

CRS Report for Congress

Received through the CRS Web

Country-of-Origin Labeling for Foods

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Summary

The 2002 farm bill (P.L. 107-171) as modified by the FY2004 USDA appropriation (P.L. 108-199) requires country-of-origin labeling (COOL) for fresh produce, red meats, and peanuts starting September 30, 2006, and for seafood starting September 30, 2004. The House Agriculture Committee approved on July 21, 2004, a bill (H.R. 4576) to make COOL voluntary. Some lawmakers still support a mandatory program, especially after recent discoveries of “mad cow” disease in a Canadian and a U.S. cow (the latter from Canada). Others counter that COOL is a marketing, not an animal or human health, issue and should be voluntary. 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 has administered and enforced 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 arriving at the U.S. border in retail-ready packages — including food products, such as 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 exceptions to the labeling requirements, such as 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 (where Customs was located until it was moved to the Department of Homeland Security) 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 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. USDA’s Food Safety and Inspection Service (FSIS) is responsible for ensuring 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 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 destined for U.S. plants for further processing also have had to bear country-of-origin marks. However, once these non-retail items enter the country the federal meat inspection law deems them 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 *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. Efforts to create, administratively, a more explicit voluntary program at USDA effectively ended with passage of the 2002 farm bill and the start of rulemaking for mandatory COOL.

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.

Requirements of the 2002 Farm Bill

Various bills were introduced in the 107th Congress to impose more prescriptive country-of-origin requirements on a variety of food products. Ultimately, the House-passed farm bill (H.R. 2646) included language requiring retail-level COOL for fresh

produce. The Senate version further extended coverage to red meats, peanuts, and fish. Section 10816 of the final farm law, signed May 13, 2002 (P.L. 107-171) amended the Agricultural Marketing Act of 1946 to:¹

- 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;²
- 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 (now delayed for two years).

Two-Year Delay in Mandatory COOL

In June 2003, the House Appropriations Committee reported the FY2004 USDA appropriation (H.R. 2673) with language banning funds to implement mandatory COOL for meats only but not other commodities. A floor amendment to delete the funding ban was defeated, 208-193. In November 2003 the Senate approved a resolution insisting that their conferees not agree to the House position on COOL. Nonetheless, the conference report on the FY2004 omnibus bill (H.R. 2673, H.Rept. 108-401) postpones mandatory COOL for two years. In lieu of a spending ban *per se*, conferees changed the farm bill to delay the mandatory implementation date for all covered commodities, except farmed fish and wild fish, to September 30, 2006. The omnibus conference report won final approval by the House and Senate; it was signed into law (P.L. 108-199) on January 23, 2004.

Implementation and Selected Issues

USDA’s Agricultural Marketing Service (AMS) had published guidelines for the voluntary phase in the October 11, 2002 *Federal Register*. (Few if any retailers opted for voluntary compliance.) AMS published proposed rules for mandatory COOL on October 30, 2003; final rules have not been issued as of June 2004.³ Meanwhile, debate has

¹ Deleted in conference was Senate language to ban the use of USDA quality grade labels on imported carcasses and meat products. Currently, both domestic and imported meats and meat products are eligible to receive USDA quality grades as a fee-based service.

² USDA rules define what is processed and what is not. For example, cooked roast beef must be labeled but not bacon; canned roasted and salted peanuts must be labeled but not mixed nuts.

³ AMS maintains an extensive website on COOL at [<http://www.ams.usda.gov/cool/>]. It contains links to the voluntary guidelines, the proposed mandatory rules, and a cost-benefit analysis.

continued on a number of policy issues, such as how rigorous the industry compliance requirements must be, their cost, and whether a mandatory program is even desirable.

Farm Economic Impacts. Some believe that COOL will provide U.S.-origin products with a competitive advantage over foreign products because, they argue, U.S. consumers, if offered a clear choice, would choose fresh foods of domestic origin, strengthening demand and prices for them. 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. COOL supporters point to a number of studies and surveys suggesting consumers want such labeling and would pay for it. However, the analysis accompanying USDA's October 2003 proposed rules found "little evidence that consumers are willing to pay a price premium" for such information. USDA officials said they were unable to quantify benefits because of a lack of evidence. They did estimate that purchases of covered commodities would have to increase by between 1-5% for benefits to cover COOL costs, but added that such increases were not anticipated.

Costs. Accompanying the proposed rule was a lengthy discussion of potential costs, which include recordkeeping plus capital and related expenses to manage product flow. USDA estimated that total first-year implementation costs for all affected industries could range anywhere from \$582 million to \$3.9 billion, of which \$582 million would be for recordkeeping and related costs. Subsequent year recordkeeping costs were estimated at \$458 million annually. USDA estimated first-year costs per firm at between \$180 to \$443 for producers, \$4,048 to \$50,086 for intermediate suppliers, and \$49,581 to \$396,089 for retailers. Critics of mandatory COOL view these estimates as evidence of the huge burden industry is facing; some of them had developed estimates that were higher.

