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September 5, 2008

Mr. Lloyd Day
Administrator, Agricultural Marketing Service (AMS)
Country of Origin Labeling Program
United States Department of Agriculture
STOP 0254, Room 2607-S
1400 Independence Avenue, SW
Washington, DC 20250-0254

Dear Mr. Day,

The Government of Canada appreciates the opportunity to comment on the August 1, 2008 Federal Register notice of the interim final rule on the mandatory country of origin labeling (COOL) provisions of the *Food Security and Energy Act 2008*.

Fundamentally, Canada's comments stem from our concern that this program will impose unnecessary costs on affected North American industries. The substantial volume of two-way trade between Canada and the United States has been a testament to the integrated and cooperative nature of many of our industries. Indeed, trade with Canada supports more than 7.1 million jobs in the United States. Trade is also vital in the agricultural sector, and Canada is in fact the largest single-country export market for the United States with more than US\$15 billion in sales last year. Focus on the size of the relationship, however, does not fully reveal how trade can be so mutually-beneficial. For example, Canadian inputs in terms of cattle, hogs and their meats facilitate the ability of the United States to export to third markets. The mandatory COOL provisions could, therefore, also upset North American competitiveness vis-à-vis other markets.

In the current economic context, I believe we agree that ensuring a safe, efficient supply chain and supporting the overall competitiveness on both sides of the border are key priorities. In this regard, our mutual interest is for COOL to be implemented in a manner that is the least disruptive to industry, is flexible enough to avoid unintended consequences, and does not add unnecessary costs or administrative burden. Our comments are submitted toward this end. However, should implementation of the subject mandatory COOL provisions result in an adverse impact on Canada, the Government is prepared to consider all of its options.

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Specific comments and suggestions are outlined in the attached. I, and Embassy staff, remain available to meet with you, or your staff, for further discussion. For any clarifications, please also feel free to contact Pamela Simpson at 202-682-7629.

Yours sincerely,



Michael Wilson
Ambassador

c.c.: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget

**Government of Canada
Comments on Interim Final Rule
Mandatory Country of Origin Labeling
Docket No. AMS-LS-07-0081**

The Government of Canada appreciates the opportunity to comment on the August 1, 2008 Federal Register notice of the interim final rule on the mandatory country of origin labeling (COOL) provisions of the *Food Security and Energy Act 2008 (2008 Farm Bill)*.

The Government of Canada has long held the view that the COOL amendments to the 1946 *Agricultural Marketing Act* should be repealed. Should implementation of the provisions result in an adverse impact to Canada, the Government is prepared to consider all options. Without prejudice to this view, the following points highlight concerns the Government of Canada has regarding the interim final rule.

- 1. The Government of Canada notes that the interim regulations provide packers and processors the flexibility to label meat from animals of U.S. origin in the same manner as they label meat from animals of “mixed origin”. The same flexibility should be allowed with respect to meat from animals imported directly for slaughter, as the current differentiation likely accords less favourable treatment to “like” products based on where the animals are born and raised.**

Put another way, if the objective of this labeling program is to inform consumers and if Label A (U.S. origin) product¹ is eligible for Label B (mixed origin), then Label C (animals imported for immediate slaughter) product that is “like” Label A product should also be eligible for Label B, given that the only difference would appear to be the “nationality” of the animal from which the product is derived. U.S. packers and processors will naturally look first to U.S.-born and mixed origin animals, due to their eligibility for Label B and the likely lower compliance costs for U.S. producers when using animals born and/or raised in the United States. Costs for using animals imported directly for slaughter could also be increased by requirements such as verification (i.e. tracking the origin of the commodity), providing further incentive for U.S. packers to slaughter U.S. born and/or raised animals and effectively limiting the market for animals imported into the U.S. for immediate slaughter. Because Label C differentiates solely on where the animal from which a labeled product is derived was **born and raised**, it is unclear how the U.S. is according national treatment to imported products that are “like” domestic products.

Moreover, the interim regulation in effect requires retailers to inform consumers of meat products of both the country where livestock is born and raised and the country where the livestock is slaughtered. In this case, the amount of information that needs to be provided to meet the labeling requirements, including for the purposes of

¹ Labels A, B and C as referenced in the Government of Canada comments refer to the way the labels are organized in the 2008 Farm Bill legislation. With regards to the Federal Register notice, Label A refers specifically to S 65.300 (d), Label B refers to S 65.300 (e) I, and Label C refers to S 65.300 (e) ii.

verification of country of origin, for covered commodities derived from animals imported for immediate slaughter could be greater than what is required for a commodity that is exclusively born, raised and slaughtered in the United States. This can result in less favourable treatment being afforded to commodities derived from livestock born and raised outside the U.S.

