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CRS Report for Congress

Country-of-Origin Labeling for Foods

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Summary

Under the 2002 farm bill (P.L. 107-171) as amended by the 2008 farm bill (P.L. 110-246), many U.S. retailers must begin providing country-of-origin labeling (COOL) for fresh produce, red meats, peanuts, chicken, ginseng, pecans, and macadamia nuts. However, COOL rules will not be fully enforced by the U.S. Department of Agriculture (USDA) for the six months following their September 30, 2008, effective date. Some lawmakers have proposed other COOL requirements for foods and food ingredients, as part of a proposed overhaul of the Federal Food, Drug, and Cosmetic Act.

Background

Since the 1930s, U.S. tariff law has required almost all imports to carry labels so that the "ultimate purchaser," usually the retail consumer, can determine their country of origin. However, certain products, including a number of agricultural commodities in their "natural" state such as meats, fruits and vegetables, were excluded. For almost as many decades, various farm and consumer groups have pressed Congress to end one or more of these exceptions, arguing that U.S. consumers have a right to know where all of their food comes from and that, given a choice, they would purchase the domestic version. This would strengthen demand and prices for U.S. farmers and ranchers, it was argued.

Opponents of ending these exceptions to country-of-origin labeling (COOL) contended that there was little or no real evidence that consumers want such information and that industry compliance costs would far outweigh any potential benefits to producers or consumers. Such opponents, including other farm and food marketing groups, argued that mandatory COOL for meats, produce, or other agricultural commodities was a form of protectionism that would undermine U.S. efforts to reduce foreign barriers to trade in the global economy. COOL supporters countered that it was unfair to exempt agricultural commodities from the labeling requirements that U.S. importers of almost all other products already must meet, and that major U.S. trading partners impose their own COOL requirements for imported meats, produce, and other foods.

Since at least the 95th Congress (1977-1978), lawmakers have introduced bills, unsuccessfully, to end the exception for various agricultural commodities. That changed

with passage of the 2002 farm bill (P.L. 107-171, § 10816), which mandated retail-level COOL for fresh fruits and vegetables, beef, pork, lamb, seafood, and peanuts, starting September 30, 2004. However, continuing controversy over the new requirements within the food and agricultural industry itself led Congress to postpone full implementation for a total of four years, until September 30, 2008.[1]

Meanwhile, lawmakers in the 108th and 109th Congresses debated several new bills to alter, in some cases significantly, the provisions of the 2002 law. Finally, stakeholders in the sectors affected by COOL reached a consensus on a series of amendments intended to ease what many of them viewed as some of the more onerous provisions of the 2002 COOL law, such as its recordkeeping requirements, considerations for labeling U.S. and non-U.S. origin products, and penalties for noncompliance. These amendments were incorporated into the 2008 farm bill (P.L. 110-246, § 11002). The enacted 2008 bill also maintained the September 30, 2008, implementation date and added goat meat, chicken, macadamia nuts, pecans, and ginseng as commodities covered by mandatory COOL. A more detailed description of the new law follows later in this report.

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 generally defines the "ultimate purchaser" as the last U.S. person to receive the article in the form in which it was imported. So, articles arriving at the U.S. border in retail-ready packages — including food products, such as a can of Danish ham, or a bottle of Italian olive oil — 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 exceptions to labeling requirements, such as for articles 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 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 placed on the J List were specified agricultural products including "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.) Although J List items themselves have been exempt from the labeling requirements, § 304 of the 1930 Act has required that their "immediate container"(essentially, the box they came in) 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 by the Tariff Act.

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[1] The FY2004 omnibus appropriations act (P.L. 108-199) postponed COOL — except for seafood — until September 30, 2006; the FY2006 agriculture appropriation (P.L. 109-97) further postponed it until September 30, 2008. An interim final rule for seafood COOL was published on October 5, 2004, and took effect April 4, 2005 (69 *Federal Register* pp. 59708-59750).

Meat and Poultry Inspection Provisions

USDA's Food Safety and Inspection Service (FSIS) is to ensure the safety and proper labeling of most meat and poultry products, 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 country of origin appear in English on 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). 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 destined for U.S. plants for further processing, also have had to bear country-of-origin marks. However, once these non-retail items have entered the country, the federal meat inspection law has deemed them to be domestic products. When they are further processed in a domestic, FSIS-inspected meat or poultry establishment — which has been considered the ultimate purchaser for purposes of country-of-origin labeling — FSIS no longer requires such labeling on either the new product or its container. FSIS 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.

Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules but also with 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, a potential for conflict has existed between the two requirements, Administration officials acknowledge.

