



## COUNTRY-OF-ORIGIN LABELLING

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10 April 2003

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## COUNTRY-OF-ORIGIN LABELLING

### INTRODUCTION

Country-of-origin labelling (COOL)<sup>(1)</sup> was specified by the U.S. 2002 Farm Bill<sup>(2)</sup> and requires retailers to inform consumers of the country of origin for certain agricultural commodities, called “covered commodities.” The term “covered commodity” is defined as muscle cuts of beef, lamb, and pork, ground beef, ground lamb, ground pork, farm-raised fish and shellfish, wild fish and shellfish, perishable agricultural commodities, and peanuts. Perishable agricultural commodities are further defined as fresh and frozen fruits and vegetables. A notable exception is poultry and poultry products. The labelling of blended products will be especially difficult for ground beef companies, which buy trimmings from multiple packing houses. A list of relevant definitions is in Appendix A.

The 2002 Farm Bill states that, with few exceptions, a retailer may use a “United States country of origin” label if the product is from an animal that was exclusively born, raised, and slaughtered in the United States. In the case of farm-raised seafood, the product must be from fish hatched, raised, harvested, and processed in the United States. For wild seafood, the product must be harvested in waters of, and processed in, the United States. Also, the label must distinguish between farm-raised and wild-harvested seafood products. Perishable agricultural commodities must be exclusively produced in the United States to carry that label. The 2002 Farm Bill gives new labelling responsibility to the United States Department of Agriculture (USDA). The USDA’s Agricultural Marketing Service has been delegated rule-making responsibility.

The Agricultural Marketing Service estimated that it would cost producers, food handlers, and retailers nearly US\$2 billion in the first year to comply with new record-keeping

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(1) This abbreviation is sometimes shortened to COL.

(2) This Act amends the Agricultural Marketing Act of 1946.

requirements for certain products sold at retail and labelled by their country of origin.<sup>(3)</sup> The estimated compliance costs were broken down as follows: US\$1 billion for farmers and ranchers; US\$340 million for about 100,000 food handlers, including packers, processors, importers, wholesalers and distributors; and US\$627 million for retailers.

An examination of Canada's beef sector provides some insight into the potential financial costs of COOL to targeted agricultural sub-sectors in this country. For Canadian beef exports, the Canadian Cattlemen's Association estimates that, if unmitigated, COOL will cost between \$280 million and \$300 million per year, or \$90 to \$100 per head. Over the past 15 years, beef and cattle have grown to be Canada's largest agricultural export to the United States. In 2002, Canadian beef and cattle exports reached a new record, exceeding \$4 billion. Over 60% of Canada's beef and cattle production is now exported, and over 80% of those exports go to the United States.

## **RATIONALE BEHIND COUNTRY-OF-ORIGIN LABELLING**

Country-of-origin labelling was implemented as an amendment to the Farm Bill. The amendment was based on legislation drawn up by Senator Tim Johnson (D-S.D.).<sup>(4)</sup> The idea originated with certain U.S. producer groups who felt that such labelling requirements would quickly end low commodity prices.

The COOL requirements are an attempt to increase the traceability of the covered commodities. When information about a particular attribute of a food product – in this case, the country of origin – is systematically recorded from creation through marketing, then traceability for that attribute is established.

A government may have three reasons for considering a mandatory traceability system:

1. to protect consumers from fraud and producers from unfair competition;
2. to facilitate and monitor traceback to enhance food safety; and
3. to address consumer information gaps about food safety and quality.

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(3) It reached this estimate by multiplying the hourly burden of creating and keeping labelling records for producers, food handlers, and retailers.

(4) Senator Johnson, who has a constituency of farm groups and ranchers in favour of COOL, has introduced legislation every session since he became a senator, and has been pushing for mandatory COOL since he became a member of the House of Representatives in 1986.

With respect to COOL, however, it does not appear that any of these rationales apply. The first point is not relevant to the COOL provisions, as neither the U.S. government nor the proponents of COOL have claimed fraud or unfair competition. With respect to the two other points, the Government of Canada's submission to the USDA on COOL notes that, although many COOL proponents have explicitly stated that it has a food safety objective, that objective is not actually mentioned in the COOL guidelines. Furthermore, the exemption of poultry from COOL is further evidence that food safety is not the primary concern.

Additionally, retailers must label products only if they sell fruit and vegetables with an annual value of more than US\$230,000. Those who do not sell fruit and vegetables, or those who sell less than that dollar amount, are exempt from country-of-origin labelling. It would appear that the effective rationale for the regulations is that consumers want to know where red meat and fish come from, but only if they buy these foods from stores that also sell a lot of produce. If consumers buy red meat and fish at a butcher shop, a fish market or a restaurant, apparently they are no longer concerned. Restaurants are exempt from country-of-origin labelling.

