Country of Origin Labeling Program  
Agricultural Marketing Service, Room 2092-S  
United States Department of Agriculture  
1400 Independence Ave., SW Stop 0249  
Washington, DC 20250-0249  

RE: Comments on Final Rule regarding Mandatory Country of Origin Labeling of Fish and Shellfish  

The Center for Science in the Public Interest (CSPI) appreciates this opportunity to comment on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) proposed rule regarding mandatory country of origin labeling. CSPI is a non-profit consumer advocacy and education organization that focuses largely on food safety and nutrition issues. It is supported principally by the 900,000 subscribers to its Nutrition Action Healthletter and by foundation grants.

I. Background  

Congress first mandated country of origin labeling for certain covered commodities in the Farm Security and Rural Investment Act of 2002 (“2002 Farm Bill”), largely in response to consumer demand for information about where their food was coming from. Since 2002, significant portions of the program have been delayed, and only now is USDA close to promulgating a final rule on labeling for fish and shellfish. The 2007 Farm Bill, passed on July 27, 2007 by the House of Representatives, for the first time includes country of origin labeling for meats, fruits, and vegetables, reflecting Congress’s awareness of the overwhelming public support for the program.
CSPI strongly supports the creation of a strong final rule requiring mandatory country of origin labeling of fish and shellfish, and believes that USDA has tried to create a comprehensive framework for such a regulation. American consumers have shown a great interest in knowing where their food is coming from, and recent food safety issues from imported foods have highlighted the need for greater information on country of origin. Consumers may have a multitude of reasons for wanting to know where food is coming from, but it is clear that the desire to know is greater than ever.\(^1\) CSPI believes that country of origin labeling is an important and necessary step in the traceability paradigm—a paradigm which can lead to better food safety protections for all consumers. Country of origin labeling is by no means a panacea for all issues concerning imported food safety, but it does offer consumers an additional frame of reference for consumers when they make food purchasing decisions.

While the AMS interim final rule contains several strong provisions, it also falls short in several key areas. CSPI urges USDA to reconsider these areas of concern before promulgating a final rule.

II. Using PACA’s narrow definition of “retailer” leaves significant gaps in country of origin labeling coverage.

Retailers covered by the AMS proposed rule must meet the definition of “retailer” as defined by the Perishable Agricultural Commodities Act of 1930\(^2\) (PACA). The PACA definition includes persons engaged in the business of selling any perishable agricultural commodity solely at retail when the cost of purchases exceeds $230,000 during a calendar year. Notably, however, the PACA definition includes only those retailers handling fresh and frozen

\(^1\) USA Today/Gallup Poll, July 11, 2007, showing that products from China are becoming highly suspect to U.S. consumers, with 83 percent voicing concern about Chinese products, versus 61 percent concerned with food from Mexico and 39 percent concerned with food produced here in the U.S. Further, a 2005 poll by Public Citizen found that 85% of respondents supported country of origin labeling, and 74% wanted Congress to institute a mandatory program.

\(^2\) 7 U.S.C. § 499

fruits and vegetables. This definition thus excludes butcher shops, fish markets, and small
grocery stores, many of whom either do not sell fruits and vegetables, or sell less than $230,000
worth of products in a year. Unfortunately, the use of this definition could result in an
exemption for fish markets, a significant source of consumer seafood purchases. The exclusion
of these specialty markets undercuts the very purpose of the rule, which is to provide consumers
with additional information when purchasing fish and shellfish. Exempting these retailers may
confuse consumers, since consumers may believe that all unlabeled products sold at that retailer
are made in the United States.

Further, exempting certain retailers—particularly those selling otherwise covered
commodities—while requiring other retailers to comply with the rule creates confusion among
retailers, and contributes to an uneven playing field.

AMS has previously stated that the PACA definition and exemption exist at the statutory
level and thus are outside the jurisdiction of this rule. However, the General Accounting Office
in its report on country of origin labeling has suggested that the Secretary of Agriculture propose
that Congress make a technical correction to the definition of “retailer” to include fish markets.3
We urge USDA to accept this recommendation so that the definition can be expanded to include
all similarly situated retailers.