Farm Bill COOL Requirements

The COOL provisions of the 2002 and 2008 farm bills do not change the requirements of the Tariff Act or the food safety inspection statutes; rather, they amend the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 note). USDA's Agricultural Marketing Service (AMS) administers most AMA-authorized programs, including COOL.[2] AMS published an interim final rule to implement COOL for all covered commodities (except seafood, which is already implemented) on August 1, 2008, to take effect September 30, 2008.[3] However, it indicated it would not enforce the rule for six months to give those affected more time to understand and fully comply with it. Among the major COOL provisions:

- Covered commodities are ground and muscle cuts of beef, lamb, and pork, farm-raised and wild fish and shellfish, peanuts, "perishable agricultural commodities" as defined by the Perishable Agricultural

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[2] AMS maintains an extensive website on COOL, with links to implementing regulations, cost-benefit analysis, and other materials at [http://www.ams.usda.gov/cool/].

[3] 73 *Federal Register*, pp. 45106-45151.

Commodities Act (PACA, i.e., fresh and fresh frozen fruits and vegetables), goat meat, chicken, pecans, macadamia nuts, and ginseng.
- These items are exempt if they are an ingredient in a processed food.
- Only PACA-regulated retailers (those purchasing at least $230,000 a year in fresh fruits and vegetables) are covered, and must inform consumers of 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."
- Exempt are "food service establishments" such as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public.

Defining Origin. In designating country of origin, difficulties arise when products — particularly meats — are produced in multiple countries. For example, beef might have been from an animal that was born and fed in Canada, but slaughtered and processed in the United States. Likewise, products from several different countries often are mixed, such as for ground beef. For covered red meats and chicken, the COOL law:

- *permits* the U.S. origin label to be used only on items from animals that were exclusively born, raised, and slaughtered in the United States, with a narrow exception for those animals present here before July 15, 2008;
- *permits* meats or chicken with multiple countries of origin to be labeled as being from all of the countries in which the animals may have been born, raised, or slaughtered;
- *requires* meat or chicken from animals imported for immediate U.S. slaughter to be labeled as from both the country the animal came from and the United States;
- *requires* products from animals not born, raised, or slaughtered in the United States to be labeled with their correct country(ies) of origin; and
- *requires*, for ground meat and chicken products, that the label list all countries of origin, or all "reasonably possible" countries of origin.

Many retailers and meat processors reportedly plan to use the "catch-all" label (second bullet, above) on as much meat as possible — even products that would qualify for the U.S.-only label, because it is both permitted and the easiest requirement to meet. COOL supporters are concerned about that the label will be overused, undermining the whole intent of COOL (i.e., to distinguish between U.S. and non-U.S. meats).[4]

For perishable agricultural commodities, ginseng, peanuts, pecans, and macadamia nuts, retailers may only claim U.S. origin if they were exclusively produced in the United States. However, a U.S. state, region, or locality designation is a sufficient U.S. identifier (e.g., Idaho potatoes). For farm-raised fish and shellfish, a U.S.-labeled product must be derived exclusively from fish or shellfish hatched, raised, harvested, and 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. Also, labels must differentiate between wild and farm-raised seafood.

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[4] *Cattle Buyers Weekly*, August 4, 2008; and *Food Chemical News*, September 15, 2008.

Record-Keeping, Verification, and Penalties. The law prohibits USDA from using a mandatory animal identification (ID) system, but the original 2002 version stated that the Secretary "may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable record-keeping audit trail that will permit the Secretary to verify compliance." Verification immediately became one of the most contentious issues, particularly for livestock producers, in part because of the potential complications and costs to affected industries of tracking animals and their products from birth through retail sale. Producers of the plant-based commodities, as well as food retailers and others, also expressed concern about the cost and difficulty of maintaining records for commodities that are highly fungible and often widely sourced. The 2008 law eased these requirements somewhat by stating that USDA "may conduct an audit of any person that prepares, stores, handles, or distributes a covered commodity" in order to verify compliance. Such persons must provide verification, but USDA may not ask for any additional records beyond those maintained "in the course of the normal conduct of business."

In its August 1, 2008, interim final rule, AMS stated that covered persons would have to keep records for one year that can identify both the immediate previous source and the immediate subsequent recipient of a covered commodity. A slaughter facility can accept a producer affidavit as sufficient evidence for animal origin claims.

Also, potential fines for willful noncompliance are set for retailers and other persons at no more than $1,000 per violation. The 2002 law had set the fine at no more than $10,000 (and for retailers only), but the amount was lowered by the 2008 farm bill.

