MANDATORY COUNTRY OF ORIGIN LABELING, PART II

HEARING

BEFORE THE

SUBCOMMITTEE ON
LIVESTOCK AND HORTICULTURE

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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MANDATORY COUNTRY OF ORIGIN LABELING, PART II

WEDNESDAY, OCTOBER 1, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND HORTICULTURE,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 1:02 p.m., in room 1300 of the Longworth House Office Building, Hon. Robin Hayes (chairman of the subcommittee) presiding.

Present: Representatives Pombo, Ose, Osborne, Rogers, Neugebauer, Goodlatte [ex officio] Ross, Cardoza, Scott, Peterson, Alexander, Lucas and Boswell.

Staff present: Pam Scott, subcommittee staff director; Pete Thomson, John Goldberg, Callista Gingrich, clerk; Claire Folbre, Elyse Bauer, Teresa Thompson, Andy Baker, and Lisa Kelley.

OPENING STATEMENT OF HON. ROBIN HAYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. HAYES. I would like to call this meeting to order, and ask the witnesses to come to the firing line, I mean to the witness table.

The hearing of the Subcommittee on Livestock and Horticulture to review the mandatory country of origin labeling will come to order.

I would like to thank, first, all of our witnesses for their willingness to participate in today's subcommittee hearing to review the mandatory country of origin labeling law included in 2002 farm bill. As you all know, the full committee held a hearing to review the law June 26, and Chairman Goodlatte mentioned then that the subcommittee had an interest in holding further hearings on this issue. Let me add at this point, your time and your energy and the expense to be here is much appreciated. I know this is a difficult process, but the information, the wisdom and insight that you bring to this committee and to the Hill is very valuable and we listen carefully, and the things that you bring to our attention are the reasons on the occasion that we craft sound policy that we do that.

Today's hearing will focus on how the implementation of the law could specifically affect the fruit, vegetable, fish and peanut industries. After the full committee hearing, I believe the livestock industry's views are better understood, but I believe that other covered commodities need additional attention as to how they will be affected. By now, most of us know the history of how country of ori-

gin labeling became law, and how much time and effort the House Agriculture Committee has put into this issue. The most recent action on country of origin labeling was the House agriculture appropriations bill for 2004, which includes a provision to delay implementation of the law for beef, lamb and pork for 1 year. During House consideration of the appropriations bill, there was an attempt to remove this provision, but that amendment was defeated. We are now anxiously awaiting for the Senate to complete their version of an agriculture appropriations bill. Additionally, many of us are eager for USDA to publish the proposed rule on how the industry and producers will have to comply with the law when it becomes mandatory on September 30, 2003. The sooner this rule can be released, the more time it will give the industry to properly review it and make comments to USDA.

My understanding from USDA is that there will be a 60-day comment period after the rule is announced, which should be by the end of October. Once it is published, the subcommittee welcomes all comments of those who have an interest in these regulations, and I would anticipate that the committee will hold additional hearings. It is important that we keep the communication open as this process continues.

Again, I thank the witnesses participating, and I look forward to today's testimony. We will enforce the 5-minute rule stringently—that is the light system in front of you—and we do this not to restrain your testimony in any way, but to make sure that everyone has the chance to fully participate. After the original witnesses testify, then we will have however many rounds of questions are necessary to cover the issues on the minds of our members. If you happen to have left something out of your opening statement, feel free, in addition to answering the questions, concise as possible, but to use that time to additionally clarify or expand on some ideas that you may have already had. Along the same vein also, if you have your written statement, we all can read that. I would suggest you may want to use your time to talk about expanding on that, but again, that choice is up to you.

We appreciate you being here. We welcome your interest and your input, and at this time, I would like to turn to my friend Mr. Collin Peterson from Minnesota, and to welcome Mr. Boswell, from Iowa, to our hearing. Others will be coming and going. Don't think of that as any particular interest or lack thereof to you and the subject. A lot of other things going on, and Rodney Alexander joins us as well. Mr. Peterson.

OPENING STATEMENT OF HON. COLLIN PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. PETERSON. Thank you, Mr. Chairman, and I want to thank you for your leadership in calling this hearing.

As I assume everybody knows, I have been involved in this issue to some extent and we have been doing considerable work on trying to make the underlying statute more workable, if and when this ever comes to fruition, and I have introduced a bill that has become known as COOL Lite, which mostly focuses on meat issues, but I just want to say to the witnesses, I think that it is likely that this

effort to delay this is going to fail, and that is part of why I introduced this bill. I think we need to start thinking about what happens if the attempt to delay this does fail and we end up with a mandatory system.

Because the underlying statute, in my opinion, is not well-drafted, and we are going to end up with a problematic rule, I think, if we use this underlying language for the basis for that rule, this is not about food safety. Country of origin labeling is a marketing issue So, I don't think we need to make it as complicated as some people want to make it. I don't think we need to have third party verification and all this sort of thing, because this is a marketing issue. We are not talking about health and safety issues, and so what I am trying to do is if, in fact, this is going to go ahead and we are going to have a mandatory situation, that we make this as workable as possible.