III. The definition of “processed food item” is too broad, and exempts many
items that consumers want labeled.

The definition of “processed food item” under this rule has significant impact on the
scope of the rule’s coverage, and should be defined more broadly to encompass those items
which meet a common-sense definition. Under the interim final rule, items such as smoked
salmon and breaded shrimp are considered processed and thus exempted, despite the fact that

3 GAO Report 03-780, COUNTRY-OF-ORIGIN LABELING: Opportunities for USDA and Industry to Implement
such products retain much of their original characteristics and are still easily identifiable as salmon and shrimp, which are otherwise covered. As with non-smoked items, smoked fish such as salmon can vary in ways that are important to consumers (flavor, texture, oil content, etc.) and thus the country of origin should be readily identifiable.

Similarly, types of seafood that have been mixed together may be defined as processed, even though the mixture may not contain any substantive additives. CSPI finds this exemption misleading to consumers, since a simple mixture of covered commodities should be subject to the mixed origin portion of the labeling requirement, rather than exempted from labeling entirely.

CSPI urges AMS to reconsider one of its own alternative definitions for “processed food item” for inclusion in the final rule. That definition would include all seafood otherwise defined as a covered commodity unless it has been mixed with other commodities so as to create a distinct food. This definition comports with the intent of the regulation and would fulfill consumer expectations for proper labeling.

IV. **The definition of “farm-raised” should include fish and shellfish obtained from the wild but raised in captivity.**

AMS’ interim final rule mandates labeling only for farm-raised fish and shellfish that have been “hatched, raised, harvested and processed” in the United States. As drafted, the rule appears to cover only those fish and shellfish hatched in captivity. This definition is too narrow, since many farms—particularly those in developing countries—still stock their farms with post-larvae shellfish caught in the wild. Shrimp from these farms, for example, may be excluded under this rule, even though most consumers would consider the term “farm-raised” to encompass them. The rule should, whenever feasible, adopt common-sense definitions, since the

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5 Id.
rule purports to inform consumers. Thus the definition of “farm-raised” should be expanded and clarified to comport with consumer understanding.

V. Remote purchases should be labeled at point of purchase, not delivery.

The failure to require country of origin labeling for remotely purchased products creates a loophole in consumer awareness that undermines the intent of the rule. For consumers to use country of origin labeling as a factor in their purchasing decisions, they must be given the pertinent information at the point of sale, not at the point of delivery. Catalog and internet items should meet the same standards for providing labeling information as products purchased locally, and consumers awaiting delivery of these items should not be surprised by additional disclosures as to the country of origin once a product arrives. The blanket exception for remotely purchased products is unwarranted and contradicts the purpose of the labeling rule.

VI. Commodities of mixed origin should be labeled by weight or percentage.

The failure to label commodities of mixed origin by weight or percentage is misleading to consumers who have come to expect—as with ingredient labeling—that commodities within a product are listed in order of prominence. Listing commodities by weight or percentage provides more information, since consumers can identify which counties provide more and less substantial portions of the product they purchase. We urge AMS to reconsider this portion of the rule and require a purposeful and sensible listing of commodities of mixed origin.

V. Conclusion

Country of origin labeling is an important, non-alarmist tool for educating consumers
about the origins of their food. CSPI urges AMS to continue its commitment to consumer
information by promulgating a country of origin labeling rule that comports with consumer
expectations and understanding. To that end, the proposed rule should be modified to broaden
the definition of “retailer” to encompass specialty markets where consumers purchase fish and
shellfish. Further, the definition of “processed food item” is too broad, and exempts many items
that consumers want and expect to be labeled. Conversely, the definition of “farm raised” is too
narrow, and does not comport with common-sense consumer understanding. In addition, the
remote purchasing portion of the rule undermines its purpose by limiting consumer information
at the point of purchase. Finally, the section of the rule relating to commodities of mixed origin
confounds consumer expectation that product ingredients will be listed in order of quantity, and
thus should be redrafted to require labeling by weight or percentage.

Respectively submitted,

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