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BEFORE THE
SENATE AGRICULTURE COMMITTEE
SUBCOMMITTEE ON MARKETING, INSPECTION AND PROMOTION
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Introduction

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the mandatory country of origin labeling provision for livestock and, more specifically, what USDA is doing to implement this Farm Bill mandate. I am Bill Hawks, Under Secretary for Marketing and Regulatory Programs at the U.S. Department of Agriculture, and I am pleased to be here today in your home State of Missouri.

Country of Origin Labeling Voluntary Guidelines

Section 10816 of the 2002 Farm Bill requires the Secretary of Agriculture to implement a mandatory country of origin labeling program at the final point of retail sale for beef, lamb, pork, fish, shellfish, perishable agricultural commodities, and peanuts after a two-year voluntary program. Congress provided clarification for dealing with wild fish in the Fiscal Year 2002 Supplemental Appropriations Act, signed into law on August 2, 2002.

Mr. Chairman, as you may know, the Office of Management and Budget's Statement of Administration Policy on S.1731, the Agriculture, Conservation, and Rural Enhancement Act of 2001, found the provision requiring mandatory country of origin labeling highly objectionable. The Administration's position and the reasons for that position have not changed. We feel these new requirements will not have a positive effect overall and that the potential impact on trade and the unintended consequences on producers could be significant.

In spite of the Administration's view and the narrow parameters Congress adopted for this very prescriptive piece of legislation, USDA is fully committed to carry out the intent of this law to the best of its abilities. These provisions are part of the Farm Bill and we are working diligently to implement them.

This program began on October 11, 2002, when USDA published its "Guidelines for the Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts" in the Federal Register. The voluntary guidelines, effective upon publication, are to be used by retailers who wish to notify their customers of the country of origin of covered commodities they purchase prior to the mandatory implementation date of September 30, 2004.

The voluntary guidelines are the result of consulting with scores of interested parties, including the public, industry groups, consumer groups, trade associations, foreign governments, and Congress. In fact, USDA met with over 40 different groups and associations in formulating the voluntary guidelines. USDA received approximately 1,000 comments by the April 9, 2003, closing date and we are now in the process of analyzing all the comments received as we begin development of mandatory country of origin labeling requirements.

The law requires retailers to label, at the final point of sale, beef, lamb, and pork -both muscle cuts and ground -fish, shellfish, perishable agricultural commodities, and peanuts as to their country of origin and further label fish as either wild or farm-raised. The law defines retailer as does the Perishable Agricultural Commodities Act, as a business that sells fresh or frozen fruit and vegetables with an annual invoice value of more than \$230,000. Approximately 4,200 P ACA retail licensees operating some 31,000 retail outlets are within this definition. By using this definition, Congress exempts butcher shops, fish markets, and small retailers, in addition to the restaurants and other food service establishments the bill specifically exempts from the labeling requirements.

The Farm Bill defines the criteria for a covered commodity to be labeled as "U.S. Country of Origin." To receive this label, the beef, lamb, and pork must be derived exclusively from animals born, raised, and slaughtered in the United States. There is an exception for beef from cattle born and raised in Alaska or Hawaii and transported through Canada for not longer than 60 days before slaughter in the United States. Wild fish and shellfish must be derived exclusively from fish or shellfish harvested in U.S. water or aboard a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. Farm-raised fish and shellfish must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States.

Fresh and frozen fruit and vegetables, as well as peanuts, must be exclusively produced in the United States.

The Act says "covered commodities" must be labeled unless they are an "ingredient in a processed food item." USDA determined that there are some covered commodities that, while they undergo slight processing, still retain the original identity of the commodity. Examples of some of these processed "covered commodities" include solution-enhanced and seasoned pork loins, frozen peas and carrots, frozen ground beef patties, and bagged salads. In the voluntary guidelines, therefore, a "processed food item" was defined as a materially changed covered commodity or an item that has a combination of ingredients that include the covered commodity but the identity of the food item is different from that of the covered commodity. Examples of such items would include ready-to-cook Beef Wellington, ground beef in a meal mix, fish in sushi, apple slices in a pie, or peanuts in a candy bar. Other processed food items include cooked, cured or smoked meats and fish, and fruit juice.

Although the COOL provision of the Fann Bill requires that all covered commodities be labeled at retail as to their country of origin and provides a very specific definition for "U.S. Country of Origin," it does not specify how to label imported, mixed, or blended products. We, therefore, looked to existing laws and regulations that currently govern the labeling of imported products as to their country of origin. Thus, an imported product in a consumer-ready package must also contain a country of origin label. Such product would require no change from current practice. However, if the imported product is a side of beef, for example, it currently would lose its country of origin label once it enters a U.S. plant for further processing. Under the COOL requirement, the original country of origin identity would need to be carried through to the retail level.

Products with an origin that includes production or processing steps that occurred in more than one country would need to bear labels that identify all those countries. For example, strawberries produced in Mexico and processed in the United States or pork from animals born in Canada and raised and slaughtered in the United States would be labeled just that. Blended products are a little different. These are products with differentiated covered commodity components, such as salad mix, or like product components, such as ground beef, of different origins that are combined together for retail sale. Here, if each covered commodity component can be individually identified, each must be individually labeled. For example, if a bagged salad includes U.S. lettuce and Mexican carrots, the label must say so. If the covered commodity components cannot be individually identified, they must be labeled in order of their predominance. For example, if ground beef includes components from Canada, the U.S., and mixed origin product, a label might say: Product of Canada; Product of the U.S.; Product of Mexico, Raised and Slaughtered in the U.S.