If you would look at my bill and if you have got some ideas that would help your particular situation, I would welcome the input from you, because I heard a rumor today that the USDA, even if this goes ahead with the elimination of the funding, that they were going to go ahead with this rule anyway and just make the producers pay for it, or the retailers. So, I think eventually, we are going to have this one way or another, and what I am trying to do is do it with as least cost and as least hassle to people as we can possibly do.

Mr. Chairman, I have an intelligence meeting at 2 o'clock, so I am probably going to have to leave before we get to questions, and I have got some written questions that I would like to submit to the witnesses if that would be all right.

Mr. HAYES. No objection? So ordered.

Mr. PETERSON. I appreciate that, and I see the ranking member is here, so I appreciate the——

Mr. HAYES. You have just been demoted back to your normal position.

Mr. PETERSON. That is right.

Mr. HAYES. I would like to welcome Ken Lucas from Kentucky, and our full committee chairman, Mr. Goodlatte from Virginia has joined us, so at this point, I am going to recognize Mr. Goodlatte for any opening comments he might have.

OPENING STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

The CHAIRMAN. Well, thank you, Mr. Chairman. I would like to thank you very much for calling today's hearing.

This is a very important issue, and I very much appreciate the participation of all of our witnesses today. As I am sure everyone already knows, the House Agriculture Committee has given a great deal of attention to the issue of mandatory country of origin labeling. Most recently, the full committee conducted a hearing on June 26. Mr. Hayes has graciously taken up the reins and today, the subcommittee will be focusing on some of the areas we did not complete cover in June, including fruits and vegetables, seafood and peanuts. I have made no secret about the fact that I believe mandatory country of origin labeling is a bad idea for producers.

Today, as in previous meetings, markups, floor debates and hearings I have participated in, I expect that we will be faced with a familiar dilemma. There is simply no consensus among our constituents about the value of mandatory of labeling. Inevitably, some will oppose it and some will support it. I have observed this across all commodities and regions of the country and it only adds to my tremendous sense of foreboding about the law, which will be implemented 1 year from today. However, there does seem to be a growing consensus that the implementation of this particular law is going to have adverse consequences for producers. These consequences have led to language in the agricultural appropriations to delay implementation and to the introduction of legislation modifying the existing law. A recent GAO report on the subject raised additional questions and provided very few answers. One thing that I can assure you of is this: the House Agriculture Committee will continue to give this issue close scrutiny and provide a forum for the ongoing debate. I anticipate that the administration will have completed the proposed final rule and economic analysis by the end of this month. The committee will give this due consideration and chart a course from there.

Mr. Chairman, thank you very much for venturing forth in this minefield, and I look forward to working very closely with you as we attempt to address these issues.

Mr. HAYES. Thank you, Mr. Chairman, and also, we have been joined by Coach Osborne on my left, and at this time, with the proper warning, Mr. Ross, I have already made a side deal with the catfish guy here. We are going to have a fish fry and then we are going to put it on your tab. We thought that would be the right thing to do.

But in response to your comments, Mr. Chairman, I reflect your views as well, and in reading the testimony last night, and I want to identify who it was to see if you all notice it, but one of the folks that is in favor of this mandatory labeling, as you read through the testimony, they are in favor of it, but they want the rule that would make it mandatory all voluntary. So, that adds to the confusion. My friend and ranking member, Mr. Ross from Arkansas is recognized.

OPENING STATEMENT OF HON. MIKE ROSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ROSS. Thank you, Mr. Chairman, and on a side note, as a result of the dumping of these so-called catfish from Vietnam, which are no more related to a catfish, if you look at a species chart, than a cat is to a cow, as a result of all of that, the price of catfish is so low that we won't be out a whole lot of money in feeding everybody catfish, and that is an unfortunate note to make, but I am sure we can arrange to have an old-fashioned catfish fry here in Washington for the Members. I will even do the cooking. Mr. Chairman, I would like to——

The CHAIRMAN. Would the gentleman yield?

Mr. ROSS. Yes, I will yield, Mr. Chairman.

The CHAIRMAN. Maybe we could solve the problem by having mandatory accurate fish species labeling, as opposed to country of origin.

Mr. ROSS. We actually got that passed last year. We now have that, and those fish that are raised in cages in polluted rivers in Vietnam can no longer be called catfish under Federal law. Mr. Chairman, I would like to thank you for holding this hearing to provide members of this subcommittee the opportunity to review the mandatory country of origin labeling law and its effects on producers as well as retailers and everyone that falls in between.

As all of my colleagues are aware, the Farm Security and Rural Investment Act was just passed last Congress, and the regulations are still being finalized within the administration and it is my belief that the hearings that Chairman Hayes and his staff have outlined for the remainder of the 108th Congress at the request of many members on both sides of the aisle are not only our duty with respect to oversight, but also will be very productive. These discussions allow the membership of this subcommittee to hear the good and the bad about the law, so that we can make adjustments as needed and hopefully, at the end of the day, have what I call some common sense brought to the table on this issue, and find a way to make it work.

Again, I thank you, Mr. Chairman, for your time and attention to this matter, and I look forward to working with you as we address this issue together in the coming days, and further, I appreciate the openness by which this hearing was formulated and I look forward to hearing from the witnesses who have gathered here today. Thank you, Mr. Chairman.