2. **The Government of Canada notes that there is no mandated order of countries under Label B**, thus allowing for a Canada-U.S. label that is accurate, that covers products under both Labels B and C, and that can help to reduce the impact on trade in affected commodities. Therefore, the Government of Canada proposes that the Final Rule give processors the flexibility to make use of the order of countries mandated under Label C when processing a production run including animals of U.S., "mixed origin" or "imported for immediate slaughter".
3. **Furthermore, consumers will only be confused** when arriving at a grocery store to find two display cases with identical product if there is a requirement at retail to separate pork or beef that is derived from mixed origin feeder animals and pork or beef that is derived from animals that have been sent directly from Canada to slaughter, particularly if such differentiation is related to the order of the countries on the label, i.e. Product of U.S. and Canada versus Product of Canada and the U.S.

According to the mandatory COOL fish and shellfish regulations, a bulk container (e.g., display case, shipper, bin, carton, and barrel) used at the retail level to present product to consumers may contain a covered commodity from more than one country and/or more than one method of production provided all possible origins and/or methods of production are listed (7 CFR Part 60, S60.300 (d)). The fish and shellfish rule also states that "for imported covered commodities that have subsequently undergone substantial transformation in the United States that are commingled with other imported covered commodities that have subsequently undergone substantial transformation in the U.S. (either prior to or following substantial transformation in the U.S.) and /or U.S. origin covered commodities, the declaration shall indicate the countries or origin contained therein or that may be contained therein" (7 CFR Part 60, S60.200(h)2). Similarly, the 2008 legislation does not imply that products must be separated at retail; rather, it says only that the product must be adequately identified with its country of origin. Canada, therefore, requests consistency with the fish and shellfish rule for retail display across all covered commodities. For meat products, as long as all possible origins are declared in a conspicuous location on the container, case or package at retail (Product of U.S., Product of Canada and the U.S.), there is no need to separate product at retail according to origin.

4. **The inconsistency of these labeling provisions is highlighted by the ground beef provision**, where the United States Department of Agriculture (USDA) has clearly stated that included countries do not need to be labeled either alphabetically or by predominance in the ground products; the product from the particular origins simply must have been in the grinder's inventory in the last sixty days. For the order of countries to supposedly matter when determining the origin of one type of beef

product, but not to matter when determining the origin of another, would appear to be inconsistent with the rule's stated objective of informing consumers.

5. **Identification of animal origin by ear tag is a cause for concern.** Canada notes that the USDA has not provided guidance as to what records will suffice for imported animals, stating only that for animals that are part of an official identification system, such as the Canadian cattle identification system, ear tags will suffice for proving origin at the slaughterhouse. The Government of Canada is concerned with having requirements imposed because of a specific animal health concern, such as Canadian ear tags on cattle, enshrined in separate regulations for an entirely different and unrelated purpose. This could restrict Canada's abilities to adapt its national cattle identification system to changing environments or technologies in the future. The Government of Canada is satisfied, however, that the USDA has expressly prohibited the presumption of U.S. origin for unmarked animals.

The Government of Canada is also concerned about the impacts of these identification requirements on the hog industry, where there is no official identification system in Canada. While the USDA has provided some guidance as to how producer affidavits will be interpreted, Canada remains concerned about the burden of record-keeping requirements that may be imposed on a hog sector already facing considerable hardship. Weanlings and feeder pigs rapidly outgrow the initial marking requirements that would have identified them on the health certificate at export. The Government of Canada would like to note that, as U.S. pork exports continue to increase, hogs of Canadian origin represent approximately 10% of total U.S. slaughter. The burden of identification and record-keeping for imported hogs should be a significant consideration for the USDA, given its impact on U.S. producers and processors.

6. **Acronyms would serve a useful purpose on the labels.** As customers attempt to sort out all the information presented on the display panels of a meat product, it would be useful to develop a list of reasonable acronyms that could be used by processors and retailers (e.g. CAN for Canada). This would allow processors some ability to save space on the label and would not likely cause any further confusion to the consumer as to the origin of a product.
7. **Definitions of processing are problematic.** As the definition of "processed" has become the focus of efforts to either broaden or contract the scope of the law, it appears that the USDA's definition of "processed" in the interim final rule is inconsistent across product groupings. Covered commodities that would need to be labeled regarding origin if sold individually are exempt if combined. Discussions surrounding the various possible definitions of processed products under the mandatory COOL requirements, therefore, are shaped more by specific producer interests than by the goal of providing consumer information.

Despite the suggestions we have made to the USDA regarding the Interim Final Rule on mandatory country of origin labeling, the Government of Canada continues to believe

that the COOL provisions of the 2008 *Food Security and Energy Act* should be repealed for the reasons following.