Agricultural imports and products of mixed origin imported into the United States already must pass, in their country of origin, rigorous inspection and quality controls that are deemed by the USDA and the Food and Drug Administration (FDA) to be equivalent to the U.S. systems. Canada's food safety inspection system is considered equivalent to that of the United States.

Some in the Canadian agricultural industry believe that COOL requirements have found support in border states partly due to Canada's large trade balance in beef, which amounts to \$2.6 billion. American producers see a large number of Canadian trucks hauling cattle south – 20,000 to 25,000 shipments a year – and may associate any downturn in the market with this volume. Moreover, Canada's animal health requirements for various cattle diseases, such as blue tongue, restrict U.S. cattle exports to this country.

## **SUMMARY OF CURRENT REQUIREMENTS**

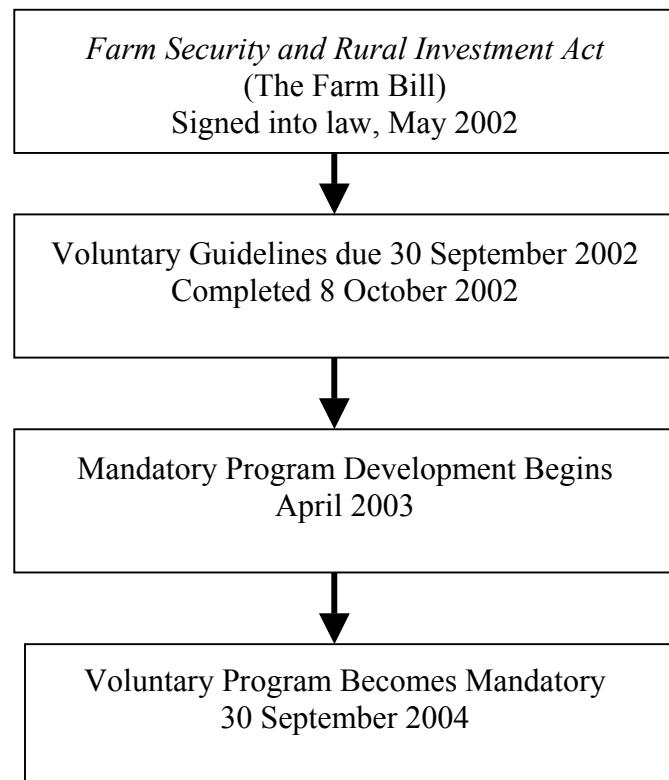
Currently, U.S. federal law – the Tariff Act, the Federal Meat Inspection Act, and other legislation – requires most imports, including many food items, to bear labels informing the “ultimate purchaser” of their country of origin. “Ultimate purchaser” has been defined as the last U.S. person who will receive the article in the form in which it was imported.

If the article is destined for a U.S. processor or manufacturer where it will undergo “substantial transformation,” that processor or manufacturer is considered the ultimate purchaser. As a result, meat and other items have not been required to carry a country-of-origin mark after cutting or processing in the United States.

## SEQUENCE OF LEGISLATIVE AND RULE-MAKING EVENTS

A timeline of the sequence of legislative events is illustrated in Figure 1. Under the Farm Bill, the Secretary of Agriculture was directed to issue guidelines for voluntary labelling by 30 September 2002, and to promulgate requirements for mandatory labelling no later than 30 September 2004. The comment period for the guidelines ended on 9 April 2003.

**Figure 1: Timeline of Country-of-Origin Rulemaking**



Note: The USDA received comments until 9 April 2003.

## **LIABILITY LIES WITH RETAILERS**

To convey country-of-origin information to consumers, retailers may use 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 consumption. Food-service establishments – such as restaurants, bars, food stands, and similar facilities – are exempt, as are “materially changed” products such as ham, and ground beef with vegetable protein. A more complete list of the requirements of the law is in Appendix B.

The Secretary of Agriculture may require any person who prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable record-keeping audit trail. Suppliers are required to provide information to retailers indicating the country of origin of the covered commodity. The Secretary shall not use a mandatory identification system to verify country of origin; certification programs already in place may be used. The 2002 Farm Bill also provides for enforcement procedures, including fines of up to US\$10,000 for retailers wilfully failing to comply.

Examples of possible wording on labels are presented in Appendix C.

