearch.umn.edu/bitstream/103385/2/AAEA%20COOL%20MEL%20MEL%20khlim.pdf>.

[ix] Consumer Reports, *Poll Finds 93% of Consumers Want Labeling on Meat*, (last visited Sept 24, 2018) <https://consumersunion.org/news/poll-finds-93-of-consumers-want-labeling-on-meat/>.

[x] American Grassfed Association & Organization for Competitive Markets, *Petition For Change to the Food Safety and Inspection Service Standards and Labeling Policy Book on "Product of the U.S.A."*, U.S. Dept Agric. (June 12, 2018), <https://www.fsis.usda.gov/wps/wcm/connect/195183b8-d436-4914-8b73-449fd0a5a623/18-05-American-Grassfed-Association-061818.pdf?MOD=AJPERES>.

[xi] *Id.*

[xii] *Id.*

[xiii] *Id.*

[xiv] *Id.*

[xv] *Id.*

[xvi] Federal Meat Inspection Act of 1906, 21 U.S.C. § 602 (2012); Tariff Act of 1920, 19 U.S.C. § 1304(a) (2012).

[xvii] *Ranchers-Cattlemen Action Legal Fund v. USDA*, No. 2:17-CV-223-RMP, 2018 U.S. Dist. LEXIS 94527, at *11 (E.D. Wash. June 5, 2018).

[xviii] Elaine Watson, *Fear of Competition—Not Consumer Protection—Is Behind Cattlemen's Petition Claim Plant-Based Clean Meat Brands*, *Food Navigator—USA* (Apr. 17, 2018), https://www.foodnavigator-usa.com/Article/2018/04/17/Fear-of-competition-not-consumer-protection-behind-Cattlemen-s-petition-claim-plant-based-clean-meat-brands?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright#.

[xix] World Trade Organization, *Technical Barrier to Trade—Technical Information* (last visited Sept. 28, 2018), https://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm.

[xx] Ellen Essman, *USDA Sued Over Country Of Origin Labeling Regulations*, Ohio Agriculture Law Blog (July 5, 2017), <https://ohioaglaw.wordpress.com/2017/07/05/usda-sued-over-country-of-origin-labeling-regulations/>.

[xxi] Joel L. Greene, *Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling*, Congressional Research Service (Dec. 8, 2015), <https://fas.org/sgp/crs/misc/RS22955.pdf>.

[xxii] *Id.*

[xxiii] *Id.*

[xxiv] *Id.*

[xxv] Wyatt Bechtel, *COOL 2.0: Comment Period Extended for "Product of U.S.A." Labeling*, Drovers (Aug. 24, 2018), <https://www.drovers.com/article/cool-20-comment-period-extended-product-usa-labeling>.

[xxvi] *Id.*

[xxvii] Hamilton *supra* note vii.

[xxviii] *Id.*

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