

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

MADE IN THE USA FOUNDATION, INC.,
RANCHERS-CATTLEMEN ACTION LEGAL FUND, UNITED STOCKGROWERS
ASSOCIATION (R-CALF USA), and
MELONHEAD, LLC,

Plaintiffs,

v.

WORLD TRADE ORGANIZATION, and
AMBASSADOR RON KIRK, in his capacity as the UNITED STATES TRADE
REPRESENTATIVE, and
TOM VILSACK, in his capacity as Secretary of the UNITED STATES DEPARTMENT OF
AGRICULTURE, a federal agency, and
THE UNITED STATES OF AMERICA.

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I.

Nature of the Case

1. This is a case seeking a declaration, and relevant injunctive relief, that a recent decision of the World Trade Organization (WTO) that found that the United States Country of Origin Labeling Act (COOL) imposes discriminatory burdens on meat imported from Canada and Mexico, is contrary to U.S. law, and is contrary to the Uruguay Round Agreements Act, P.L.

103-465, signed into law on December 8, 1994 by President Clinton. The Uruguay Round Agreement Act established the terms under which the United States joined as a member of the WTO.

II.

Parties

2. The Made in the USA Foundation, Inc. is a non-profit organization dedicated to promoting American-made products in the United States and overseas. The Foundation worked for seven years for passage of the Country of Origin Labeling Act so that consumers could make informed decisions about the source of the food they bought. The Foundation is based in California, but has members in every state.

The Foundation has members who produce, distribute and sell meat in the United States and desire to know the country of origin of that meat.

3. The Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America, (R-CALF USA) represents thousands of U.S. cattle producers on domestic and international trade and marketing issues. R-CALF USA, a national, non-profit organization, is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. R-CALF has 5,400 members located in 45 states, and the organization has many local and state association affiliates, from both cattle and farm organizations. Various main street businesses are associate members of R-CALF USA.

4. Since its inception, R-CALF USA has profoundly impacted the U.S. live cattle industry.

5. R-CALF USA worked directly with Congress to successfully pass mandatory country-of-origin labeling that reserves the USA label for only cattle born, raised, and slaughtered in the U.S.A

6. R-CALF USA is leading the cattle industry's effort to clarify and enforce the Packers & Stockyards Act by banning packer ownership of livestock, requiring all forward contracts to include a firm base price, and by protecting the cash market from further "thinning."

7. Melonhead, LLC is a Colorado limited liability company. Melonhead operates Mile High Organics, a company that delivers groceries, including meat, in Colorado and desires to provide as much local food as possible, and as much meat and produce produced in the United States as possible.

8. The World Trade Organization was formed on January 1, 1995 by the Uruguay Round Agreements. The WTO is based in Geneva, Switzerland. The WTO is a legal entity that can sue and be sued. The WTO is a "foreign state" as that term is defined in 28 U.S.C. §1603.

9. Ron Kirk is the United States Trade Representative.

10. Tom Vilsack is the Secretary of Agriculture.

11. The United States of America is the government of the United States created by the Constitution of the United States.

III.

Jurisdiction

12. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1330 (actions against foreign states), 1331 (federal question), 1337 (interstate and foreign commerce), 1346 (United

States as a defendant), 1361 (action to compel officer of the United States to perform his duty) and 1366 (construction of references to laws of the United States).

IV.

Factual Allegations

13. The Country of Origin Labeling Act, (COOL), 7 USC § 1638, Pub. L. 107–171, title X, § 10816, May 13, 2002, 116 Stat. 535, requires all fresh produce, meat, chicken and fish to be labeled as to its country of origin.

14. Canada and Mexico filed a complaint against the United States with the World Trade Organization alleging that COOL illegally discriminates against Canadian and Mexican beef because it is required to be labeled accordingly.

15. The WTO, which does not have judges, appointed three individuals, one Portuguese citizen, one Pakistani citizen, and a Swiss citizen to rule on the complaint. The panel ruled that the COOL violates the General Agreement on Tariffs and Trade (GATT).

16. The United States, Canada and Mexico appealed the panel's decision. On June 29, 2012 the Appellate Body of the WTO, the WTO's highest "legal" court, ruled that the U.S. Country of Origin Labeling Act is inconsistent with the GATT and the Technical Barriers to Trade Agreement (TBT). The TBT Agreement was part of the Uruguay Round Agreements

17. The WTO Appellate Body found, "350. We therefore uphold, albeit for different reasons, the Panel's ultimate finding, in paragraph 7.548 of the Panel Reports, that the COOL measure, particularly in regard to the muscle cut meat labels, is inconsistent with Article 2.1 of the TBT Agreement because it accords less favourable treatment to imported livestock than to

like domestic livestock.”

18. The Country of Origin Labeling Act is not a barrier to trade of any kind. It was passed to give consumers information about where agricultural products came from. Consumers could choose not to buy raspberries from Guatemala because of a bacterial problem there, or could refuse to buy Canadian beef because of a Mad Cow disease problem there. According to a recent opinion poll 93% of American consumers support the Country of Origin Labeling Act.

19. The WTO Appellate Body ruled that the United States had imposed an illegal barrier to trade by passing COOL into law. Ultimately, the Panel sustained the claims of the complainants and found that "the COOL measure violates Article 2.2 because it does not fulfill the objective of providing consumer information on origin with respect to meat products".

Paragraph 351.