## **DOMESTIC SUPPORTERS AND OPPONENTS OF COUNTRY-OF-ORIGIN LABELLING**

Some producer groups in the United States who have been experiencing low commodity prices support COOL labelling because they believe that American consumers want to know the origin of their food, prefer U.S. products, and are willing to pay more for this information. These producer groups assume that this willingness by some consumers to pay for labelling information will result in an increase in their revenues and profits. Surveys by groups such as the American Frozen Food Industry, however, have shown that less than 1% of respondents consider country of origin a major factor when shopping for frozen fruits and vegetables.

Other research shows that people may be willing to pay for country-of-origin information for meat products, but that this willingness to pay on the part of some consumers does not mean that demand for meat will increase overall. Rather, if the costs of country-of-origin labelling requirements are passed on to consumers, the price of meat will increase for the American public, which will trigger a decrease in demand. In fact, a recent study sponsored by



the National Pork Producers Council in the United States found that if higher on-farm production costs are passed on to consumers at the retail level, the demand for pork will decrease by 7%.<sup>(5)</sup>

Support for COOL in the United States is not unanimous. Some producer groups are in favour of mandatory labelling, such as the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF) and various state cattlemen's groups. Other groups, such as fresh fruit and vegetable producers (United Fresh Fruit & Vegetable Association) and some livestock trade associations, state that mandatory COOL is too costly and unnecessary. For example, the National Cattlemen's Beef Association and the National Pork Producers Council support a voluntary labelling program. Even some groups that originally supported the initiative have expressed concerns; for example, the Iowa Farm Bureau Federation believes that the USDA's Agricultural Marketing Service appears to be straying from the original intent of the law.

Processors, wholesalers, and retailers – those further down the supply chain – are against COOL. The American Meat Institute, representing the U.S. meat industry, has been very vocal in its opposition, as has the Food Marketing Institute, which represents wholesalers and supermarkets. Retailers especially oppose the COOL requirements, since they bear the responsibility and legal liability for implementing COOL.

Some retailers in the United States have indicated that they may choose to source their beef from only one country. If these retailers were to follow this strategy and choose a country other than Canada, Canadian producers would be unable to sell to them. Since Canada's exports represent only about 3% of the total beef supply in the United States, the U.S. government might not consider this high priority for action. This would be especially true if U.S. trade organizations and farmer groups do not continue to pressure the U.S. government to repeal COOL.

## **TRADE IMPLICATIONS**

Canada, Mexico, and Australia have all indicated that they may challenge the country-of-origin labelling provisions. Australia has threatened to make a challenge under the World Trade Organization (WTO), and Canada and Mexico may challenge them under NAFTA.

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(5) This study was co-authored by Dr. Dermot Hayes, an economist at Iowa State University, and Steve Meyer, a pork industry economist.

WTO rules do permit countries to require country-of-origin labels, but such labels cannot be used to restrict trade. Under WTO rules, however, no action can be taken until a law is in place. It is easier to challenge a rule under NAFTA; to do this, Canada would have to establish intent to obstruct imports.

According to officials from Agriculture and Agri-Food Canada who appeared before the House of Commons Standing Committee on Agriculture and Agri-Food,<sup>(6)</sup> the Government of Canada, in consultation with industry and the provinces, submitted comments to the USDA on 9 July 2002. Further comments were submitted in January 2003 on the value of the interim voluntary guidelines, and on a USDA proposal for information-gathering related to the drafting of the mandatory regulations. Additionally, Canada participated in the Tri-national Agricultural Accord meeting in May 2002 in Nogales, Arizona, and in meetings in Chicago organized by the Province State Advisory Group in July 2002, which were dedicated specifically to COOL.

U.S. domestic producers who cannot, or choose not to, comply with the COOL labelling requirements have two choices: 1) they can either dump their products on world markets, causing world prices to decline in the short run, or 2) they may sell their products to the food service industry, or, in the case of meat, sell to the pet food industry. Some Canadian exports that would normally go to the United States may also be sold internationally, competing with U.S. products and possibly lowering world prices.

One of the principal effects of COOL could be to seriously undermine the United States' efforts in the Doha agricultural negotiations. U.S. trading partners could take the view that a new labelling law is a trade barrier, especially if the law raises prices or lowers demand for imported products, such as Canadian agricultural goods.

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(6) House of Commons Standing Committee on Agriculture and Agri-Food, Meeting No. 25, 2nd Session, 37th Parliament, Ottawa, 8 April 2003.

