

CROSS-BORDER

WTO COOL DECISION PUTS CONGRESS ON THE CLOCK

The World Trade Organization (WTO) issued an arbitration decision in the longstanding Country-of-Origin Labelling (COOL) dispute between Canada, Mexico, and the United States on December 7. The arbitrator determined that Canada may request to impose retaliatory duties on U.S. goods in the annual amount of CAD 1,054.729 million. While the dispute concerns the labelling of beef and pork products, Canada's proposed retaliation list includes items such as wooden furniture, mattresses, corn, potatoes, cherries, maple syrup, fructose and fructose syrup, tomato ketchup, and stoves. Throughout the arbitration, Canada has signaled its intention to impose a 100 percent surtax on these goods, up to the total amount of retaliation authorized by the arbitrator. Unless the U.S. Congress acts for a full repeal of COOL – perhaps in this week's omnibus spending bill – Canada will likely request authorization to commence retaliation early in 2016. **All companies that have goods entering into Canada, as well as Mexico, as part of their distribution or value chains should examine this matter to assess potential impacts.**

Background

In 2009, the U.S. imposed mandatory country-of-origin labelling requirements on imports of beef and pork from Canada and Mexico into the U.S. COOL required that Canadian and Mexican imports be labelled according to where the animals were born. The COOL measures had an adverse effect on Canadian and Mexican cattle and pork exports to the United States. For this reason, on October 6, 2009, the governments of Canada and Mexico initiated dispute settlement proceedings against the United States at the WTO to challenge the COOL requirements as discriminatory against Canadian and Mexican livestock. In June 2012, the WTO Appellate Body agreed and afforded the United States until May 2013 to bring its COOL rules into compliance with its international agreements. In response, in May 2013, the U.S. revised its COOL requirements to require that meat labels on cattle and beef imports include where the animals were born, raised, and slaughtered. In response, Canada and Mexico challenged the U.S.'s revised COOL rules before the WTO. The WTO Appellate Body again found in their favour on May 18, 2015.

Supported by the favourable WTO Appellate Body decision, Canada and Mexico pursued this arbitration proceeding to determine the amount of retaliation that would be permitted against the U.S. The Canadian government [published a list of proposed products](#) – identified by tariff item in the Canadian Customs Tariff – against which they intend to impose 100 percent tariffs up to the total amount of retaliation agreed to by the WTO arbitrator.

The Decision

In the December 7 decision, the arbitrator determined that Canada annually lost CAD 1,054.729 million as a result of the measures imposed

by the United States. In accordance with the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Canada may now request authorization from the Dispute Settlement Body to suspend concessions and related obligations at a level not exceeding CAD 1,054.729 million annually with respect to any goods under the GATT 1994 treaty.

Notably, the decision authorizes retaliation in an amount less than the CAD 3,068.1 million that Canada requested. Canada proposed this amount based on the level of its export revenue losses (CAD 2,045 million), and losses as a result of domestic price suppression (CAD 1,023.1 million). The arbitrator reduced the amount requested by Canada based on Canada's proposed methodology – including domestic price suppression – and substituted its own determination in its place.

With respect to Mexico, the arbitrator determined that Mexico annually lost USD 227.758 million, despite Mexico having claimed a combined total of USD 713.4 million in export revenue losses and losses from domestic price suppression.

Next Steps

All eyes now turn to Washington to see if the U.S. Congress will pass legislation repealing COOL. On June 10, 2015 the U.S. House of Representatives voted 300-131 to repeal the COOL rules by passing the *Country of Origin Labeling Amendments Act*, H.R. 2393. On June 25, 2015, the U.S. Senate Committee on Agriculture held a hearing on COOL and trade retaliation. During the Committee hearing, then Canadian Agriculture Minister Gerry Ritz indicated that anything but a full legislative repeal of the U.S. COOL regime would lead to Canadian retaliation. Unfortunately, following the Committee meeting, a vote was held and there were not enough votes in the Senate to fully repeal COOL.

On July 23, 2015 U.S. Senators John Hoeven (R-N.D.) and Debbie Stabenow (D-Mich.), members of the Senate Agriculture Committee, introduced a bill entitled the [Voluntary Country of Origin Labeling \(COOL\) and Trade Enhancement Act of 2015](#). The bill was designed to prevent retaliatory trade sanctions by Canada and Mexico, yet still allow voluntary labelling of beef, pork and chicken that is produced in the United States. Cosponsoring the bill were Senators John Thune (R-S.D.), Amy Klobuchar (D-Minn.), Chuck Grassley (R-Iowa), Heidi Heitkamp (D-N.D.), Mike Enzi (R-Wyo.) and Sherrod Brown (D-Ohio). The legislation remains in committee.

On the same day as Hoeven and Stabenow introduced their bill, Senator Pat Roberts (R-Kan.), introduced an amendment to the highway appropriations bill to effectively and simply repeal COOL requirements for beef, pork and chicken. This procedural maneuver failed.

In the wake of today's decision, several U.S. members of Congress are hoping that appropriators will include a COOL repeal in the omnibus

spending bill that must pass Congress by December 11, 2015. Rep. Rodney Davis (R-IL), a member of the House Agriculture Committee, is among those who have said that a COOL fix is one of several possible riders for the omnibus bill, which is expected to be made public this week. Senate Agriculture Chairman Pat Roberts (R-KS) said in a statement that many senators are concerned about retaliation. "There is a lot of will in the Senate to repeal COOL and prevent retaliation,"

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FOR MORE INFORMATION CONTACT:



Brenda C. Swick is a Member in Dickinson Wright's Toronto office. She can be reached at 416.594.4052 or bswick@dickinsonwright.com.



Daniel D. Ujcz is Of Counsel in Dickinson Wright's Columbus office. He can be reached at 614.744.2579 or dujcz@dickinsonwright.com.