We recognize that a number of State and regional labeling programs already exist. While the Fann Bill country of origin labeling requirements in no way inhibit the use of these labels, they cannot be accepted in lieu of the country of origin labeling requirement. First, the law says country of origin, not State or region. Second, the labeling requirements for the existing certification programs, such as Iowa Pork, may not meet the labeling requirements of the Federal law. And third, if this sort of substitution were to be accepted for domestic product, similar treatment would likely be required for imported product, allowing State, Provincial, or other regional labels U.S. consumers might not equate to particular countries.

As the Fann Bill language indicates, consumer notification as to the country of origin of covered commodities can occur in a variety of ways. Many fruit and vegetables already have country of origin labels directly on the product. Some beef, lamb, and pork have labels on their package, too. These labels, as well as signs on a display or bin, or other forms of notification should prove acceptable.

The COOL legislative language does not specify what records are acceptable to verify country of origin claims. It only says that the Secretary may require persons in the distribution chain to maintain a verifiable recordkeeping audit trail to verify compliance. The law also requires any one person in the business of supplying a covered commodity to a retailer to provide to the retailer information indicating the country of origin of the covered commodity. At the same time, the law prohibits the Secretary from establishing a mandatory identification system to verify the country of origin of a covered commodity. Therefore, retailers and their suppliers must maintain records that verify the country of origin of covered commodities.

The law directs USDA to partner with the States to assist in the administration and enforcement of this provision. As you know, USDA has a long history of State partnerships and we have proven that working together works. Some States already have a country of origin labeling provision on their books. Florida, for example, has had a law mandating labels for fruit and vegetables for years. In fact, last year, AMS Administrator A.J. Yates and other staff traveled to Florida to review their system.

Experience at the state level shows us that costs associated with labeling fruits and vegetables are very different than costs associated with labeling meats. Fruits and vegetables from other countries are already labeled with the country of origin; therefore, the system is far less complex than with meat from animals that may be born and raised in one country and then slaughtered in the United States.

Record Keeping

It is apparent that country of origin labeling will require the maintenance of records sufficient to verify claims of origin. As many as 2 million farmers, ranchers, and fishermen could be affected. An estimated 100,000 food handlers (packers, processors, importers, wholesalers, and distributors) could be impacted. At the retail level, 4,200 businesses operating some 31,000 retail outlets will be involved.

It is important to note that even with a modest level of participation by retailers in the voluntary program, the need for record keeping by suppliers could expand to virtually the entire population of producers, processors, and distributors. Early in their production process, few covered commodities are produced for a specific market. Rather, the decision on how a covered commodity is ultimately marketed to consumers is most typically made far from the point of production. For example, even in a relatively simple situation where a calf is born and raised on a farm in Virginia, finished in a feedlot in the Texas panhandle, and slaughtered and processed by a Kansas packing plant, record keeping will need to be maintained to establish country of origin. In each of these steps the animal is owned and managed by different parties. The decision on how the component cuts of this animal are marketed is made at the packing plant in Kansas. Seldom, if ever, will all of the cuts from one animal be marketed to a single retail outlet. The strip loins and ribs could be marketed in the food service sector while the round cuts are destined for retail. To provide the required country of origin claim information for covered commodities sold at retail, the entire production system must have the appropriate record keeping in place.

On November 21, 2002, in accordance with the Paperwork Reduction Act of 1995, USDA published a "Notice of Request for Emergency Approval of a New Information Collection," in the Federal Register. This notice detailed the anticipated paperwork and recordkeeping requirements associated with the voluntary country of origin labeling program. In estimating the hours needed to comply with country of origin requirements, USDA drew upon its experience with the oversight of auditable and verifiable origin-based documented marketing programs. The cost estimate associated with the new record keeping requirements generated a wide range of comments and opinions. The comment period was extended an additional 30 days due to the interest raised by various parties regarding the estimated cost burden. When the comment period closed on February 21, 2003, USDA had received 98 comments. With these additional comments taken into consideration, the topic of cost burdens associated with record keeping for country of origin labeling will be revisited as part of the regulatory process to develop mandatory country of origin requirements. Again, because food handlers and retailers are margin operators, we are concerned that America's farmers and ranchers will bear the ultimate costs.

It is also important to note that due to the significant nature of the mandatory country of origin regulation, a comprehensive economic impact analysis will be required to evaluate all costs and benefits associated with implementing this rule. The economic analysis will consider costs of product segregation, inventory management, process verification and other costs throughout the industry beyond just record keeping.

USDA Outreach

To date, USDA has formally sought public comment on country of origin labeling three times. Besides the recordkeeping notice and the voluntary guidelines, USDA issued a press release on July 25, 2002, seeking comments to assist in the development of the voluntary guidelines. Once a proposed rule for mandatory country of origin labeling requirements is drafted and published, USDA will formally solicit comments a fourth time. All of these comments are posted on the Web site USDA created for COOL - <http://www.ams.usda.gov/cool/>.

On March 5, Secretary Veneman announced a series of listening and education sessions that will be held throughout the country to gather additional public input and provide interested parties more information about the new country of origin requirements. Representatives from USDA will be coordinating these educational sessions and plan to travel to 12 States over the next two months. These States represent a cross section of the food and agriculture sector and include California, Florida, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Carolina, Pennsylvania, Texas, Washington and Wyoming. The first session is scheduled for next Tuesday in North Carolina. In addition to these USDA-sponsored events, we are finalizing arrangements to speak on this issue in Alaska, Iowa, and elsewhere to industry group conferences.

Conclusion

Mr. Chairman, the Congress has tasked USDA with the responsibility of implementing a country of origin labeling program for a wide range of food products. We take this mandate seriously and will do our utmost to implement a program that meets the requirements of the law and minimizes the burdens on all concerned.

I am grateful for the opportunity to testify this morning on behalf of USDA. I will be happy to answer any questions from you or the other Subcommittee Members. Thank you.