## **RETAILERS LIKELY TO SHIFT LIABILITY TO PRODUCERS**

Although retailers are ostensibly the sector that will be held liable by the USDA for non-compliance with the COOL provisions, they will likely attempt to shift their liability and additional cost burden onto their suppliers. Retailers will demand a verifiable audit trail from their suppliers, such as packing houses, who in turn will probably attempt to shift their additional liability and cost burden back up the supply chain to their suppliers, namely, farmers. If the added costs of labelling are passed back from the retailer to producers, this could mean that farmers will face lower profit margins.

Indeed, with more than a year to prepare for the mandatory phase of the program, supermarkets and wholesalers are already hearing advice from the Food Marketing Institute (FMI) on how to pass back to their suppliers the costs and liability associated with the country-of-origin labelling requirements. Retailers are being advised to renegotiate buying contracts to require that all products be branded with the country-of-origin information, and that all suppliers maintain “audited proof” of product origin in the event of a government inspection.

According to FMI guidelines, new contracts should also specify that suppliers would be held liable for any fines or other costs incurred by retailers for inaccurate labelling information. Retailers are being told to ask suppliers for results of audits by the USDA or a third party, demonstrating the supplier’s compliance with the new law.

For instance, U.S. meat processing giant Hormel Foods has warned pork suppliers to expect new policies if mandatory country-of-origin labelling takes effect next year. Amongst other provisions, it will assess to the responsible producer(s) any fine or penalty issued to Hormel resulting from producer non-compliance. Wal-Mart Stores, Inc. has also met with suppliers to discuss how they can comply with the law.

The USDA is recommending that U.S. cow/calf producers keep sales or purchase receipts, feed records, calving records, individual cow performance records, ear tag records, ear tag transfer records, in-processing records, and other records tracking the movement of livestock. Producers are being advised to check with their sales points to determine what documents are required, and on what dates the buyers will require them, in order to comply by 30 September 2004.

## **CONCLUSION**

As the country-of-origin labelling rules have yet to become mandatory, the full details of the requirements are not yet known. Furthermore, the rules are likely to evolve as new issues arise – such as the discovery of bovine spongiform encephalopathy (BSE) in Alberta. Consequently, the actual effect of COOL on Canadian agricultural trade cannot be determined at this time. Nevertheless, since the Canadian and U.S. meat and food sectors are so highly integrated, COOL will likely hurt Canadian-U.S. trade in agricultural food products.

## **APPENDIX A**

### **DEFINITIONS**

Covered Commodity:

- muscle cuts of beef, lamb, and pork, ground beef, ground lamb, ground pork, farm-raised fish and shellfish, wild fish and shellfish, perishable agricultural commodities, and peanuts

Perishable Agricultural Commodities:

- fresh and frozen fruits and vegetables

Retailer:

- any person who buys or sells perishable agricultural products (i.e., fresh and frozen fruits and vegetables) solely for sale at retail with a cumulative invoice value in any calendar year of more than \$230,000. This definition excludes butcher shops, fish markets, and small grocery stores that either purchase fruit and vegetables at a level below this dollar volume threshold or do not purchase fruit and vegetables at all.

Traceability:

- information about a particular attribute of a food product that is systematically recorded from creation through marketing

Ultimate Purchaser:

- the last U.S. person who will receive the article in the form in which it was imported

Source: United States Department of Agriculture.

## APPENDIX B

### REQUIREMENTS OF THE LAW

The USDA's Agriculture Marketing Service released the following Questions and Answers regarding the voluntary guidelines. (This is a partial list; the complete list is available at: <http://www.ams.usda.gov/cool/FAQ.htm>.)

**Q. Are certain types of products that are either produced from or including covered commodities excluded?**

A. Covered commodities are excluded from country of origin labelling if they are an "ingredient in a processed food item." A processed food item means either: 1) a combination of ingredients that include a covered commodity but the identity of the processed food item is different from that of the covered commodity; or 2) a materially changed covered commodity (i.e., a single or principal ingredient processed food item).

Examples by category of covered commodities excluded from country of origin labeling include, but are not limited to:

Whole muscle beef, lamb, and pork: Ham, raw corned beef brisket, restructured beefsteaks, and ready-to-cook Beef Wellington.

Ground beef, ground lamb, ground pork: Ground beef with vegetable protein, cooked ground beef crumbles, bratwurst, fresh pork sausage, lamb sausage, and a meal kit that includes ground beef and other ingredients.

Fresh and frozen fruit and vegetables: Orange and other fruit juices, as well as a frozen prepared pie that includes frozen sliced apples.

Peanuts: Peanut butter and peanuts in a candy bar.

Wild and farm-raised fish and shellfish: Canned tuna, canned sardines, surimi, restructured fish sticks, and salmon sushi.

