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Testimony

of Linda Dempsey

Vice President, International Economic Affairs
National Association of Manufacturers

before the Subcommittee on Livestock and Foreign Agriculture
of the Committee on Agriculture
U.S. House of Representatives

on the Implications of Potential Retaliatory Measures Taken Against the United
States in response to Meat Labeling Requirements

March 25, 2015



**COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE**

**SUBCOMMITTEE ON LIVESTOCK AND FOREIGN AGRICULTURE
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Chairmen Rouzer, Ranking Member Costa and members of the Subcommittee on Livestock and Foreign Agriculture, thank you for the opportunity to testify on behalf of the National Association of Manufacturers.

My name is Linda Dempsey, and I am the vice president of international economic affairs for the National Association of Manufacturers (NAM). The NAM is the nation's largest industrial association and voice for more than 12 million women and men who make things in America. Manufacturing in the U.S. supports more than 17 million jobs, and in 2014, U.S. manufacturing output reached a record of nearly \$2.1 trillion. It is the engine that drives the U.S. economy by creating jobs, opportunity and prosperity. The NAM is committed to achieving a policy agenda that helps manufacturers grow and create jobs.

I am also appearing today as co-chair of the COOL Reform Coalition,¹ along with the U.S. Chamber of Commerce. Launched a year ago, the COOL Reform Coalition includes companies and associations from across the U.S. economy, including a variety of manufacturing sectors, that advocate for U.S. compliance with the international obligations it has undertaken in the World Trade Organization (WTO) agreements relating to the topic of this hearing.

U.S. manufactured exports are a critical source of growth for manufacturing and other industries throughout all 50 states. U.S. manufactured goods exports reached their highest level

¹ www.COOLReform.com

ever last year, totaling \$1.4 trillion, which supports millions of U.S. jobs. That growth has been supported over the past decades by the creation of the WTO and other market opening trade agreements, under which the United States and other nations agreed to reduce tariff and non-tariff barriers.

The United States' continued failure to bring the Country-of-Origin Labeling (COOL) rules for muscle cuts of meat into compliance with its WTO obligations is threatening U.S. manufactured goods exports to our two largest trading partners, Canada and Mexico. The COOL rules, which were put in place more than six years ago, have already been found out of compliance with the WTO obligations that the United States itself helped create – not just once, but three times. With the threat of retaliation looming for our nation's manufacturers, we and the COOL Reform Coalition urge that Congress move quickly to eliminate these WTO-inconsistent provisions.

I. Background on the COOL Dispute

The challenge before us today is not a new one. Indeed, it has been more than six years in the making, with attempts to impose COOL rules on muscle cuts of meat found to be out of compliance with international rules time and again.

The 2002 farm bill, subsequently amended by the 2008 farm bill, established U.S. Mandatory COOL rules that require most retailers to provide country of labeling for fresh fruits and vegetables, fish, nuts, meat and poultry, among other products. These provisions were implemented through an Interim Final Rule of the U.S. Department of Agriculture on July 28, 2008.

Less than five months later, Canada challenged the rule for muscle cuts of meat at the WTO, arguing that COOL has a trade-distorting impact by reducing the value and number of cattle and hogs shipped to the U.S. market. Mexico joined the complaint soon thereafter.

In November 2011, the WTO dispute settlement panel established to review the complaint found that the COOL rule violated U.S. commitments under the WTO Technical Barriers to Trade (TBT) Agreement because the rule treats imported Canadian cattle and hogs, and imported Mexican cattle, less favorably than domestic livestock. The United States appealed this ruling in March 2012 to the WTO Appellate Body. The WTO Appellate Body ruled in June 2012 and also found that the COOL rule violated U.S. obligations not to discriminate in its technical regulations.

The United States requested a reasonable period of time to bring the rule into international compliance and the U.S. Department of Agriculture published revised rules nearly a year after the WTO Appellate Body ruling in May 2013. The Canadian and Mexican governments objected to the revised rules, and in August 2013 sought yet another review – a so-called compliance panel – to determine whether the revised COOL rule was WTO compliant.

In October 2014, the WTO compliance panel report found the United States to be in continued violation of its WTO obligations under the TBT Agreement, but also in violation of the basic GATT 1994 agreement for discriminating against products imported into the United States. In fact, the WTO compliance panel found that the revised rule was even more discriminatory than the earlier version by requiring additional segregation. The United States appealed the decision in December, and a final WTO decision is expected this spring.

Given the earlier findings, including the most recent finding that the revised rule is more discriminatory, it is widely expected that the WTO Appellate Body will find that these rules discriminate against imports from Canada and Mexico. As a result, both Canada and Mexico will be authorized to retaliate against billions of dollars of U.S. exports.

II. Impact of Retaliation on U.S. Exports, Industries and Jobs

This past year, the NAM and U.S. Chamber of Commerce joined with other broad industry groups and individual companies to form the COOL Reform Coalition to urge action to avoid WTO-authorized retaliation on a wide variety of U.S. non-agricultural exporting industries.