1. **COOL represents two steps back:** This legislation is not in the best interests of the U.S. nor of its closest trading partners. Industries in both the U.S. and Canada have worked hard in the 20 years since the Canada-U.S. Free Trade Agreement was signed to make national origin irrelevant in business and consumer decisions, so as to provide businesses the flexibility to capitalize on regional advantages within North America. However, the COOL legislation will upset the North American comparative advantage in other markets because of the added costs to industry through changes to production practices such as separation requirements throughout the supply chain. Implementing mandatory COOL undoes many of the benefits that have been achieved over nearly 20 years and moves North America backwards. Moreover, it comes at a time when the recent and rapid rise of third country, low-cost agricultural producers is already threatening to displace North American meat products in third country markets. Ultimately, the increased costs of mandatory COOL will decrease North American competitiveness on the world stage.
2. **COOL will cost at least \$2.5 billion with no benefits:** According to the USDA cost-benefit analysis, COOL will cost at least \$2.5 billion to implement with benefits that are difficult to quantify. It is possible that the costs could be even greater. On the previous fish and seafood rule, the analysis by the Food Marketing Institute of the associated implementation costs indicated that the costs to industry were more than ten times higher than those estimated by the USDA, with no increased sales of U.S. seafood. The complexities added at all levels of the U.S. food distribution system to implement the subject interim final rule – with no off-setting benefits to consumers – make it clear that the legislation and rule should be withdrawn. Most importantly, the USDA’s own cost-benefit analysis indicates that for all covered commodities, the volume of U.S. exports will decline with the implementation of this legislation. If neither U.S. consumers, nor U.S. industry as a whole, are expected to gain from mandatory COOL, then who is?
3. **COOL will not make food safer.** The rule states that mandatory COOL “is not a health safety or animal health measure. COOL is a retail labeling program and as such does not address food safety or animal health concerns”. There are no food safety standards or guidelines in the mandatory COOL requirements. Moreover, the safety of covered commodities is already addressed in other U.S. measures. Given that the USDA has acknowledged that mandatory COOL is not an appropriate means of enhancing or enforcing food safety, the Government of Canada would like to underscore the cooperative work of food safety officials on both sides of the Canada-U.S. border who, together, protect the health and safety of North American consumers. Canada underlines that inspectors currently receive the necessary food safety information to make a safety determination based on sound science and internationally-accepted standards. The North American food safety system is among the best in the world, and mandatory COOL will neither complement nor enhance this science-based regulatory oversight.

- 4. Labeling requirements are arbitrary and confusing.** The labeling requirements as stated by the legislation and interpreted by the USDA are confusing and arbitrary. They will be implemented at great cost for questionable consumer benefit, as the USDA cost-benefit analysis itself suggests. For instance, the inclusion of only certain commodities as “covered commodities” and the definition of “retailer” suggest that consumers are not in need of information on all commodities that they purchase from all types of stores. We are unaware of any reason why the objective of informing consumers is limited to requiring country of origin labeling only for the covered commodities. Furthermore, the specific requirements could mandate differentiation between finished products that are identical in all aspects except in the order of countries on the label. This will raise questions in the minds of consumers such as whether the label implies a difference in products, a difference in company labeling policy, or even a difference in quality. The legislation and ensuing regulations do not serve the stated purpose of informing the consumer.
- 5. Unnecessary obstacle to international trade.** Canada has raised its concerns regarding mandatory COOL under the 2002 *FSRI Act* at several WTO Technical Barriers to Trade (TBT) Committee meetings, including June 2002, March and July 2003, March and June 2005, and July and November 2007. Canada believes that the amendments passed with the *2008 Farm Bill* are still cause for concern. Canada has consistently expressed its view that the COOL requirements should not create an unnecessary obstacle to international trade and should be consistent with the United States' international trade obligations.

For example, the Codex *General Standard for the Labeling of Prepackaged Food* states that “when a food undergoes processing in a second country that changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labeling”. This definition was considered adequate in the U.S. system for a number of years and will continue to remain the standard for retailers outside of the U.S. *Perishable Agricultural Commodities Act*, as well as for export. It remains the most practical, and also the most adaptable, to evolving commercial practice and growing international trade; and yet it is not the standard adopted in the COOL regulations. The U.S. has yet to respond to the concerns raised by Canada at the TBT Committee meetings, and Canada has consistently expressed its view that should implementation of the provisions result in an adverse impact to Canada, it is prepared to consider all of its options.

In closing, the Government of Canada would like to reiterate strong objections to the implementation of mandatory COOL and underscore that it should not create an unnecessary obstacle to international trade or reduce the international competitiveness of the highly integrated North American food and agri-food industries. Implementation of COOL comes at a time when there are increasing concerns about the cost of food, and recent studies show consumers underutilize existing labels. Furthermore, the North American livestock sector is under extreme financial pressure, while facing increasing offshore competition. We strongly urge the repeal of this harmful legislation that imposes costs to industry and consumers, threatens competitiveness of affected industries, and promises no clear offsetting benefits.