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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. Meats, produce, and several other raw agricultural products generally were exempt. A new omnibus farm law (P.L. 107-171) signed by President Bush on May 13, 2002, contains a requirement that many retail establishments provide, starting on September 30, 2004, country-of-origin information on fresh fruits and vegetables, red meats, seafood, and peanuts. The program is voluntary until then. USDA on October 8, 2002, issued guidelines for the voluntary labeling program.

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 or manufacturer 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 it was developed in the 1930's, according to Customs officials.

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 bin at the supermarket, country-of-origin labeling has not been required. However, if those tomatoes or grapes are wrapped in cellophane or otherwise packaged, the label *is* 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, USDA has considered them (under the federal meat inspection law, see 21 U.S.C. 620(a)) 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, enough of a transformation so that country markings are no longer necessary. For example, once a U.S. establishment grinds boneless foreign beef into hamburger and/or mixes it with domestic product, processes it into sausage or lunchmeat, or uses it in a soup or stew, neither that establishment nor the retailer has been required to label the finished product to indicate that it contains imported meat.

Although country-of-origin labeling has not been *required* by USDA after an import leaves the U.S. processing plant, the Department (which must *preapprove 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.

Congressional Action

106th Congress. In the 106th Congress, a number of bills aimed at expanding country labeling requirements for meats and other agricultural products were introduced, and both the House and Senate Agriculture Committees held hearings on the issue. However, no mandatory legislation was enacted. Instead, language was included in the conference report to the FY2000 USDA appropriation (H.R. 1906; P.L. 106-78) directing the Secretary of Agriculture to issue regulations to determine “which cattle and fresh beef products are ‘Products of the U.S.A.’ This will facilitate the development of voluntary, value-added promotion programs...”

In September 2000, several trade associations joined in petitioning USDA for regulations establishing a new voluntary certification program for U.S.-produced beef. The rulemaking process, started by FSIS in 2001, could be superseded by requirements of the new 2002 farm law (see below).

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. These included: H.R. 1121, for muscle cuts and ground products of beef, lamb, and pork (but not poultry); H.R. 1605, for perishable agricultural commodities (i.e., fresh and fresh frozen fruits and vegetables); H.R. 2439, for farm-raised fish; S. 144, for peanuts and peanut products; H.R. 3329 and S. 1664, both for raw agricultural ginseng; and S. 280 and Title III of S. 20, both for beef, lamb, pork, and perishable agricultural commodities.

Before passing its omnibus farm bill (H.R. 2646) in October 2001, the House voted for a floor amendment requiring retail-level country-of-origin labeling for fresh produce, based on H.R. 1605. The omnibus farm bill (S. 1731) reported by the Senate Agriculture Committee in November 2001 contained more extensive labeling language, covering not only fresh produce but also red meats, peanuts, and farm-raised fish. Prior to final Senate passage in February 2002, the labeling provision was altered to include wild fish and shellfish.¹

Final Law. After conferees resolved differences in the House and Senate-passed measures, President Bush signed the new omnibus farm law on May 13, 2002 (P.L. 107-171, the Farm Security and Rural Investment Act of 2002). Title X, §10816, significantly expands current requirements for notifying consumers of the country of origin of specified agricultural products, by amending the Agricultural Marketing Act of 1946. Specifically, the new program:

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.

- ! Covers 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*;
- ! Exempts these products if they are ingredients of processed foods;
- ! Requires retailers (i.e., supermarkets and other food stores) to inform consumers of these products’ country 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 to consumers;”
- ! Exempts “food service establishments,” such as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public;
- ! Requires USDA to issue, by September 30, 2002, voluntary guidelines for labeling the above commodities, with mandatory labeling to begin on September 30, 2004;
- ! Defines requirements for products that denote the United States as the country of origin. For example, U.S.-labeled beef, lamb, and pork have to be from animals “exclusively born, raised, and slaughtered in the United States;”
- ! Requires that country of origin notices distinguish between wild and farm-raised fish;
- ! Provides guidance regarding record keeping, certification procedures and enforcement by USDA.

