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Congress Puts the USDA's COOL Enforcement on Ice

March 9, 2016 · by [grantjahner](#) · in [GGU Law Review](#) ·



It is more important that Americans have safer food than to know if their steak is “single-origin”. Especially in the wake of major E. coli outbreaks at mega chains like [Chipotle](#) (<http://www.fda.gov/Food/RecallsOutbreaksEmergencies/Outbreaks/ucm470410.htm>), food safety in the United States should take priority over pseudo-protectionist policymaking and food transparency.

Transitions in policy do not always come easy. Most legislatures need a little encouragement before change occurs. Congress’ encouragement came in the billions.

Shortly after a \$1 billion retaliatory tariff ruling from the World Trade Organization, US Congress had to act quickly. Step one: repeal the infringing regulation (<http://www.ams.usda.gov/sites/default/files/media/FAOs%20-%20COOL%20Beef%20Pork%20Repeal.pdf>), Country of Origin Labeling. Step two: earmark over \$104 million (<http://www.foodsafetynews.com/2015/12/house-spending-bill-includes-104-million-increase-for-fsma-cool-repeal/#.VnnOFhorL6Y>) specifically for increased food safety within the newest \$1.1 trillion omnibus spending bill.

What were the Country of Origin Labeling requirements?

Country of Origin Labeling (COOL) is a labeling policy that requires retailers, such as grocery stores and supermarkets, to provide their customers with information regarding the country of origin for particular foods. In 2013, the United States Department of Agriculture (USDA) issued its final rule for COOL, which prohibited the commingling (<http://www.nationalgrocers.org/industry-issues/food-labeling/regulatory-issue-country-of-origin-labeling>) of muscle cuts from different countries.

For example, a butcher at your local grocer could not mix a ribeye steak from Canada and a ribeye steak from the United States in the same package. Additionally, each cut of meat was required to bear a label that indicated where that particular cut was born, raised, and slaughtered (<http://www.nationalgrocers.org/industry-issues/food-labeling/regulatory-issue-country-of-origin-labeling>). In other words, every cellophane wrapped pork chop at the market had a sticker that told consumers which side of the Rio Grande it resided.

Trade Agreement Rules Supreme

About a week before the omnibus bill, the World Trade Organization (WTO) ruled that Canada and Mexico could impose \$1 billion in retaliatory tariffs against United States products. The beef and pork COOL requirements imposed huge labeling burdens (<http://www.forbes.com/sites/nancyhuehnergath/2015/12/21/quashing-consumers-right-to-know-congress-repeals-country-of-origin-labeling-for-beef-and-pork/>) and discriminated against Canadian and Mexican producers. The WTO found that COOL amounted to a non-tariff trade barrier (<http://www.foodsafetynews.com/2015/12/usda-ends-cool-enforcement-with-presidents-signature-on-omnibus-bill/#.VnoF1BorL6Y>) that US trade agreements prohibited.

Ramifications of Repeal

Effective immediately, the USDA will cease enforcing beef and pork labeling (<http://www.ams.usda.gov/sites/default/files/media/FAOs%20-%20COOL%20Beef%20Pork%20Repeal.pdf>) requirements. While the USDA lifted the COOL requirements for beef and pork, there will still be rigorous inspections (<http://www.foodsafetynews.com/2015/12/usda-ends-cool-enforcement-with-presidents-signature-on-omnibus-bill/#.VnoF1BorL6Y>) for all incoming meat. Accordingly, this repeal should not signal a return to Upton Sinclair's *The Jungle*.



The USDA has not ceased all enforcement of origin labeling. Many types of meat like chicken, lamb, goat, fish, and shellfish (<http://www.ams.usda.gov/rules-regulations/cool>) will continue to have the same restrictions on commingling and labeling. Also, COOL requirements go beyond labeling meats; fruits, vegetables, and certain nuts will maintain the origin labeling requirements, as well.

Repealing COOL also has repercussions for those outside the meatpacking industry. For example, Washington's apple industry (<http://www.thepacker.com/news/bill-repeals-cool-meat-boosts-fda-funding>) welcomed news of the repeal because Canada and Mexico remain the top two export destinations for their products. The shift in the COOL requirements and the corresponding escape from the \$1 billion retaliatory tariffs will likely keep grocery prices down for Americans. If the tariffs had gone forward, American growers could have been put out of business (<http://www.thepacker.com/news/bill-repeals-cool-meat-boosts-fda-funding>).

Some in the "Right-to-Know" camp think the repeal is a major step back (<http://www.foodsafetynews.com/2015/12/house-spending-bill-includes-104-million-increase-for-fsma-cool-repeal/#.VnnQFhorL6Y>) for Americans who want food transparency. Knowledge effectuates the purchasing power of every consumer. In a capitalist society, the consumer has choices (at least, in theory). As the saying goes: "vote with your feet." However, a more apt analogy is for consumers to "vote with their dollars." Consumers can only "vote" once they have the information they want.

On the other hand, there is an assumption that the consumer knows what the information actually means. Look no further than the trend of "gluten-free" dieters (<http://www.consumerreports.org/cro/magazine/2015/01/will-a-gluten-free-diet-really-make-you-healthier/index.htm>) and the corresponding "gluten-free" information printed on unnecessary items such as a bag of popcorn. There is a misconception that cutting gluten (a

protein commonly found in wheat) from a diet will result in better health. While those with celiac disease or gluten intolerance may benefit from a gluten-free diet, others may experience adverse effects like adding undesired sugar and fat to their diet. The deluge of gluten information has the potential for perpetuating this misunderstanding. Thus, knowledge without understanding is worthless.

Just like a gluten free sticker may not effectively educate a consumer, the country of origin label may not educate the consumer about their dinner. What does knowing a steak came from Canada, which is the second largest in territorial size in the world (<http://www.worldatlas.com/articles/the-largest-countries-in-the-world-the-biggest-nations-as-determined-by-total-land-area.html>), actually mean to the consumer?

If the new food safety funding is effectively applied, the benefits of safer food will reach more people than a sticker with a country name on it. That is not to say all information should be removed from food labels. There are certain key portions of labels that are necessities. For example, allergen warnings are critical and lifesaving.

Americans' food safety and lower prices are more important than minor labeling transparency. Congress' move to repeal a portion of the COOL requirements does not come as a big surprise for Representatives and Senators who need to maintain the recovering US economy – damage control is a top priority. Accordingly, avoiding \$1 billion tariffs with our major trade neighbors fits the bill.

Tags: [Chipotle](#), [COOL](#), [Country of Origin Labeling](#), [food](#), [labeling](#), [origin](#), [single-origin](#), [USDA](#), [WTO](#)

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