Canada and Mexico are by far the United States' largest export markets, and purchased a record \$485 billion in manufactured goods in 2014. Those exports support millions of U.S. jobs. WTO-authorized retaliation by two of the largest U.S. trading partners could result in billions in tariffs affecting multiple sectors of the U.S. economy, threatening the livelihoods of American families.

Canada has put forward a proposed retaliatory list. The list includes agricultural products such as beef, pork, cheese and fresh fruit. But the impact would be much broader: steel pipes, heating appliances, office furniture and mattresses are among the manufacturing products on the proposed list.

Mexico has not set forth what products could be included on its list. But the impact on U.S. companies is expected to be severe, if history serves as our guide. Mexico imposed tariffs as high as 45 percent on 99 U.S. products after a North American Free Trade Agreement (NAFTA) dispute settlement panel sided with Mexico on a dispute over cross-border trucking in March 2009. More than \$2.5 billion of U.S. exports to Mexico were affected, resulting in lost sales and lost jobs. Agricultural and manufactured goods were both listed on Mexico's trucking retaliation list, ranging from potatoes, pork, cheese and red wine to office equipment and home appliances (refrigerators, dish washers, washing machines). Many companies reported that once they lost sales to Mexico because of the retaliatory tariffs, they lost that customer for the foreseeable future. Those lost sales were devastating to businesses, workers and their communities across the U.S. economy.

As well, there are broader systemic concerns. The dispute is also about U.S. international leadership and whether the United States will meet the international obligations that it has voluntarily undertaken – and indeed created – as a founding member of the WTO.

Since the WTO was created in 1995, there have been about 490 complaints. The United States has brought over 113 complaints, most of which it has won or favorably settled. The United States has been the respondent in over 140 cases, of which it has been found out of compliance in about a third of the cases.²

It is very much in the long-term economic interests of the United States to live by the rules of the international trading system and to ensure that other countries do the same. We led the world in writing these rules first in the General Agreement on Tariffs and Trade (or GATT) in 1947 and then with the creation of the WTO in 1995, where binding dispute settlement was a primary U.S. objective.

Enforcement of the rules-based trading system has helped American workers, farmers, and manufacturing companies secure access to overseas markets and grow exports and jobs in the United States. From barriers to grain in the European Union, shelf life restrictions in Korea to automotive restrictions, discriminatory taxes, and raw material and rare earth export restrictions in China, the WTO dispute settlement system is vital to America's access to world markets.

As explained in the NAM's recent report, *Trading up with TPA*,³ growing U.S. manufacturing exports to win more of the nearly \$12 trillion in annual world trade in manufactured goods will provide substantial new opportunities to our nation's manufacturers and help sustain and grow American jobs. To be successful globally, our exporters need a respected and enforced global trade system. If countries, including the United States, do not live

² See Office of the United States Trade Representative (USTR), "Snapshot of WTO Cases Involving the United States" (May 22, 2014), <https://ustr.gov/sites/default/files/Snapshot%20May.pdf>.

³ NAM, *Trading up with TPA: Manufacturers Need New Trade Agreements for Jobs, Growth and Competitiveness* (February 2015), [http://www.nam.org/Data-and-Reports/Reports/Trading-Up-With-TPA-\(Full-Report\).pdf](http://www.nam.org/Data-and-Reports/Reports/Trading-Up-With-TPA-(Full-Report).pdf).

up to their obligations, the system will be weakened and our exporters will face even more onerous barriers.

III. Action to Repeal WTO-Inconsistent COOL Provisions is Needed Now to Avoid Retaliation

Our nation's exporters are running out of time. Once a final WTO decision is announced, retaliation by Canada and Mexico could be authorized as soon as 60 days thereafter.

Even before retaliation is in place, U.S. exporters will lose sales, as we did during the cross-border trucking dispute with Mexico. Just as in the United States, customers oftentimes plan months in advance and once a decision is made will seek to import from countries that are not targeted for retaliation. As a result, America's exporters will start losing sales immediately even if we allow a brief period of non-compliance after final adjudication.

Failure to act quickly to bring the United States into compliance will put at risk billions of dollars of U.S. exports to Canada and Mexico and the industries and the jobs of tens of thousands of workers that produce those goods.

IV. Conclusion

The NAM's primary objective, as a co-chair of the COOL Reform Coalition, has always been to avoid retaliation by Canada and Mexico and to prevent a loss of export sales by our nation's manufacturers. In that capacity, we have urged Congress to create a process to be able to quickly bring the U.S. into compliance with its international obligations by a final ruling. Congress has not acted.

With the threat of retaliation looming for our nation's manufacturers, time has run out. The NAM and the COOL Reform Coalition urge Congress to bring the United States back into compliance with its WTO obligations fully and quickly through the repeal of these WTO-inconsistent provisions.

Thank you for the opportunity to appear today. I look forward to working with the Committee to resolve this important issue.