COOL supporters counter that USDA grossly exaggerated costs, partly because it is opposed to the program and relied heavily upon critics' estimates. COOL supporters note that even USDA's own figures break down to a fraction of a percentage point on a per-unit basis — at most a penny or two per pound. A study published by the University of Florida provides an alternative analysis suggesting first-year recordkeeping costs of between \$70 million and \$193 million — which authors contend are substantially outweighed by the benefits, including consumers' willingness to pay for country of origin information.⁴

Recordkeeping and Verification. The law explicitly prohibits USDA from using a mandatory identification (ID) system, but 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... ." USDA's voluntary guidelines explicitly stated that suppliers of covered commodities must maintain "auditable records." The proposed rule words the requirement differently, but still states that upon request, affected retailers and suppliers must make available "records and other documentary evidence that will permit substantiation of an origin claim" at a reasonable time and place. Suppliers "must make available information to the buyer about the country of origin;" and those who initiate an origin declaration (e.g.,

⁴ VanSickle, McEowen, Taylor, Harl, and Connor, *Country of Origin Labeling: A Legal and Economic Analysis*, International Agricultural Trade and Policy Center, Univ. of Florida, May 2003. Costs also are discussed in GAO's *Country-of-Origin Labeling: Opportunities for USDA and Industry to Implement Challenging Aspects of the New Law* (GAO-03-780), Aug. 2003.

a meat packer or produce packer) “must possess or have legal access to records that substantiate that claim,” the proposed rule states.

Suppliers must maintain records for two years that identify the immediate previous source and immediate subsequent recipient of a covered commodity, the proposal states. Retailers would have similar responsibilities. The law subjects retailers to \$10,000 fines for willful violations, although the proposed rule would not hold them (or their suppliers) liable if they could not reasonably have known that a previous supplier had provided false information. Animals themselves are not considered covered commodities, so the proposal would not require livestock producers to keep records. However, packers are likely to demand such producer records so they can substantiate their own origin claims.

This aspect of the program may be among the most controversial, because of the potential complications and costs to affected industries of tracking animals (or plants) from birth (harvest) through retail sale. Producers and processors may have to segregate these relatively “fungible” (i.e., interchangeable) commodities when they come from different sources. Failure to maintain acceptable records could result in the product being forced off retail markets and into either export or restaurant outlets. Program proponents do not agree that record-keeping difficulties will be as difficult as critics contend. Modern production methods already incorporate many aspects of animal ID and tracking for purposes of improved nutrition, animal health, and so forth, providing opportunities for rules that are minimally burdensome.⁵ Some COOL supporters have charged that the Administration deliberately has sought to promulgate overly complicated, costly rules in order to discredit mandatory COOL, which it opposes. One pending bill, H.R. 3083, seeks to ease producer recordkeeping requirements, delete the current prohibition against USDA-mandated animal ID, and eliminate third-party audit provisions.

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. Difficulties arise when products — particularly meats — are produced in multiple countries. For example, beef may be from an animal that was born in the United States, fed and slaughtered in Canada, and its meat reimported for processing — now more 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. The proposed rules would require the label to list all the countries of origin alphabetically.

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. Furthermore,

⁵ Many analysts believe U.S. animal ID will be demanded in the near future, more likely for animal health reasons. See CRS Report RL32012, *Animal Identification and Meat Traceability*.

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. (The GAO report examines COOL in 57 countries that account for most U.S. agricultural trade.) Critics counter that country-of-origin labeling is a thinly disguised trade barrier 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. Mandatory COOL undermines 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 could challenge a mandatory program as a violation of existing U.S. trade obligations.

Consumer Choice and Food Safety. Proponents of mandatory COOL argue that U.S. consumers have a right to know the origin of their food, particularly during a period when food imports are increasing. 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 one prominent example concerns about the safety of some foreign beef due to outbreaks of bovine spongiform encephalopathy (BSE, or "mad cow disease"). The May 2003 and December 2003 discoveries of BSE in two Canadian-born cows (one imported to the United States) prompted virtually all major foreign markets to suspend shipments of both countries' beef and cattle products. After briefly suspending all Canadian beef imports, U.S. authorities have since granted entry to hundreds of millions of pounds of some types of Canadian beef, making it more important that U.S. consumers know where their meat is from, COOL supporters argue. (See CRS Issue Brief IB10127, *Mad Cow Disease: Agricultural Issues for Congress.*)

Critics (and some proponents) of COOL assert that such labeling has little utility for food safety; it does not increase public health by telling consumers which foods are safer than others. They argue that 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 argue, adding that recent Canadian beef imports have posed virtually no risk to consumers or U.S. agriculture.

Recent Congressional Activity

The House Agriculture Committee approved a bipartisan bill (H.R. 4576) that would abolish the current, single mandatory program. In its place, H.R. 4576 would require USDA to implement separate, voluntary COOL programs for red meats, for produce, and for seafood (but not for peanuts). During committee markup, bipartisan amendments to retain but modify mandatory COOL were not successful. Some 350 trade groups and firms, including the National Cattlemen's Beef Association, Food Marketing Institute, National Pork Producers Council, American Meat Institute, United Fresh Fruit and Vegetable Association, and National Fisheries Institute, expressed support for H.R. 4576. Other groups, including the American Farm Bureau, National Farmers Union, R-CALF USA, and Consumer Federation of America, are expected to oppose H.R. 4576 if it reaches the House floor or arises in the Senate, where, these groups assert, stronger support exists for retaining mandatory COOL. Bills to repeal the two-year delay have been introduced in the House (H.R. 3732; H.R. 3993) and Senate (S. 2451).