Mr. HAYES. Thank you, sir, and at this time, other statements for the record may be included.

PREPARED STATEMENT OF HON. EARL POMEROY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

I appreciate the opportunity to submit my views regarding the implementation of mandatory country of origin labeling by the U.S. Department of Agriculture. I believe the discussion of this issue is timely given the status of USDA's rulemaking and I commend the Chair and ranking member for holding this hearing.

When Congress passed the country of origin labeling provision in the 2002 farm bill, the intent of the legislation was straightforward: provide consumers with clear, simple information on where their food is grown or raised. This labeling provision was an important victory for consumers and producers alike.

Consumers have demonstrated an interest in such information and their demand for such information only continues to grow as world trade in agricultural products increases. Consumers support country of origin labeling in overwhelming numbers, 86 percent by one account. This information should be easily acquired and provided.

However, while the intent of the legislation was simple, the implementation of the regulation has been anything but. In fact, the regulations as issued by USDA strive for a burdensome, costly system that succeeds only in turning supporters of labeling into opponents of labeling.

I believe the August 2003 report by the General Accounting Office summed it up well by pointing out that the assumptions underlying USDA's $1.9 billion estimate for the burden on industry are "questionable" and "not well supported." In fact, USDA estimated the record-keeping costs of complying at a much higher rate than they estimated for other similar programs.

Additionally, the GAO Report countered the point raised by labeling opponents regarding our trade partner concerns over the policy. Specifically, GAO surveyed the practices in 57 countries, which combined account for about 94 percent of US foreign trading activity for food and animals. Of these 57 countries, 48 require country of origin labeling for one or more of the commodities covered under the law as passed by Congress under the farm bill. Our consumers in the United States deserve the same information as that provided to consumers overseas.

I hope the hearing today sheds light on the issues raised in the GAO report and furthers the committee's understanding of the problems underlying the implementation of this legislation.

Mr. HAYES. I would like to identify by name and location our fine panelists. First would be Jerry Place, president, Western Nut Company; Mike Stuart, Florida Fruit and Vegetable; John McClung, Texas Produce Association; John Connelly, National Fisheries Institute; Hugh Warren, who is going to put a fish fry, with the Catfish Farmers; Mr. Gary Kushner, and Mr. Kurt Buckman. Mr. Place, if you would begin, a welcome.

STATEMENT OF JERRY M. PLACE, PRESIDENT, WESTERN NUT COMPANY, INC., ON BEHALF OF THE PEANUT AND TREE NUT PROCESSORS ASSOCIATION, SNACK FOOD ASSOCIATION, NATIONAL CONFECTIONERS ASSOCIATION AND AMERICAN PEANUT PRODUCT MANUFACTURERS, INC.

Mr. PLACE. Thank you, Mr. Chairman, and members of the subcommittee. My name is Jerry M. Place. I am the president of the Western Nut Company, out of Salt Lake City, Utah. I am a member of the Board of Directors of the Peanut and Tree Nut Processors Association. I also appear today on behalf of the members of the Snack Food Association, the National Confectioners Association and the American Peanut Product Manufacturers, Incorporated.

I come before you today because of the grave implications mandatory country of origin labeling requirements for peanuts will have on our industry and, more particularly, small business such as my own. Our company was founded in 1966. We are a family-owned small business that processes packages, shells, roasts and salts, mixed nuts, and we distribute our products at whole, distributor and retail pricing.

We employ 30 to 35 full-time employees and that number explodes in excess of 250 employees during the fourth quarter of each calendar year. It is difficult for me to believe that the closure of small business operations such as our own was the intent of Congress when it included the mandatory country of origin labeling provisions in the most recent farm bill. However, this will be the likely outcome unless you in Congress correct the problem. Implementation of mandatory country of origin requirements is simply a logistical and economic impossibility for a company our size and would, in effect, put us out of business.

Even though we are small, we have in excess of 1,189 stock keeping units that contain nuts. Of this total, 520 SKUs contain peanuts. The heart of our business is centered around gourmet nuts that are presented in a custom, award-winning package. Under a mandatory country of origin labeling program, as currently contemplated by USDA, we would be required to pre-print each and every one of our gift boxes in advance in every possible combination of variations of country origin, including the United States. We do not have adequate inventory space to house such a vast inventory of packaging, and additionally, it would be virtually impossible for us to track the movement of individual peanuts as they move through our processing operation. I have enclosed with my written statement one of our season 2003 retail catalogs that will give you

an idea of the complexity involved in providing appropriate labeling for each different product.

One might say, well, simply buy domestic peanuts, and I want to say, we do, but pray tell what do we do in a year, when the domestic peanut crop fails, as it has periodically done in the past, and there is inadequate supply of domestic peanuts? Furthermore, how would the small U.S. business nut processor compete price-wise with imported packaged peanuts that carry a country of origin labeling of a nation where the peanuts were processed and packaged rather than the actual origin of the peanut?

Some of the larger corporations in our industry may be able to comply with the proposed regulations because they can push the costs back on the grower or spread the cost over huge volume. Other large corporations have simply stated that they are investigating the option of relocating to Ontario, Canada, or moving to Mexico. Still others have indicated the possibility of exiting the peanut business altogether and concentrating on almonds and cashews. None of these are alternatives or an option for a company our size. We would simply be out of business.

