IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02337 RPM

MADE IN THE USA FOUNDATION, INC.,
RANCHERS-CATTLEMEN ACTION LEGAL FUND, UNITED STOCKGROWERS OF AMERICA ASSOCIATION (R-CALF USA), and
MELONHEAD, LLC, and
ORGANIZATION FOR COMPETITIVE MARKETS, INC., and
SOUTH DAKOTA STOCKGROWERS ASSOCIATION, and
INDEPENDENT CATTLEMEN OF WYOMING, and
CATTLE PRODUCERS OF WASHINGTON, and
CHAD WILSON SCOTT, TYLER WHITTEN SCOTT and STANLEY WILSON SCOTT,
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 livestock and 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 then 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. ("Foundation") 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 COOL 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 COOL that reserves the USA label for meat derived from cattle exclusively born, raised, and slaughtered in the United States.

6. R-CALF USA is leading the cattle industry's effort to clarify and enforce the Packers & Stockyards Act, including seeking administrative rules and/or legislation to ban packer ownership of livestock, require all forward contracts to include a firm base price, and protect the competitive cash market from further "thinning."

7. MELONHEAD, LLC ("Melonhead") 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, to its customers.

8. ORGANIZATION FOR COMPETITIVE MARKETS, INC. ("OCM") is a non-partisan, multi-disciplinary, non-profit organization made up of farmers, ranchers, attorneys, agricultural economists, rural sociologists, legislators and others. The mission of OCM is to work for transparent, fair and truly competitive agricultural and food markets. OCM is based in Lincoln, Nebraska.

9. SOUTH DAKOTA STOCKGROWERS ASSOCIATION ("SDSGA") is a 120-year-old grassroots, non-profit organization of independent cattle producers dedicated to the continued success and viability of the domestic cattle industry. SDSGA members believe that independent, family owned ranches are the cornerstone to the economic success of the cattle industry and the state of South Dakota. The mission of SDSGA is to promote and protect the

South Dakota cattle industry. The SDSGA represents ranchers at the state and national level on trade, marketing, animal identification, animal health, COOL, property rights and natural resource use issues. Its principal place of business is in Rapid City, South Dakota. SDSGA has 1,200 members and is the largest livestock organization in the state.

10. INDEPENDENT CATTLEMEN OF WYOMING ("ICOW") is a Wyoming, non-profit organization of independent livestock producers founded in 2007 to protect and promote the future viability of Wyoming family livestock and ranching industries. ICOW represents independent ranchers at the state and national level on COOL, trade, market competition, animal health, animal identification, property rights and natural resource use issues. ICOW educates the public and the ranching community regarding the importance of maintaining profitable ranching operations to sustain economically viable communities in rural Wyoming. Its principal place of business is in Moorcroft, Wyoming.

11. CATTLE PRODUCERS OF WASHINGTON ("CPOW"), based in Moses Lake, Washington, is composed of cattlemen in Washington State whose purpose is to sustain, improve and protect Washington State cow and calf ranchers and to promote the western heritage of ranching for future generations.

12. CHAD WILSON SCOTT, TYLER WHITTEN SCOTT and STANLEY WILSON SCOTT own and operate a ranch in Mississippi that has approximately 150 head of cattle.

13. The WORLD TRADE ORGANIZATION ("WTO") 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.

14. RON KIRK is the United States Trade Representative.

15. TOM VILSACK is the United States Secretary of Agriculture.

16. The UNITED STATES OF AMERICA is the government of the United States created by the Constitution of the United States.

III.

Jurisdiction

17. 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

18. 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.

19. Canada and Mexico filed a complaint against the United States with the WTO alleging that COOL illegally discriminates against Canadian and Mexican livestock and beef because beef and other meat from Canada and Mexico is required to be labeled accordingly.

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

21. 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. COOL is inconsistent with the GATT and the Technical Barriers to Trade Agreement ("TBT Agreement"). The TBT Agreement was established pursuant to, or, under the auspices of, the Uruguay Round Agreements Act.

22. 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."

23. 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 percent of American consumers support the Country of Origin Labeling Act.