Costs and Benefits. COOL supporters argue that a number of studies show that consumers want such labeling and would pay extra for it. Analysis accompanying USDA's interim final rule concludes that, while benefits are difficult to quantify, it appears they will be small and accrue mainly to consumers who desire such information. A Colorado State University economist suggested that consumers might be willing to pay a premium for "COOL meat" from the United States, but only if they perceive U.S. meat to be safer and of higher quality than foreign meat.[5] USDA earlier had estimated that purchases of (demand for) covered commodities would have to increase by between 1% and 5% for benefits to cover COOL costs, but added that such increases were not anticipated. Data from several economic modeling studies of COOL impacts appear to fall within this range.[6] Another research paper found that demand for domestic apples would need to increase by a range of 3% to 7% and for domestic tomatoes by 8% to 22% for COOL to increase total economic welfare in these markets.[7]

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[5] Wendy J. Umberger, "Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?" *Choices*, 4th quarter 2004, published online at [http://www.choicesmagazine.org].

[6] Gary W. Brewster et al., "Who Will Bear the Costs of Country-of-Origin Labeling?" and Daniel D. Hanselka et al., "Demand Shifts in Beef Associated with Country-of-Origin Labeling to Minimize Losses in Social Welfare," both in *Choices*.

[7] Alejandro Plastina and Konstantinos Giannakis, "Market and Welfare Effects of Mandatory Country-of-Origin Labeling in the U.S. Specialty Crops Sector," Selected Paper, American Agricultural Economics Association Annual Meeting, Portland, Oregon, 2007.

Critics of mandatory COOL have argued that large compliance costs will more than offset any consumer benefits. USDA's analysis of its interim final rule estimates first-year implementation costs to be $2.517 billion for the approximately 1.222 million firms affected. Of the total, commodity producers would bear an estimated $450 million, intermediary firms (such as wholesalers or processors) $1.115 billion, and retailers $952 million. In the tenth year after full implementation, the estimated cost to the U.S. economy would be $212 million, the result of higher food prices and reduced production, as compliance costs are passed on to consumers at the retail level, USDA estimates.

Coverage. Consumers may not find country labels on much more of the food they buy, due to COOL's statutory and regulatory exemptions. First, as noted, all restaurants and other food service providers are exempt, as are all retail grocery stores that buy less than $230,000 a year in fresh fruits and vegetables. Second, "processed food items" derived from the covered commodities are exempt, and USDA, in its interim final rule, has defined this term broadly (at 7 C.F.R. 65.220). Essentially, any time a covered commodity is subjected to a change that alters its basic character, it is considered to be processed. Although adding salt, water, or sugar do not, under USDA's definition, change the basic character, virtually any sort of cooking, curing, or mixing apparently does. For example, roasting a peanut or pecan, mixing peas with carrots, or breading a piece of meat or chicken, all count as processing. As a result, only about 30% of the U.S. beef supply, 11% of all pork, 39% of chicken, and 40% of all fruit and vegetable supplies may be covered by COOL requirements at the retail level.[8]

Food and Drug Globalization Act of 2008 (Dingell Draft)[9]

A draft bill being circulated in 2008 by the chairman of the House Energy and Commerce Committee would establish new COOL requirements, presumably focusing on non-meat and non-poultry foods regulated under the Federal Food, Drug, and Cosmetic Act (FFDCA) by the U.S. Food and Drug Administration (FDA). Currently, the FFDCA (at 21 U.S.C. §§ 301 et seq.) does not contain express COOL requirements for foods or drugs. It addresses origin to some extent, however, by providing, in § 403(e), that a food in package form will be deemed to be misbranded unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor.

The Dingell draft would add new sections to §403 of the FFDCA on misbranding. New section (z) would provide that a "processed food" will be considered misbranded if "(1) the labeling of the food fails to identify the country in which the final processing of the food occurs; and (2) the website for the manufacturer of the food fails to identify the country (or countries) of origin for each ingredient in the food." The bill also would add a new section (aa) to § 403 to provide that a "non-processed food" will be considered to be misbranded if "(1) the labeling of the food fails to identify the country of origin of the food; and (2) the website for the original packer of the food fails to identify the country of origin for the food." It is unclear whether (but unlikely that) the Dingell or other similar proposals might receive formal consideration prior to adjournment.

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[8] Percentages calculated by CRS based upon USDA estimates of retail-level COOL coverage in pounds, divided by total annual supply (USDA data on domestic production plus imports).

[9] Portions of this section are from material prepared by Jeanne Grimmett, Legislative Attorney in the CRS American Law Division.