I think I speak for all of the little guys in our industry when I say please reconsider this whole idea of mandatory country of origin labeling for peanuts. Why would it possibly be in the best interests of our nation to encourage large producers to leave the country, put small producers out of business and discourage new start-up operations? And perhaps most importantly for Members of Congress who represent peanut-growing regions, what will all of this to the peanut growers here in the United States? That is one question that I can answer with confidence. It means reduced returns for producers and decreased customer demand for snack peanuts as retail costs go up to pay for the mandatory labeling requirement.

In short, everyone loses, nobody wins. Does this economic or political sense? I think not.

In the most emphatic of terms, I respectfully ask you to move as expeditiously as possible to correct this situation, so that we can avoid the unintended but nevertheless adverse consequences of mandatory country of origin labeling for peanuts.

Thank you very much.

[The prepared statement of Mr. Place appears at the conclusion of the hearing.]

Mr. HAYES. Thank you very much, Mr. Place. That is the reason we have you all here, to convince yourself of the wisdom of the chairman's position. Just kidding. We do appreciate you being here. Next, we have Mr. Michael Stuart, who has a differing point of view, Florida Fruit and Vegetable Association. Welcome, Mr. Stuart. Thank you.

STATEMENT OF MICHAEL S. STUART, PRESIDENT, FLORIDA FRUIT AND VEGETABLE ASSOCIATION

Mr. STUART. Thank you very much, Mr. Chairman. On behalf of our producer members, I greatly appreciate the opportunity to share our views with the subcommittee on implementation of the country of origin labeling provisions of the 2002 farm bill. The labeling provisions for fruits and vegetables are sound in our opinion

and provide the Department of Agriculture sufficient flexibility to create a workable set of regulations for the produce industry.

At the end of the day, however, the success or failure of the law is going to depend greatly on whether the Department's regulations are flexible and workable, or draconian and costly. Over the past several months, considerable controversy has developed over COOL. Opponents have labeled the law fatally flawed and have urged its repeal in Congress, and while the focus of the criticism has been the law itself, in reality, it is the Department's voluntary guidelines that have generated most of the concern within the industry.

The guidelines were published by the Department in October 2002, just about a year ago, and they were highly prescriptive in nature, and failed to recognize or take advantage of existing statutes such as the Perishable Agricultural Commodities Act, which regulates transactions between produce sellers and buyers, or the Tariff Act of 1930, which requires labeling of packaged products. USDA's cost estimates of the impact of the guidelines fueled the controversy, by suggesting that the industry would be hit with a $2 billion price tag. A recent GAO study questioned the assumptions used in the analysis, and further recommended that the Department collaborate with industry to identify existing programs as alternatives for accomplishing many of the law's requirements.

Over the last year, the Department has received hundreds, if not thousands, of comments on how this law might be implemented in a more reasonable fashion. We, and many other groups in the produce industry have submitted a variety of comments to do just that, and I would like just today to share a couple of those with you.

First, point of purchase notification should be simple and straightforward. Congress identified a variety of notification methods that can be used at the discretion of the retailer. We have suggested that the regulations be similarly flexible in the terminology used to denote origin. For example, the guidelines mandate that grown in country *X* or produce of country *Y* be used. It is way too prescriptive. In the regulations, we have recommended that the Department accept the listing or marking of the individual country name or recognized abbreviation such as USA as being sufficient to meet the requirements of the statute.

We also strongly support the Department incorporating a common sense approach in evaluating the effectiveness of the notification system selected by the retailer. The test should be whether the consumer can make a reasonable decision regarding the country of origin of the produce at the point of sale, not whether 100 percent of the fruit is stickered.

Second, record-keeping isn't required under the law. Again, the law gives the Secretary the option of mandating a verifiable record-keeping audit trail or not. The requirements contained in the guidelines create a tremendous burden on the entire industry and are unnecessary. Florida's country of origin law has functioned well since 1979 without a mandated record-keeping system, and we don't believe one is warranted here. However, in the event the Department elects to implement a record-keeping mandate, we have suggested that it be based on the current requirements of PACA.

In addition, Florida's law operates under the presumption of truthfulness of the information provided to the point of retail sale. The Department should take the same approach in developing regulations for COOL. There should be downstream liability for the validity of origin information provided by a product's supplier, as is the case for misbranding currently under the PACA.

Mr. Chairman, in summary, FFEA believes COOL is a fundamentally sound law that will provide consumers with information regarding the country of origin of the produce they purchase at retail supermarkets. In implementing the law, the Department has the discretion to make it as simple or as difficult as possible for the industry. We have urged them to take the simple approach. We greatly appreciate the efforts the Department has made over the last year to seek input from the industry on this issue, both formally and informally, and through the Federal Register and through listening sessions. We also appreciate the efforts of this committee to hear the views of the industry. The suggestions made by our organization and others have been well-spoken, and there are numerous organizations within the fruit and vegetable industry across this country that strongly support this law.

We are hopeful that the draft regulations will incorporate the flexible, common-sense approach recommended by our industry, and quite frankly, the sooner, the better.