24. The WTO Appellate Body ultimately 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."

25. 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;
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> (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;
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> (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
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> (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).

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

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

28. 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.

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

30. 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 then President Clinton.

31. 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.

32. 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 Agreements Act, 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.

33. 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.

34. Plaintiffs R-CALF USA, SDSGA, ICOW and CPOW and their 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.

35. Plaintiffs Chad Wilson Scott, Tyler Witten Scott and Stanley Wilson Scott are harmed by any weakening of the country of origin labeling law and do not want the beef

produced from their domestic cattle confused by the consumer with meat from Canada or Mexico.

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

37. All Plaintiffs are harmed by any weakening of the country of origin labeling law because their members seek to preserve marketplace competition for U.S. farmers and ranchers, which competition cannot occur if consumers cannot accurately distinguish meat derived from their U.S. cattle from meat derived from foreign cattle at retail stores.

V.

First Cause of Act: Declaratory Judgment

38. Plaintiffs incorporate by reference paragraphs one through 37, inclusive.

39. 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

40. Plaintiffs incorporate by reference paragraphs one through 39, inclusive.

41. U.S. Trade Representative Ron Kirk is in the process of negotiating with Canada and Mexico, subject to the WTO's oversight, to amend, and water-down, the U.S. Country of Origin Labeling Act.

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

43. 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, subject to the WTO's oversight, to water-down the provisions of COOL.

44. 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 beef produced exclusively from cattle of U.S. origin be labeled as from the United States and not be mixed or confused with beef from other countries including Mexico and Canada.

45. Plaintiffs seek a mandatory order that Ambassador Kirk cease and desist from negotiating away sovereignty of the United States by attempting to amend or otherwise dilute the U.S. Country of Origin Labeling Act to comport to the WTO Appellate Body's ruling.

46. The Country of Origin Labeling Act provides that meat be labeled with a USA label if it is born, raised and slaughtered in the United States and plaintiffs seek 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.

THIRD CAUSE OF ACTION: Violations of the Administrative Procedure Act

47. Defendants Tom Vilsack and the United States of America implemented regulations of the Country of Origin Labeling Act.

48. Contrary to the intent of COOL, these defendants allow retail stores to label meat derived exclusively from animals exclusively born, raised, and slaughtered in the United States to be labeled as meat with multiple origins under certain conditions. By allowing meat, such as individual sirloin steaks derived exclusively from animals exclusively born, raised, and slaughtered in the United States, to be labeled as from "Canada, Mexico and the United States," or combination thereof, if such U.S.-origin sirloin steaks are processed in a plant on any day when that plant also processes any amount of meat derived from Canadian and/or Mexican cattle, defendants have violated the intent of COOL that provides that consumers have the right to know the "country" of origin of the meat.

49. The regulations of the U.S. Department of Agriculture that allow labeling meat as from "Canada, Mexico and the United States," when such meat is exclusively of United States origin, violates the Administrative Procedure Act because the defendants' actions under the program exceed statutory authority and limitations imposed by Congress by the Country of Origin Labeling Act and are not otherwise in accordance with law, and are taken without observance of procedures required by law.

50. The Administrative Procedure Act (APA), Pub.L. 79-404, 60 Stat. 237, 5 U.S.C. 500 *et seq.* provides that federal actions, including rulemaking, cannot be arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law.

51. The actions of defendant are arbitrary, capricious, an abuse of discretion and not in accordance with the Country of Origin Labeling Act.

VIII.

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. Declare that the defendants' regulations that allow labeling meat exclusively of United States origin as a "Product of Canada, Mexico and the United States" or combination thereof, violates the Administrative Procedure Act and the Country of Origin Labeling Act;

D. Permanently enjoin defendants from allowing the labeling of meat as a "Product of Canada, Mexico and the United States," or combination thereof, when such meat is derived exclusively from animals exclusively born, raised, and slaughtered in the United States;

E. Award Plaintiff attorneys' fees and costs pursuant to 28 U.S.C. § 2412;

F. Order such other relief as in the interests of justice.

/Joel D. Joseph/

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