**Q. What products can be labeled as having a U.S. Country of Origin?**

A. If following the voluntary guidelines, a retailer shall label a covered commodity as having a "United States Country of Origin" only if the following criteria are met:

Beef: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States (including animals that were born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

Lamb and Pork: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States.

Farm-raised Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish hatched, harvested, and processed in the United States.

Wild Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

Fresh and Frozen Fruits and Vegetables, and Peanuts: Covered commodities must be derived exclusively from produce or peanuts grown, packed and, if applicable, processed in the United States.

**Q. How are products of “mixed origin,” including the United States, to be labeled?**

A. Two situations involving products of mixed origin are addressed in the voluntary guidelines:

Production regimes involving foreign countries and the United States: Covered commodities produced in both foreign countries and the United States will be labeled to identify which production processes occurred in a foreign country and which production processes occurred in the United States, up to the point that the country of origin definition was determined.

Country of Origin for Blended or Mixed Products: The applicable country of origin labeling for each raw material source (as defined in the guidelines) must be reflected in the labeling of the mixed or blended retail item by order of prominence by weight.

**Q. Why were terms such as “Born in,” “Raised in,” and Slaughtered in” required for the labelling of covered meat products of “mixed origin” (production involving more than one country)? How might consumers perceive the use of these terms?**

A. The [Farm Bill] explicitly defines the requirements for covered commodities to be labelled with a “United States Country of Origin.” However, the law is considerably less prescriptive for products produced completely or in part outside of the United States. Because the law requires that an animal be born, raised and slaughtered in the United States to be considered “United States Country of Origin,” these guidelines apply the same criteria to beef, pork, and lamb for which part, but not all, of these steps have been performed in the United States. By doing so, consumers are provided complete information as to the origin of the product. The same labelling approach is used for other covered commodities of “mixed origin.” Because it is unclear how consumers will perceive this labelling approach and its specific terminology, the term “processed” may be used in lieu of the term “slaughtered” on meat products.

**Q. Are U.S. producers required to maintain records that will verify that their livestock meets the requirements for United States country of origin?**

A. To verify that products are properly labeled at the retail level, records must be maintained from birth to retail.

**Q. How are imported products to be labeled?**

A. The country of origin for products produced entirely outside of the United States shall be the country as specified under existing federal laws (Customs) at the time the product arrives at the U.S. port of entry.

**Q. Is specific labeling language required for product that meets the requirements for United States country of origin?**

A. Covered commodities meeting the guidelines for “United States Country of Origin” may be labelled by any commonly understood designation, such as: 1) Country of Origin – United States; 2) Product of the United States; 3) Produced in the United States; or 4) Product of USA.



## APPENDIX C

### EXAMPLES OF COUNTRY-OF-ORIGIN LABELLING

The following Questions and Answers are based on examples from the USDA's guidelines.

**Q: How do you label pork chops derived from a pig born in a foreign country, but raised and slaughtered in the United States?**

A: "From Country X hogs, Raised and Slaughtered in the United States."

**Q: How about green beans grown in the U.S. but frozen in a foreign country, then imported back to the U.S. for retail sale?**

A: "Grown in the United States, Processed in Country X."

**Q: And what about a fish that was harvested in the waters of or by a flagged vessel of one country and processed in another country or onboard a vessel with a different flag?**

A: "Harvested in Country X, Processed in Country Y."

**Q: Let's say a calf was born in Country X and raised in Country Y, then slaughtered in the U.S.?**

A: This gets a little tricky. USDA says that since verifiable product information will not always be available when two or more countries are involved in the production process, it's acceptable to call the resulting T-bone "From Cattle Imported From Country Y, Slaughtered in the United States." But if all the production processes are known and a verifiable record keeping trial is available, it could be labelled as "Born in Country X, Raised in Country Y and Slaughtered in the United States."

**Q: What about mixed or blended products like ground beef, where the raw material may come from a variety of countries?**

A: This gets really tricky. The USDA believes it would be misleading to consumers if only a small percentage of a mixture of a covered commodity met the definition of United States origin, yet the mixture listed United States first. So...the country of origin labelling for each raw material source must be reflected by order of prominence by weight. (The actual percentage of weight of each ingredient does not have to be listed.)

For example, the label "From Country X, Cattle Slaughtered in the United States; Product of Country Y; and United States Product" would be the label on a package of ground beef that contains meat in descending order of weight from: cattle born and raised in Country X, slaughtered in the United States, followed by imported Country Y trimmings as well as trimmings from the U.S.

**Q: What about the word "slaughter?" Won't that be a turn-off to consumers?**

A: You can use "processed."

Source: United States Department of Agriculture.