Thank you.

[The prepared statement of Mr. Stuart appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, sir. Next, Mr. McClung.

STATEMENT OF JOHN M. MCCLUNG, TEXAS PRODUCE ASSOCIATION

Mr. MCCLUNG. Mr. Chairman, members of the subcommittee, my name is John McClung, and I am the president of the Texas Produce Association, headquartered in the Rio Grande Valley, Texas.

I want to thank you and commend you for holding this hearing today. The subject, obviously, is one that is probably as controversial as anything that has been before the fresh fruit and vegetable industry in a long while, and we very much appreciate your attempt to figure out how best to deal with it.

On late August of just a few weeks ago, the Board of Directors of the Texas Produce Association unanimously voted to attempt to rescind the current country of origin law, thus reversing the position we had taken give or take a year and a half ago, and obviously, highlighting the change in thinking on the members' part. At the same time, we, of course, recognize that there is a Federal rulemaking underway with the existing law, and that we all are going to have to wait and see what comes out of USDA when that regulation issues, and that any attempt to take action in the Congress probably would be premature until we know exactly what we are dealing with. And in that regard, I might point out the Texas industry's posture is entirely consistent with the position of the national produce organization, the United Fresh Fruit and Vegetable Association, that we should wait to see what USDA's regulations are going to be before informed decisions can be made on possible

additional actions, including seeking congressional intervention. Nonetheless, my Board felt that the law as currently written is too prescriptive to allow the U.S. Department of Agriculture to develop regulations that are acceptable to the industry. We shall see if that is true or not.

The members also felt that the basic premise of the law, that U.S. consumers would prefer to buy domestically grown fruits and vegetables if they only knew they were U.S. grown is contrary to what we know about the variables that consumers most often use in making their purchasing decisions. The only likely exception would be when there is a food safety scare of some sort, and then we generally lose the sector anyway.

And finally, the Board felt that the cost and disruption associated with compliance probably would outweigh any benefits. The jury, again, is out on that matter until we can digest the regulations.

Interestingly, my association's Board is made up largely of grower/shippers who, without exception, are also importers of Mexican produce, and I would like to come back to the significance of that in just a moment.

As I think we all know, the retail community has mounted an enthusiastic campaign to convince their fruit and vegetable suppliers that country of origin labeling is a bad idea for a lot of reasons, and while my shippers are well aware of that systematic, I don't think it looms over-large in my Board's position. We are not, after all, unaccustomed to being at odds on occasion with the buyers on issues of mutual interest, and simply are hopeful that the differences will be thoroughly aired and where there is legitimacy to the threats of upheaval, that the best possible resolution can be reached.

I must add that some retailers are insisting on elaborate assurances of compliance with anticipated provisions of the law and regulations from their suppliers before the regulations are scheduled to take effect and even before they are published. These demands are, of course, impossible to comply with for the most part, but they are more than mere irritants, as they often include audit requirements, hold harmless agreements and other provisions that are simply unacceptable to the supply side, and one gets the clear impression that something more than buyer eagerness to comply with the law is at play here.

The Texas industry's view on country of origin labeling is obviously colored by a transitional role as a supplier of fresh fruits and vegetables to the Nation. Just 20 years ago, Texas was, by most accounts, ranked as third largest producer of fruits and vegetables in the United States, behind only California and Florida. By 2001, when the Congress appropriated money for specialty crop grants, and those dollars were distributed according to each State's relative rank as a supplier, Texas was tied for 10th with New York.

While many factors contributed to that decline in the State's domestic ranking, arguably the most telling was and continues to be pressure on domestic production from Mexico. Last year, some 180,000 semitrailer loads of produce entered the United States from Mexico, just under 40 percent of them through Texas. Each load is, give or take, 44,000 pounds. I don't have to tell you that

is a lot of onions and cabbage and melons and mangoes and other commodities. Texas producers and shippers, seeing the writing on the wall, going back many years, are heavily involved in growing and packing and marketing Mexican produce. Very few, if any, vegetable shippers, remain in Texas who are not sourcing in one way or another from Mexico. As a result, while Texas production has slipped, the State retains its rank as a top supplier to the rest of the country, which is why I say we are going through a transition, and one thing we know is that consumers don't really care where their commodities come from most of the time, so long as they are of high quality, display well and priced right. These importers do not impose country of origin labeling on the grounds that it will cost them market share, but they generally do oppose it as an expensive and burdensome requirement of little or no practical value. They particularly note that there is no evidence consumers are clamoring to know where their produce comes from in most instances.

Clearly, the Congress is considering what it might do to fix this law if, in fact, it proves to be hopelessly broken. It might well be that converting to a voluntary program would be an option. In any event, we do greatly appreciate the opportunity to be here today and to work with you in the future as you deal with this issue.

Thank you very much.

[The prepared statement of Mr. McClung appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, sir. I feel badly making you talk so fast. Get some oxygen out there to you. Next, we have Mr. John Connelly, the president of the National Fisheries Institute. Welcome.

