

## PolicyPennings by Daryll E. Ray & Harwood D. Schaffer

### Dueling COOL “damage” calculations

The proposed annual penalties of \$3.8 billion from Canada and Mexico for damages they claim they have suffered as the result of the US country-of-origin labeling law (COOL) has some members of Congress scrambling to repeal the legislation to protect industries that might be subject to retaliatory tariffs. Other legislators who have a long record of opposing COOL are using the proposed tariffs as an opportunity to achieve a goal they have long sought—its repeal.

It will be intriguing to see what will happen when Congress returns from its summer recess now that the US has responded to the Canadian and Mexican requests for the penalties (<http://tinyurl.com/phur6kk>) with a calculation that the impact of COOL on the import of cattle and hogs from the two countries is no more than \$91 million—\$43.22 million for Canada and 47.55 million for Mexico or 2.4 percent of the \$3.8 billion figure. The lower figure certainly gives ammunition to the 142 groups opposing the repeal of COOL.

The Canadian and Mexican figures include both the value of the loss of exports and a “calculation of domestic ‘price suppression losses.’” In its response, the US asserts that there is no history in disputes like this in which the arbitrator includes secondary impacts of the loss of export trade in the benefits awarded in a trade case.

Having dismissed the secondary losses, the US turns to the issue of the loss of exports and the method that Canada and Mexico use to calculate the damages they are seeking. The US argues that the methodology they use is incapable of taking into account other potential causes of export losses including recurring bovine spongiform encephalopathy events in Canada, the outbreak of Porcine Epidemic Diarrhea Virus in the US, drought in the American southwest and Northern Mexico from 2011-2014, and economic downturns.

In addition, the US asserts that Canada and Mexico’s methodology cannot accurately account for “independent economic events that may also affect fuel or transportation costs, exchange rates, unemployment rates, disposable income, and labor costs.” The US response argues that high grain prices reduce the profitability of US feedlots and thus the need for imported cattle, one of the factors that the methodology used by the two is unable to take into account.

“As a result, in the methodology proposed by Canada and Mexico, the bias inherent in the...analysis will result in a severely overestimated calculation of the trade effects of the amended COOL measure.”

For its part, the US uses a methodology that it claims is supported in the literature for problems like the one posed in determining the impact of COOL on cross border trade. In a number of areas the US claims that it, too, has overestimated the level of reduction in cattle and swine imports from Canada and Mexico in coming up with the \$91 million dollar figure.

The US points out that in 2014, “Canada’s total hog and cattle export value...was \$1.177 billion” while it claimed a loss of \$1.61 billion in additional export revenue due to COOL. “Canada estimates its marginal increase in exports on a per head basis will be 333,580 fed cattle, 360,176 feeder cattle, 1,889,680 fed hogs and 3,154,632 feeder pigs. This would require a 77 percent increase in cattle exports, and a 103 percent increase in pigs and hogs. These estimates ignore the demand for Canadian livestock to supply Canada’s own processing industry, the availability of livestock from Mexico, and the limits of consumer demand [for beef and pork] in the US.”

The US also points out that Canada’s methodology has changed as the dispute has made its way through the World Trade Organization dispute resolution process. The strongest language in the US submission to the arbitrator accuses Canada of using a “results-driven methodology.”

Unless the arbitrator completely throws out the argument made by the US, it would appear that the final level of damages will come in well below the \$3.8 billion Canada and Mexico is asking for. Whether or not that will make a difference in the halls of Congress is another matter.

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