

# CRS Report for Congress

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## Country-of-Origin Labeling for Foods: Current Law and Proposed Changes

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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 bills have been introduced to impose expanded country-of-origin labeling requirements on meats and on several other agricultural products. Such proposals have attracted attention for a number of reasons. One is that they are viewed (by some advocates) as a way to help U.S. producers dealing with low farm prices. Also, some perceive that food products from certain countries might pose greater risks than those from the United States. Proponents of the bills contend that additional country labeling requirements would enable consumers to know the source of retail food offerings and include that knowledge in selecting their purchases. Opponents counter that country-of-origin labeling bears no relation to food safety and would not raise U.S. commodity prices. They argue that it would impose excessive and costly regulatory burdens on retailers and others in the marketing system and on consumers, be difficult to enforce, and—by imposing new non-tariff trade barriers—undermine ongoing U.S. efforts to reduce other countries’ trade barriers and expand international markets for U.S. products. This report will be updated as events warrant.

## Current Country-of-Origin Labeling Requirements

### Tariff Act Provisions

Under section 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 is the “J List,” so named for section 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, are exempt from the labeling requirements, section 304 of the 1930 Act requires that their “immediate containers” have country-of-origin labels. For example, if Mexican tomatoes, or Chilean grapes, are sold loosely from a bin at the supermarket, country-of-origin labeling is not required. However, if those tomatoes or grapes are wrapped in cellophane or otherwise packaged, the label *is* required.

## **Meat and Poultry Inspection Program Provisions**

The U.S. Department of Agriculture’s (USDA’s) Food Safety and Inspection Service (FSIS) 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 require 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.

Such labeling must appear on all individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami). 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 must bear country-of-origin marks.

However, once these non-retail items enter the country, the meat and poultry inspection laws consider them to be domestic products. When they are further processed in a domestic, USDA-inspected meat or poultry establishment—which is considered the ultimate purchaser for purposes of country-of-origin labeling—USDA no longer requires such labeling on either the new product or its container. USDA considers 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, after 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 is required to label the finished product to indicate that it contains imported meat.

Although country-of-origin labeling is not *required* by USDA after an import leaves the U.S. processing plant, the Department (which must *preapprove all* meat labels) has the discretion to *permit* labels to cite the country of origin, if the processor requests it. This includes 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 is a potential for conflict between the two requirements, Administration officials acknowledge. Several Customs officials said that if their “substantial transformation” test were applied more rigorously to meat and poultry products, it is likely that a piece of foreign meat that simply was cut or ground into hamburger still would have to bear a country-of-origin label. Customs notes that it requires such labels on other processed and/or repackaged food products that contain imported agricultural commodities. However, the agency rarely has challenged USDA-inspected products, according to Administration officials.

## **Congressional Action**

In the 106<sup>th</sup> 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. However, 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 "promulgate regulations defining which cattle and fresh beef products are 'Products of the U.S.A.' This will facilitate the development of voluntary, value-added promotion programs..."

On September 8, 2000, the National Cattlemen’s Beef Association, the American Farm Bureau Federation, the Food Marketing Institute, the National Meat Association, and the American Meat Institute petitioned USDA for regulations establishing a voluntary certification program for U.S.-produced beef. As of late March 2001, USDA had not yet acted on either the legislative directive or the industry petition. However, FSIS officials assert that current agency rules already allow for “USA” labels if industry can provide certain evidence of U.S. origin.

## **Recent Labeling Bills**

Bills introduced early in the 107<sup>th</sup> Congress that would impose various new country-of-origin labeling requirements include:

- The Country of Origin Meat Labeling Act of 2001 (H.R. 1121), introduced March 20, 2001, by Representative Pomeroy, which would amend the Agricultural Marketing Act of 1946 to require retailers, except restaurants, to notify consumers of the country of origin of muscle cuts and ground products of beef, lamb, and pork (but not poultry). To be considered from the United States, a product would have to be “from an animal that is exclusively born, raised, and slaughtered” here. Retailers could inform consumers through labels on the product itself or on a “display, holding unit, or bin containing the commodity at the final point of sale.”
- The Peanut Labeling Act of 2001 (S. 144), introduced January 23 by Senator Cleland, which would require retailers to inform consumers at the final point of sale of the country of origin of peanuts and peanut products – through “a label, stamp, mark, placard, or other clear and visible sign [on the product] or on the package, display, holding unit, or bin containing” the peanuts or product, unless USDA determines it is impracticable for the retailer to determine the country of origin. The bill spells out civil penalties for retailer violations.
- The Consumer Right-to-Know Act of 2001 (S. 280), introduced February 7, 2001, by Senator Johnson, which is similar to H.R. 1121 (see above), except that in addition to meats, perishable agricultural commodities also must be covered. These are defined generally as fresh and frozen fruits and vegetables. S. 280 also is similar to language in Title III of S. 20, a broader agricultural bill introduced January 22, 2001, by Senator Daschle.