STATEMENT OF JOHN CONNELLY, PRESIDENT, NATIONAL FISHERIES INSTITUTE

Mr. CONNELLY. Yes, Mr. Chairman. I noticed you wanted a fish fry, and so if you promise to bring the catfish, I have some cod and some shrimp here that I will add into the mix, and we will be ready to go for a good fish fry.

By way of introduction, because NFI isn't a typical association that comes before the Agriculture Committee, the National Fishery Institute represents folks that are in the aquaculture area of fishing, the wild capture area, but also importers, distributors and retailers. Our mission is to promote fish and seafood as a healthy food choice that is good for your heart, weight loss, et cetera.

In addition to the written testimony we provided, I would like to concentrate on three items. The first, we oppose mandatory country of origin labeling primarily because of the reason that Mr. Peterson raised. This is a marketing issue, and if it is a marketing issue, the market should decide what should be done. There already are requirements and rules within the FDA and FTC about what can be labeled as American product. These cod filets right here, I just happened to go to Safeway the other night and picked up some fish, and this is labeled as a product of the United States, because this company feels that it is in their competitive advantage to have a product that is labeled as a product of the United States. It meets all of the FDA and FTC requirements, so that is the market

at work. It is allowing the market to decide if the consumer is going to want U.S. fish and seafood, and they will label it as such.

So, while we oppose mandatory country of labeling, we did want to highlight two items within the existing voluntary guidelines that may end up being the regulations coming out of USDA. The first is the processed seafood issue and the second, how commingled or blended products have a specific impact within the fish and seafood world.

More than 85 percent of the fish and seafood we eat as American consumers is processed in some way, that means shrimp is peeled, or it is breaded or battered in some way. We already have existing laws that dictate how those products have to be labeled. The Customs Bureau, the Customs Agency already dictate how things have to happen.

This is a bag of shrimp from Thailand, and it is labeled as a quality product of Thailand, because it has the requirements that Customs has laid out for what has to be labeled for certain kinds of products. So, this is already a product that is labeled according to the Customs Department.

What we're concerned about in processed seafood is a requirement that Customs will come up with and that USDA will come up with, and if they are different, where does that put both the consumer and the processor of the fish and seafood? What agency should they comply with? If one says go ahead and label it and the other says don't label it, obviously we will put the American company, in this case, in a bad position. So our recommendation is to stick with what the Customs Agency has already decided is protective of the American consumer. So, we would not suggest that we have duplicative or conflicting regulations.

In the area of combined or commingled or blended products, we believe that the voluntary guidelines demonstrate a lack of understanding of how a processing plant actually works. Anyone that worked in a manufacturing facility when they were younger understands that volume is important for fish and sea, in that running a plant all the time is very, very important, because that is the safest way to run a plant. When you start something up or shut it down, that tends to be where accidents happen.

Customers look at seafood and fish by size, by weight, by category, by cut, by quality. The last thing typically a consumer looks at is where that fish came from. When you go and buy shrimp, you are looking for a certain count of shrimp, certain size of shrimp. Can you put it on the barbecue and have it cook up, or is it going to fall through the slats? The first thing you look at is not probably does this come from a certain area of the world. The way the USDA guidelines now read or are concerned, if they are formed into regulation, is it will require companies to label products in order of the percentage of the product coming from a certain country, and then label it down from that. So, this product had a requirement that had product of Thailand, Vietnam, U.S., Mexico, et cetera, and the challenge there is that each time that mix of product is processed, the company is going to have to stop the manufacturing process, and that is an extraordinarily inefficient way to run your facility.

We think a much more effective way to get out of this, if we are going to have to have mandatory country of labeling is to say that

product may contain fish or seafood from a number of countries, rather than going through the very prescriptive manner of labeling if by percentage or weight.

In summary, and if I oppose this country of origin labeling because it is duplicative, would be confusing to the public and it is unnecessary, we submitted written testimony and we would just like to highlight the processed and commingled issues.

[The prepared statement of Mr. Connelly appears at the conclusion of the hearing.]

Mr. HAYES. Thank you very much. Next, we have Mr. Hugh Warren, the executive vice president, Catfish Farmers of America.

STATEMENT OF HUGH WARREN, EXECUTIVE VICE PRESIDENT, CATFISH FARMERS OF AMERICA

Mr. WARREN. Mr. Chairman, ranking member and members of the subcommittee, I appreciate this opportunity to provide testimony in support of the country of origin labeling law.

I am Hugh Warren, and have been executive vice president of the Catfish Farmers of America since 1989. CFA is a trade organization representing the interests of the farm-raised catfish industry with current membership representing 40 States. Our producer members, farmers, account for approximately 80 percent of the total catfish production. Over the past two decades, the U.S. catfish industry has grown from a relatively unknown segment of the U.S. seafood industry to the Nation's largest aquaculture industry, accounting for over 70 percent by volume and over 60 percent by value, of all U.S. aquaculture production of fish. Because farm-raised catfish has become a widely accepted food item throughout much of the United States, the demand for catfish should continue to increase as American consumers increasingly turn towards fish as part of a safe and nutritious diet.

