

Country-of-Origin Labeling

Anastasia Lewandoski

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>



Part of the [Agriculture Law Commons](#), and the [Food and Drug Law Commons](#)

Recommended Citation

Lewandoski, Anastasia. "Legislative Update." *Sustainable Development Law & Policy*, Fall 2008, 62- 63.

This Legislative Update is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

LEGISLATIVE UPDATE

COUNTRY-OF-ORIGIN LABELING

by Anastasia Lewandoski*

Since 1949, the Farm Bill has been updated every four to six years to reflect the evolving needs of the nation, addressing various topics from food stamps to agricultural subsidies to natural disaster insurance. Section 11002 of the 2008 Farm Bill mandates country-of-origin labels for certain food products. This section amends the Agricultural Marketing Act of 1946, which gave prerequisites for producers of certain products only if they chose to put a USA label on their product.¹ The 2008 amendments to § 11002 now require country-of-origin labels on goat meat, chicken, ginseng, pecans, and macadamia nuts. These are additions to the products which were already required to have country-of-origin labels. This prior list contained beef, lamb, pork, fish, peanuts, and perishable agricultural commodities such as fruits and vegetables.² Although these labels provide useful information to consumers, they come at a heavy price and still have loopholes allowing many food products to remain unlabeled.

Country-of-origin labels will help consumers make informed decisions about the products they buy. Many consumers prefer American over foreign products. Also, in the event that foreign food products become somehow tainted, country-of-origin labels could reassure worried consumers. A good illustration of the utility of country-of-origin labeling comes from past outbreaks of *bovine spongiform encephalopathy*, commonly called “mad cow disease,” which may be present in cattle from England and Ireland.³ Outbreaks 1992 and 1993, where almost one thousand cases of mad cow disease were diagnosed in Great Britain each week,⁴ caused great fear among consumers of beef in the United States.

Some producers will enjoy decreased competition as a result of the 2008 amendment to § 11002. For example, the amendment adds macadamia nuts which are domestically grown in Hawaii.⁵ They have also been imported from Australia—where they are more cheaply produced—and then packaged in Hawaii and sold as Hawaiian macadamia nuts for a lower price than those actually grown in Hawaii.⁶ Under the new law, these producers will have to market their nuts as products of Australia because nuts can only be labeled as American if they were produced *exclusively* in the United States.⁷

While the amendment will give consumers new knowledge, the substantial costs of the labeling program will likely be passed on to consumers. The Office of Information and Regulatory Affairs estimates that labeling will cost producers, retailers, and packers anywhere from \$500 million to \$4 billion during the first year of implementation, and cost between \$100 million and \$600 million per year after the practice has been in place for ten years, making this “one of the most burdensome rules to be reviewed by the Administration.”⁸ The U.S. Department of Agriculture, which underestimated costs when country-of-origin labels for fish were implemented in 2005, estimated a cost of \$2.52 billion for producers, packers, and retailers during the first year.⁹ These costs come from producing new labels for all the products, segregating American from Canadian cattle in slaughterhouses where they would otherwise be grouped together, and costs for some producers to find new domestic sources.¹⁰ Furthermore, food retailers will face an estimated \$952 million expense during the first year of implementation.¹¹ When this price is handed down to consumers, this equates to an increase of seven cents a pound for beef and four cents a pound for pork, lamb, and goat.¹²

Although it is more comprehensive, the amendment does contain holes. For instance, labels do not apply to all food products. Processed foods are exempted,¹³ removing a huge portion of the overall food consumed in the United States. The exemption uses a broad interpretation of what is “processed,” and includes foods that have been cooked, cured, smoked, or restructured.¹⁴ The processed food exemption is also nonsensical as applied to certain products, like vegetables, which need labels when sold in separate packages but not if sold in a mixed bag.¹⁵ It only seems logical that if a consumer is entitled to know the origin of a bag of peas *or* carrots, the consumer should also be entitled to know the origin of a bag of peas *and* carrots. Other exemptions undermine the intended purpose of the rule. Roasted products, for example, are exempt from labeling, and as many nuts are sold roasted, this exemption will remove foods that the

* Anastasia Lewandoski is a JD candidate, May 2010, at American University Washington College of Law.

bill otherwise purports to regulate. Finally, restaurants and cafeterias are not required to inform their customers where their food originated.¹⁶

With these large exceptions, the country-of-origin requirement cannot be completely effective in informing American consumers of the origin of their food. Consumers are left guessing the origin of many products. Additionally, the costs to consumers may be larger than the value of the information. In short, although the amendment is a step in the right direction for consumer information and food safety, it remains severely flawed.



Endnotes: Legislative Update

¹ Food, Conservation, and Energy Act of 2008, 7 U.S.C.S. § 1638 (2008).

² *Id.*

³ See generally GREG LARDY ET AL., N.D. ST. U. EXTENSION SERVICE, BOVINE SPONGIFORM ENCEPHALOPATHY, (Apr. 2004) available at <http://www.ag.ndsu.edu/pubs/ansci/beef/as1206.pdf> (last visited Nov. 13, 2008).

⁴ *Id.*

⁵ 7 U.S.C.S. § 1638(2)(A)(xi).

⁶ Mike Adams, *Hawaiian Macadamia Nut Farmers Face Economic Devastation Due to False Labeling of Imported Mac Nuts as "Hawaiian,"* NATURAL NEWS, April 23, 2007, available at <http://www.naturalnews.com/021805.html> (last visited Nov. 10, 2008).

⁷ 7 U.S.C.S., § 1638a(a)(4)(B).

⁸ Letter from John Graham, Adm'r of the Office of Info. and Regulatory Affairs, to William Hawks, U.S. Dep't of Agric. (Oct. 27, 2003), available at http://www.reginfo.gov/public/postreview/ltr_to_william_hawks_on_cool.pdf (last visited Nov. 10, 2008).

⁹ Karen Talley, *Label Change to Hit Grocery Bills,* WALL STREET JOURNAL (Aug. 27, 2008), available at http://online.wsj.com/article_email/SB121980900189375853-1MyQjAxMDI4MTI5NzgyMDC5Wj.html (last visited Nov. 10, 2008).

¹⁰ Dan Ikenson, *Uncool Rules: Second Thoughts on Mandatory Country of Origin Labeling,* FREE TRADE BULLETIN (Jan. 16, 2004), available at <http://www.freetrade.org/node/101> (last visited Nov. 10, 2008).

¹¹ *Id.*

¹² *Id.*

¹³ Food, Conservation, and Energy Act of 2008, 7 U.S.C.S. § 1638 (2)(B) (2008).

¹⁴ Mandatory Country of Origin Labeling, 73 Fed. Reg. 149 (Aug. 1, 2008) (to be codified at 7 C.F.R. pt. 65), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5070926> (last visited Nov. 10, 2008).

¹⁵ *Id.*

¹⁶ 7 U.S.C.S. § 1638a(a)(4)(B).