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Country-of-Origin Labeling for Foods

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Summary

Federal law requires most imports, including many food items, to bear labels informing the "ultimate purchaser" of their country of origin. Various raw agricultural products generally were exempt. The omnibus farm law (P.L. 107-171) signed on May 13, 2002, contains a requirement that many retailers provide, starting on September 30, 2004, country-of-origin labeling (COOL) on fresh fruits and vegetables, red meats, seafood, and peanuts. The program is voluntary until then. Some food industry groups want the 108th Congress to revisit the labeling law, on the grounds that it is deeply flawed. Proponents maintain that its benefits to producers and consumers will far exceed any costs. This report will be updated if events warrant.

Background

Tariff Act Provisions. Under §304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. The U.S. Customs Service, which administers and enforces this requirement, generally defines the "ultimate purchaser" as the last U.S. person who will receive the article in the form in which it was imported. So, if articles arrive at the U.S. border in retail-ready packages — including food products, e.g., a can of Danish ham, a slab of Dutch cheese, or a box of English candy — each must carry such a mark. However, if the article is destined for a U.S. processor where it will undergo "substantial transformation" (as determined by Customs), then that processor or manufacturer is considered the ultimate purchaser.

The law authorizes a series of exceptions to the labeling requirements, such as articles that are incapable of being marked or where the cost would be "economically prohibitive." One important set of exceptions has been the "J List," so named for §1304(a)(3)(J) of the statute, which empowered the Secretary of the Treasury (where Customs is located) to exempt classes of items that were "imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin."

Among the items the Secretary placed on the J List were the following agricultural products: eggs; cigars and cigarettes; feathers; flowers; raw hides; unfinished leather; livestock; fur skins; maple sugar; and "natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation." (See 19 C.F.R. 134.33.) The J List has not changed substantially since the 1930's, according to Customs. Although J List items themselves, including the agricultural products such as fruits and vegetables, have been exempt from the labeling requirements, §304 of the 1930 Act has required that their "immediate containers" have country-of-origin labels. For example, when Mexican tomatoes or Chilean grapes are sold loosely from a store bin, country labeling has not been required. However, if those tomatoes or grapes are wrapped in cellophane or otherwise packaged, the label has been required.

Meat and Poultry Inspection Provisions. The Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) is responsible for ensuring the safety, wholesomeness, and proper labeling of all meat and poultry products for human consumption, including imports, under the Federal Meat Inspection Act as amended (21 U.S.C. 601 *et seq*.) and the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq*.). Regulations issued under these laws have required that the country of origin appear in English on the immediate containers of all meat and poultry products entering the United States (9 C.F.R. 327.14 and 9 C.F.R. 381.205, respectively). Only plants in countries certified by USDA to have inspection systems equivalent to those of the United States are eligible to export products to the United States.

All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry parts destined for U.S. plants for further processing also have had to bear country-of-origin marks.

However, once these non-retail items entered the country, they have been considered (under the federal meat inspection law, see 21 U.S.C. 620(a)) to be domestic products. When they are further processed in a domestic, USDA-inspected, meat or poultry establishment — which has been considered the ultimate purchaser for purposes of country-of-origin labeling — USDA no longer has required such labeling on either the new product or its container. USDA has considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.

Although country-of-origin labeling has not been *required* by USDA after an import leaves the U.S. processing plant, the Department (which must *pre*approve *all* meat labels) has had the discretion to *permit* labels to cite the country of origin, if the processor requested it. This has included labels citing the United States as the country of origin.

Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules, but also with the Tariff Act labeling regulations. Because Customs generally requires that imports undergo more extensive changes (i.e., "substantial transformation") than required by USDA to avoid the need for labeling, there has been a potential for conflict between the two requirements, Administration officials acknowledge.

Legislation in the 107th Congress

A series of separate bills were introduced into the 107th Congress to impose more prescriptive country-of-origin requirements on a variety of food products. In response, the House-passed farm bill (H.R. 2646) including language requiring retail-level COOL for fresh produce. The Senate version contained more extensive labeling language, also covering red meats, peanuts, and seafood.[1] Title X, §10816, of the final omnibus farm law, signed May 13, 2002 (P.L. 107-171, the Farm Security and Rural Investment Act of 2002), amends the Agricultural Marketing Act of 1946 to:

- Cover ground and muscle cuts of beef, lamb and pork, farm-raised and wild fish and shellfish, peanuts, and "perishable agricultural commodities," i.e., fresh and fresh frozen fruits and vegetables;
- Exempt these products if they are ingredients of processed foods;
- Require retailers (specifically, food stores that sell at least $230,000 annually in fruits and vegetables as defined by the Perishable Agricultural Commodities Act) to inform consumers of these products' origin "by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers;"
- Exempt "food service establishments," such as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public;
- Require USDA to issue, by September 30, 2002, voluntary guidelines for labeling, with mandatory labeling to begin on September 30, 2004;
- Provide guidance for recordkeeping and USDA enforcement.