The implementation of COOL should prove a minor issue with relatively no additional costs in the process of the marking of catfish. For the most part, the catfish industry already meets the COOL requirements through such things as the mandatory Food and Drug Administration's hazard analysis critical central control system for food safety. This HASSA plan requires processors of fish and fisheries products to identify hazards that are recognized with their products, and to help the companies then formulate control strategies. The FDA has identified certain possible hazards in the growing of catfish. The preferred method of control is for the processing plant to have on file a document updated each year by the producer farmer, identifying the farm and producer on a guarantee agreement form. This form certifies that the fish shipped to the processor are hatched, raised and harvested in the United States. By virtue of the process of being in the United States, the requirements for COOL in the United States are being met.

In addition, under the Code of Federal Regulations, the food labeling regulations requires the name and place of business of the manufacturer, packer, or distributor of food to be identified on the label. The statement of the place of business shall include the street, city, State and zip code.

Many of the Nation's trading partners already require their own version of COOL. For example, the European Commission labeling

decision for seafood, a new labeling system for fish and fishery products have been introduced by the European Commission. The new rule, which has been in effect since January 2002, stipulates that he label should have the following information on all fish products at the retail counter, whether the product is foreign, cultivated, or caught in the wild in fresh or seawater. The country where the fish underwent its final processing state and the commercial name of the species being used for local sales, along with the common term used in each member State.

In an official state, the Commission reported that considering the wide variety of species supplied, the EU considers it necessary to provided consumers with at least the basic minimum of information on the characteristics of the aquaculture products. The new labeling rule based on the traceability procedure would impose additional responsibility on retailers, transporters and producers who have to keep accurate records on these aspects so that the control officials can trace back the origin of the product and keep better control over quotas.

In the United States, the producers and the processors have worked diligently to ensure that farm-raised catfish is safe, wholesome and is just plain good to eat. I cannot imagine why anyone would want to hide the origin of their product and to deny the consumer an informed choice.

Thank you, Mr. Chairman, for allowing me to testify today, and certainly, I look forward to answering any questions any of the members might have.

[The prepared statement of Mr. Warren appears at the conclusion of the hearing.]

Mr. HAYES. Does your issue get solved by Mr. Connelly's comment, if he uses the Customs procedure there? Does that solve the problem?

Mr. WARREN. That would certainly be a big help. However, I do want to go back to Mr. Peterson's comments about the burden of third party verification. It would be hoped that a farmer's signature to a statement that he indeed was the owner of these fish or brood fish that were hatched and raised and grown without having so much substantial background verification.

Mr. HAYES. Thank you, sir. Mr. Gary Kushner, counsel, Grocery Manufacturers of America.

STATEMENT OF GARY JAY KUSHNER, COUNSEL, GROCERY MANUFACTURERS OF AMERICA

Mr. KUSHNER. Thank you, Mr. Chairman and members of the subcommittee, and good afternoon. My name is Gary Jay Kushner, and I am pleased to testify today on behalf of the Grocery Manufacturers of America. I am also pleased to represent that the American Frozen Food Institute endorses my testimony.

I don't want to jump ahead of Mr. Buckman, who is an old friend and colleague, but I noticed that he will be testifying next on behalf of the National Food Processors Association; and it is my honor to sit beside him, because Birds Eye is also a very valued member of GMA and AFFI. GMA has consistently opposed the additional mandatory country of origin labeling requirements imposed by the 2002 farm bill. Products for which country of origin labeling is appro-

priate are already labeled in accordance with Customs law and regulations. Additional labeling will do nothing to enhance the safety of the domestic food supply or the health of consumers, but it will complicate the processing and marketing of food products to the ultimate detriment of producers, consumers and food manufacturers alike.

Presumably, this legislative mandate was intended to protect domestic producers of raw agricultural products, and perhaps, even to provide American consumers with more information about some of the products that they buy. Particularly as administered by the U.S. Department of Agriculture, however, the farm bill's requirements will result in a duplicate, confusing and costly labeling scheme that will actually harm the very people that Congress sought to help. Accordingly, GMA urges this subcommittee to support legislative efforts to amend the law by rescinding the country of origin labeling mandate. At the very least, we ask that Congress ensure strict oversight of USDA's implementation of its new labeling authority to reduce unnecessary and unreasonable regulatory burdens.

A summary review of USDA's interim voluntary labeling guidelines illustrates precisely the kind of regulatory abuse that the country of origin legislative mandate invites. Of significance, although Congress, in granting USDA this new authority, expressly exempted processed foods from additional labeling, USDA's guidelines interpret that exception so narrowly as to render it meaningless. For example, the guidelines require that frozen produce, mixed frozen fruits and vegetables, frozen seafood and shelled, roasted, packaged peanuts bear country of origin labeling. Not only are these products, when imported, already labeled under Customs law, but they are also considered processed under many other FDA and USDA regulations. Specifically, FDA defines "processed food" to include "any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration and milling."

USDA's fruit and vegetable grading regulations similarly define processed product to mean any "fruit, vegetable, or other food product which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying . . ." There are numerous other FDA and USDA regulations that similarly define processing as broadly and more broadly, much more broadly, than it would be defined under USDA's guidelines.