Implementation

USDA is now implementing the new law. The Department’s Agricultural Marketing Service (AMS) has the lead role in this task. On October 8, 2002, it issued guidelines for the voluntary phase of the program. These guidelines, which also were published as a notice in the October 11 *Federal Register*, provide more detail on such questions as what specific products are covered, how exempted “processed products” are being defined, how products of “mixed origin” should be labeled, store recordkeeping expectations, and so forth.

The experience of those retailers who choose to undertake the voluntary program will help AMS as it begins development of the mandatory program, the agency stated. The process for developing mandatory rules will begin in April 2003, it added.

Selected Issues

Farm Prices. One impetus for new country-of-origin labeling has been a concern about low farm prices. Some believe that country-of-origin labeling requirements 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. A congressionally mandated USDA study for beef and lamb found no “direct or empirical evidence” that U.S. meats would gain a large or long-term price advantage from new country labeling rules.² A separate report by USDA’s Economic

² *Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb*,
(continued...)

Research Service (ERS) concluded that if a U.S. label were economically advantageous, it already would be used more widely on a voluntary basis. The report offered a number of possible reasons why this has not occurred: consumers might not care where their food originates; they actually might prefer imported versions of the product; and/or they might not be willing to pay for any increased costs of such labeling.³ (Also see “Consumer Choice and Food Safety,” below.)

Trade. Supporters of the new law allege 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 of foreign requirements.⁴

Critics counter that 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 new law will undermine continuing 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 to imports and an unjustified obstacle to trade, and that they are likely to challenge the provision as a violation of existing U.S. trade obligations under the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA).

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 potential safety of some foreign beef due to outbreaks of bovine spongiform encephalopathy (BSE, or “mad cow disease”).⁵

Critics of the new law argue that such labeling does not increase public health protection by telling consumers which foods are safer than others: all food imports already

² (...continued)

January 2000. Further, the National Cattlemen’s Beef Association (NCBA), in its April-May 2002 *National Cattlemen* magazine, argued that approximately 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.

³ Kuchler, Fred, “Country-of-Origin,” from the ERS report *Economics of Food Labeling* (AER-793), January 2001.

⁴ USDA, Foreign Agricultural Service, *1998 Foreign Country of Origin Labeling Survey*, February 4, 1998.

⁵ USDA prohibits the importation of cattle and beef from any country with BSE, and no BSE cases have been found in the United States.

must meet equivalent U.S. food 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.

A congressionally mandated General Accounting Office (GAO) report on produce concluded that new labeling requirements were favored in surveys by most consumers – although freshness, nutrition, handling and storage, and preparation tips were ranked higher. However, labeling would be of limited value in responding to produce-related illnesses due to the time lag between outbreaks and their cause.⁶

Compliance Costs. Backers contend that the costs for industry, including retailers, to comply with country-of-origin labeling requirements are minimal. For example, the Florida Department of Agriculture has estimated the annual cost of its mandatory produce labeling law to be less than \$250,000 for the entire industry, in the country's fourth-largest state. Compliance can be achieved, according to proponents, simply by placing signs near produce bins or with price information in stores, or displaying the items in their shipping cartons.

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

The GAO produce labeling study found that the cost to government and the private sector of implementing and enforcing new labeling requirements could be high, although it would depend upon a number of unknown factors such as how much current labeling practices would have to be changed. The USDA study of beef and lamb labeling concluded that the costs of segregating and protecting the identity of imports “is unknown, but could be significant.” Other potential costs include those for the labels themselves, from \$500,000 to as much as \$8 million depending upon the extent of the requirements; for government verification; and for market disruption (both also dependent upon the type of program implemented).

⁶ *Fresh Produce: Potential Consequences of Country-of-Origin Labeling* (GAO/RCED-99-112). Also see the GAO report: *Beef and Lamb: Implications of Labeling by Country* (GAO/RCED-00-44).