20. The WTO Appellate Body ruled that the United States had imposed an illegal barrier to trade by passing COOL into law. It found, “that the COOL measure, particularly in regard to the muscle cut meat labels, is inconsistent with Article 2.1 of the *TBT Agreement* because it accords less favourable treatment to imported livestock than to like domestic livestock.”

21. The WTO Appellate Body, in its findings and conclusions:
- (i) found that the Panel did not err, in paragraph 7.295 of the Canada Panel Report, in stating that the COOL measure treats imported livestock differently than domestic livestock;
 - (ii) finds that the Panel did not err, in paragraphs 7.372, 7.381, and 7.420 of the Canada Panel Report, in finding that the COOL measure modifies the conditions of competition in the US market

to the detriment of imported livestock by creating an incentive in favour of processing exclusively domestic livestock and a disincentive against handling imported livestock;

(iii) finds that the Panel did not act inconsistently with its obligation under Article 11 of the DSU to make an objective assessment of the facts in its findings with respect to segregation, commingling, and the price differential between imported and domestic livestock in the US market; and

(iv) upholds, albeit for different reasons, the Panel's ultimate finding, in paragraphs 7.548 and 8.3(b) of the Canada Panel Report, that the COOL measure, particularly in regard to the muscle cut meat labels, is inconsistent with Article 2.1 of the TBT Agreement because it accords less favourable treatment to imported livestock than to like domestic livestock; (Paragraph 496).

22. The WTO Appellate Panel Members were Ujal Singh Bhatia, Ricardo Ramírez-Hernández and Peter Van den Bossche.

23. Mr. Bhatia was formerly India's Representative to the WTO. Mr. Bhatia is not a lawyer.

24. Although Ricardo Ramírez-Hernández is a lawyer, he is a Mexican national who has represented Mexico in trade matters. He has an obvious conflict of interest since Mexico was a party to the case, and he should have been disqualified as an appellate jurist.

25. Panel member Peter Van den Bossche is from Belgium. Mr. Van de Bossche is a lawyer.

26. The U.S. Congress approved GATT and the U.S. entry into the WTO when it passed the Uruguay Round Agreements Act, PL 103-465, signed into law on December 8, 1994 by President Clinton.

27. Section 102(a)(1) of the Uruguay Round Agreements Act provides,

UNITED STATES LAW TO PREVAIL IN CONFLICT.—

No provision of any of the Uruguay Round Agreement, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.

28. The ruling by the WTO Appellate Body that declares COOL is a violation of the TBT Agreement, which was executed pursuant to, or, under the auspices of, the Uruguay Round Agreement, and that attempts to intimidate the United States into modifying COOL to conform to the WTO's interpretation of the TBT Agreement is inconsistent with the U.S. COOL law. Under Section 102(a)(1), U.S. law prevails over the ruling of the WTO Appellate Body because of the conflict.

29. The plaintiffs are harmed by the actions of the WTO because they support country of origin labeling, as do their members, and will lose income as a result of the actions of defendants.

30. Plaintiff R-CALF USA and its members are harmed by any dilution of the country of origin labeling law and do not want their domestic meat confused by the consumer with meat from Canada or Mexico.

31. Plaintiff Mellonhead, LLC is harmed by any weakening of country of origin legislation because it does not want Mexican or Canadian meat to be lumped together with meat from the United States. Mellonhead's customers desire U.S.-born, raised and processed beef and do not want confusion with Mexican or Canadian beef.

V.

First Cause of Act: Declaratory Judgment

32. Plaintiffs incorporate by reference paragraphs one through 31, inclusive.

33. Pursuant to 28 U.S.C. §2201, plaintiffs seek a declaration that the World Trade Organization has no authority to override U.S. law and that its decision concerning the Country of Origin Labeling Act is void in the United States and throughout the world.

VI.

**Second Cause of Action: Action in Mandamus to Compel
a Federal Official to Enforce Law**

34. Plaintiffs incorporate by reference paragraphs one through 33, inclusive.

35. U.S. Trade Representative Ron Kirk is in the process of negotiating with Canada and Mexico to amend, and water-down, the U.S. Country of Origin Labeling Act.

36. Agriculture Secretary Vilsack has a legal duty to implement and enforce the Country of Origin Labeling Act.

37. Secretary Vilsack, in light of the WTO ruling against COOL, is considering alternatives to enforcement of the Country of Origin Labeling Act, including negotiating with Canada and Mexico to water-down the provisions of COOL.

38. Plaintiffs seek a mandatory order that Secretary Vilsack implement and enforce the Country of Origin Labeling Act as enacted by Congress and signed by the President that provides that U.S. beef be labeled as from the United States and not be mixed or confused with beef from other countries including Mexico and Canada.

39. Plaintiffs seek a mandatory order the Ambassador Kirk cease and desist from negotiating away sovereignty of the United States by attempting to amend and dilute the U.S. Country of Origin Labeling Act.

40. The Country of Origin Labeling Act provides that meat be labeled with a single country of origin if it is raised and processed in one country and seeks a court order that neither Secretary Vilsack, nor Ambassador Kirk has any legal right to amend or contravene this law by regulations or negotiations.

VII.

Request for Relief

WHEREFORE, plaintiff request that this court:

- A. Declare that the ruling of the Appellate Body of the WTO concerning the Country of Origin Labeling Act is null and void in the United States and throughout the world;
- B. Order Secretary Vilsack to carry out, implement and enforce the Country of Origin Labeling Act as enacted into law by Congress and signed by the President of the United States;
- C. Award plaintiffs costs and attorneys' fees;
- D. Order such other relief as in the interests of justice.

/Joel D. Joseph/

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