## Related Legislation

Legislation (S. 544) would amend the Federal Meat Inspection Act to prohibit USDA from issuing a quality grade label for imported meat and meat food products that are from any cattle, sheep, or goats that have not been fed in the United States for at least 90 days. Quality grading is a voluntary service conducted by USDA and funded by industry fees; proponents of the bill, introduced March 15, 2001, by Senator Burns, contend that a USDA grade implies that the product is of U.S. origin. Opponents counter that prohibiting imports from carrying the grade is an unfair barrier to trade because it treats imports differently than domestic products. (As of late March 2001, USDA had not yet acted on earlier industry proposals that it use its standing regulatory authority to restrict USDA grades on imported beef, veal, and/or lamb.)

## Arguments for Expanded Labeling Requirements

One impetus for these bills is the concern about recent low farm prices.<sup>1</sup> Some believe that country-of-origin labeling requirements would 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 (an assertion that others challenge). Proponents of these bills 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 in the wake of trade agreements like the North

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<sup>1</sup> See CRS Issue Brief IB10043, *Farm Economic Relief: Issues and Options for Congress*.

American Free Trade Agreement (NAFTA) and the World Trading Organization (WTO) accords. 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 European beef due to an outbreak of bovine spongiform encephalopathy (BSE, or “mad cow disease”).<sup>2</sup>

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.

They also 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, proponents add. Furthermore, they note that numerous foreign countries already impose their own country-of-origin labeling, at retail and/or import sites, for various perishable agricultural commodities, which USDA has documented in a 1998 survey of foreign requirements.

## Arguments Against Expanded Labeling Requirements

Opponents of the proposals view them as new, thinly-disguised, protectionist trade barriers deliberately intended to increase costs for importers and foster the unfounded perception that foreign products are inherently less safe (or of lower quality) than U.S. products. They argue that such labeling does not increase public health protection by telling consumers which foods are safer than others: all food imports already 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.

The proposed bills undermine continuing U.S. efforts to break down other countries’ trade barriers and to expand international markets for U.S. products, opponents contend. Some have expressed reservations about some proposals because, by singling out imports, they might be in violation of WTO trade rules mandating that imported and domestic products be treated equitably. Also, other countries might retaliate by requiring that more U.S. products bear origin labels and/or whether a product is produced by methods that, while proven to be safe scientifically, might raise unreasonable fears among potential foreign consumers, they contend.

Critics also argue that industry compliance and government implementation costs would be high. They point out, for example, that the average produce department carries

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<sup>2</sup> USDA prohibits the importation of cattle and beef from any country with BSE, and no BSE cases have been found in the United States.

more than 200 items annually, which change continuously due to perishability and availability of supplies. Retailers and their suppliers would have to constantly update their signs, imposing new labor, paperwork, and materials costs—which inevitably would result in higher food prices for consumers, according to the Food Marketing Institute, a supermarket trade association. Government oversight would be costly—in the millions of dollars—if compliance were monitored down to the retail level, where as many as several hundred thousand local sites might come under regulation, opponents contend.

## GAO and USDA Reports

A congressionally mandated General Accounting Office (GAO) report on produce found that the cost to government and the private sector of implementing and enforcing new produce labeling requirements could be costly, although it would depend upon a number of unknown factors such as how much current labeling practices would have to be changed. GAO also concluded that new labeling requirements: were favored in surveys by most consumers -- although freshness, nutrition, handling and storage, and preparation tips were ranked higher; might be viewed by other countries as a trade barrier; and be of limited value in responding to produce-related illnesses due to the time lag between outbreaks and their cause.<sup>3</sup>

A congressionally mandated USDA study for beef and lamb 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 required). The USDA report found no “direct or empirical evidence” that U.S. meats would gain a large or long-term price advantage from new country labeling rules, despite new government and industry costs to implement and enforce them. The USDA report also cautions against potentially adverse trade impacts, depending on the program imposed.<sup>4</sup>

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<sup>3</sup> *Fresh Produce: Potential Consequences of Country-of-Origin Labeling* (GAO/RCED-99-112). [<http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=rc99112.txt&directory=/diskb/wais/data/gao>]

<sup>4</sup> *Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb*, January 2000. [<http://www.fsis.usda.gov/oa/congress/cool.htm>]