Implementation and Selected Issues

USDA's Agricultural Marketing Service (AMS) has the lead role in implementing the new law.[2] AMS published in the October 11, 2002 *Federal Register* guidelines for the voluntary phase. (Few if any retailers had opted for voluntary compliance as of spring 2003.) AMS also is developing rules for the mandatory phase, beginning with a series of 12 "listening sessions" around the country to gather input. The sessions conclude June 26, 2003. Implementation has sparked renewed debate over a number of policy issues, most of which also were explored during congressional consideration of COOL. Much of the controversy has focused on what the meat industry would have to do to comply.

Farm Economic Impacts. Some believe that COOL will provide U.S.-raised products with a competitive advantage over foreign products because, they argue, U.S. consumers, if offered a clearer choice, would choose fresh foods of domestic origin, strengthening demand for, and prices, of the latter. Many domestic fruit and vegetable growers, for example, believe that the quality of foreign produce can be inferior to theirs, and the two should be clearly differentiated. However, a USDA study for beef and lamb

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[1] The Senate version included a provision prohibiting the use of USDA quality grade labels on imported carcasses, meats, or meat food products. Currently, both domestic and imported meats and meat products are eligible to receive USDA quality grades as a fee-based service. The prohibition was deleted in the House-Senate conference on H.R. 2646.

[2] AMS maintains an extensive website on COOL at: [http://www.ams.usda.gov/cool/].

found no "direct or empirical evidence" that U.S. meats would gain a large or long-term price advantage from new country labeling rules.[3] Some critics have noted, if industry (including on-farm) compliance costs (see below) prove to be high, they could outweigh any potential benefits — particularly for beef, lamb, and pork producers competing with poultry, whose products are not subject to COOL. Another concern is that if COOL rules are not simplified (particularly with regard to origin designations; see below) they might encourage a food company to conduct all production and processing off-shore in a single country to avoid labeling complications — rather than encourage U.S. companies to buy more U.S. products, as some COOL supporters anticipated.[4]

Defining "Origin." To claim a product is entirely of U.S. origin, these criteria must be met: for beef, lamb, and pork, and for farm-raised fish and shellfish, the product must be derived exclusively from animals born (for fish and shellfish, hatched), raised, and slaughtered (processed) in the United States; wild fish and shellfish must be derived exclusively from those either harvested in U.S. waters or by a U.S. flagged vessel, and processed in the United States or on a U.S. vessel (wild and farm-raised seafood must be differentiated); fresh and frozen fruits and vegetables and peanuts must be exclusively from products grown, packed, and if applicable, processed in the United States. These definitions generally are in the statute and further interpreted by the AMS guidelines.

Difficulties arise when products — particularly livestock — are raised in multiple countries. The guidelines require that consumers be so informed. Thus, for example, beef may be from an animal that was born in the United States, fed in Canada, and then reimported for processing — now increasingly common, as the two countries become more dependent on each's economic strengths in those production phases. All such information would have to be noted at the retail level. Likewise, products from several different countries often are mixed, such as ground beef, or pre-cut and mixed salad greens. In such cases, the label would have to list all the countries of origin in order of predominance.

Recordkeeping and Verification. The law states that the Secretary "may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance..." In a possible precursor to the mandatory rules, the guidelines include this as a requirement. Although various types of documentation are acceptable, "self-certification...is not sufficient," the guidelines state. (The law explicitly prohibits USDA from using a mandatory identification system.)

This aspect of the program may be among the most controversial, because of the potential complications and costs to affected industries of tracking the identity of each animal (or plant) from birth (harvest) through retail sale. Producers and processors may

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[3] *Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb*, January 2000. Also, the National Cattlemen's Beef Association (NCBA), in its April-May 2002 *National Cattlemen* magazine, argued that as much as 70% of imported beef may never be labeled under the new law. Such imports are used mainly in food service and processed foods, which are exempted by the law, NCBA observed.

[4] Pasco, Richard. "Country of Origin Labeling Not So Cool for Some," *Agricultural Law Letter*, December 2002 at [http://www.agriculturelaw.com/dec2002.html].

have to determine how to segregate what often are considered relatively "fungible" (i.e., interchangeable) commodities when they come from different sources. Failure to maintain a documented chain of custody could result in the product being forced off retail markets and into either export or restaurant outlets.[5] Program proponents do not agree that record-keeping difficulties will be as difficult as critics contend. Modern production methods already incorporate many aspects of individual animal tracking for purposes of improved nutrition, animal health, and so forth, providing opportunities for rules that are minimally burdensome. Some COOL supporters have charged that the Administration deliberately is seeking to promulgate overly complicated, costly rules in order to discredit mandatory COOL, which it opposes.

Implementation Costs. AMS published, in the November 21, 2002, *Federal Register*, an estimate that the recordkeeping cost for the industry might be $1.968 billion in the first year. This preliminary estimate, for which AMS sought public comments, was based on a projection of time requirements for 2 million farm and fish producers costing $1 billion, plus 100,000 handlers (processors, distributors, importers, etc.) costing $340 million, plus 31,000 retailers costing $628 million. Mandatory COOL critics view these estimates as evidence of the huge burden industry is facing; some industry groups have developed estimates that are far higher. COOL supporters disagree, calling the estimates grossly exaggerated. A study published by the University of Florida asserts that the AMS estimate is excessively high, and provides an alternative analysis suggesting first-year recordkeeping costs of between $70 million and $193 million — which are substantially outweighed by the benefits, including consumers wanting country of origin information, and willing to pay for it.[6]

Critics assert that the average produce department alone carries more than 200 items annually, which change continuously due to perishability and availability. Retailers and their suppliers will have to constantly update their labels and signs, imposing new labor, paperwork, and other costs — ultimately resulting in higher food prices for consumers, according to the Food Marketing Institute (FMI), a supermarket trade group. Government oversight costs (although uncertain at this time) also will be high, opponents believe.

Trade. Supporters of the new law argue that it is unfair to exempt fruits, vegetables, and meats from some country labeling requirements when almost all other imported consumer products, from automobiles to most other foods, must comply with them. Furthermore, they note that many foreign countries already impose their own country-of-origin labeling, at retail and/or import sites, for various perishable agricultural commodities, which USDA documented in a 1998 survey (Foreign Agricultural Service, *1998 Foreign Country of Origin Labeling Survey*, February 4, 1998). Critics counter that

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[5] Cattle in particular take so long to move from birth to meat, that producers should consider identification of each animal now — well before the mandatory program, some analysts believe. (Some industry analysts believe that individual animal identification will be in place in the United States in the near future — more likely necessitated by market economics and, perhaps, food safety, than by COOL requirements.)

[6] VanSickle, McEowen, Taylor, Harl, and Connor. *Country of Origin Labeling: A Legal and Economic Analysis*. International Agricultural Trade and Policy Center, University of Florida. May 2003. The study is at:
[http://www.iatpc.fred.ifas.ufl.edu/docs/policy_brief/PBTC_03-5.pdf].

country-of-origin labeling is deliberately intended to increase costs for importers and to foster the unfounded perception that foreign products are inherently less safe (or of lower quality) than U.S. products. The law will undermine U.S. efforts to break down other countries' trade barriers and to expand international markets for U.S. products, critics contend. They add that several countries view the new requirement as discriminatory and an unjustified obstacle to trade, and that they are likely to challenge the provision as a violation of existing U.S. obligations under the World Trade Organization and North American Free Trade Agreement.

Consumer Choice and Food Safety. Proponents of the new program have long argued that U.S. consumers have a right to know the origin of their food, particularly during a period when food imports are increasing, and will continue to increase under both existing and future trade agreements. Such information is particularly important to consumers whenever specific health and safety problems arise that may be linked to imported foods, proponents add. They cite as examples the 1997 hepatitis outbreak linked to strawberries grown in Mexico, and concerns about the safety of some foreign beef due to outbreaks of bovine spongiform encephalopathy (BSE, or "mad cow disease").[7]

Critics (and some proponents) of COOL assert that such labeling does not increase public health by telling consumers which foods are safer than others: all food imports already must meet equivalent U.S. safety standards, which are enforced vigorously by U.S. officials at the border and overseas. In fact, they note, several serious outbreaks of food borne illness in recent years have been linked to contaminants in perishable agricultural commodities produced *in* the United States, including the bacteria *e. coli* 0157:H7 and *salmonella*. Scientific principles, not geography, must be the arbiter of safety, they add.

Recent Congressional Response

Some industry groups, including NCBA, FMI, the National Pork Producers Council, and the American Meat Institute, oppose mandatory COOL on the grounds that it is deeply flawed. In response, some lawmakers in the 108th Congress have expressed interest in modifying the labeling law. Others, including the American Farm Bureau Federation, National Farmers Union, R-CALF USA, and Consumer Federation of America, are working with supporters in Congress to keep the law and proceed with implementation.

Debate has intensified since the agriculture subcommittee of the House Appropriations Committee, marking up the FY2004 appropriation on June 17, 2003, approved language prohibiting the use of funds to implement mandatory COOL for meats (but not for other covered commodities). The measure (unnumbered) is expected to be marked up shortly by the full committee. Elsewhere, a bill (H.R. 2270) was introduced on May 22, 2003, that would extend COOL provisions to poultry products and goat meat, and permit animals born prior to October 1, 2004, to be exempt from coverage. A hearing on COOL was held by a Senate Agriculture subcommittee on April 22, 2003, and another is scheduled for June 24 before the full House Agriculture Committee.

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[7] USDA prohibits the importation of cattle and beef from any country with BSE, and no BSE cases have been found in the United States. The discovery of a single cow with BSE in Canada prompted U.S. officials to impose, in May 2003, a ban on all Canadian ruminant and ruminant product imports. This incident has been used by some COOL supporters to argue the need for country labeling. For details see CRS Report RS20839, *Mad Cow Disease: Agriculture Issues*.