Country of origin labeling of these processed products is incompatible with historical regulatory precedent and potentially inconsistent with current labeling requirements. USDA's unreasonably narrow definition of processed food would also encourage processors either to produce their products abroad or use only imported ingredients. Under USDA's guidelines, for example, mixed, frozen produce processed entirely outside the United States from foreign origin produce need only bear the country of origin of the finished product. Mixed, frozen produce that contains some U.S.-grown produce, however, would have to state the origin of each raw ingredient. In other words, labeling would be much shorter, simpler and frankly, cheaper, for a product fully processed abroad with no domestic ingredients. By restricting ingredient source, a processor

can also avoid frequent labeling changes and simplify record keeping, but in so doing, domestic producers will lose markets.

These are just a few of the unfortunate and probably unintended consequences of the farm bill's country of origin labeling mandate as it will be administered by USDA. The only sure way to avoid these results and to ensure that consumers continue to receive an abundant and affordable supply of food labeled in a meaningful manner is for Congress to amend the law to rescind these additional labeling requirements. Alternatively, and at the very least, Congressional oversight over USDA's implementation of its new authority is urgent.

Thank you very much for this opportunity to testify and for the subcommittee's consideration.

[The prepared statement of Mr. Kushner appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, Mr. Kushner, and next, our last panelist will be Mr. Kurt Buckman, quality systems management for Birds Eye Foods. Thank you, Mr. Buckman.

STATEMENT OF R. KURT BUCKMAN, DIRECTOR OF QUALITY SYSTEMS MANAGEMENT, BIRDS EYE FOODS, ROCHESTER, NEW YORK, ON BEHALF OF NATIONAL FOOD PROCESSORS ASSOCIATION

Mr. BUCKMAN. Mr. Chairman, Mr. Ross and members of the subcommittee, I want to thank you for providing the opportunity for me to comment on this matter. I am Kurt Buckman, director of Quality Systems Management for Birds Eye Foods, which has major facilities in California, Delaware, Georgia, Minnesota, New York, Ohio, Pennsylvania, Texas, Washington and Wisconsin. I am here representing the National Food Processors Association, of which we are a member.

The approach USDA has taken to country of origin labeling is unnecessarily burdensome and operationally impractical. The guidelines would over-regulate by prescribing country of origin labeling rules for products already required to display such labeling, creating the prospect for duplicative, confusing and even conflicting requirements. The ultimate consequence I foresee is that by including processed products, farmers may ultimately be harmed by decreased demand for their products due to increased consumer prices. NFPA urges the committee to reexamine these onerous, counterproductive mandates and restructure the law enabling compliance with the intent without the unintended consequences.

I wish to briefly highlight several specific concerns. The food industry has an ongoing requirement for country of origin labeling that predates the farm bill. Products of foreign origin, as determined by the U.S. tariff laws already are subject to country of origin labeling under comprehensive set of regulations administered by the Customs Bureau. The USDA's voluntary program covers food categories that are clearly processed foods. These include frozen products, fruits, vegetables, processed peanuts. Frozen produce is a processed product because it requires precise cutting, blending of raw vegetables, steam blanching and freezing by technically sophisticated processes. Peanuts and mixed nut products and other mixed snack food products also have undergone processing. USDA's

guidance, given the statutory definitions used to identify covered commodities, conflicts with the explicit exclusions for processed food ingredients in the farm bill. I attribute this to the wording of the Farm directed covered products to include perishable agricultural commodities, defined by USDA to include processed foods like frozen foods.

Although the farm bill does not require records of verification at farm level, it does contain fines and burdensome 2-year records provisions at the retail level. Consequently, a cost and burdensome chain of records showing origin must be created at every retail location. Several retailers, representing many others, having between 50 and 100 stores, have told me personally of a $5 million initial cost and projected $2 to $3 million operating cost thereafter. It makes no sense to assign retailers full legal accountability for notice of origin marking requirements for processed food products.

The labeling requirements under the farm bill are extremely complicated and technologically difficult to achieve. Order of predominance rules in country of origin marking cannot be operationalized. This will cause frequent and costly label changes or extraordinary spending on sophisticated marking equipment, if such equipment exists. For example, countries will be required to be listed in order of predominance of the ingredient by weight of the mixed product. Changes in the amount of the commodity for a given country would require a reordering of the last and a new label, even though there is no change in the originating countries. And segregation throughout the distribution channel to retail sale. These changes have costs leading to higher prices and decreased demand for processed farm products, ultimately harming farmers.

The food industry must comply with the farm bill country of origin labeling requirements as of September 30, 2003. There simply is not enough time for the processed food industry to meet this deadline. The farm to market cycle is too long and required business process changes are complex. It is implicit that labeling or record keeping requirements will be necessary on products packaged well before the date of the mandatory rule becomes effective. To require labeling to be in place at the store level for such products had the effect of making the statute mandatory on the date that it was enacted. Ultimately, our processed food industry will realize increased financial risk due to noncompliance, business disruption and costly enforcement penalties. Again, farmers will be harmed by decreased demand in response to higher prices in covering costs.

Finally, no recognition is given to State or regional programs that identify origins of foods. We believe that State and regional labeling programs are designed, or could be designed, to provide proper documentation, that foods included in the program do, in fact, originate from the State or region of the United States. For example, labeling retail products, for instance, New York State apples, clearly communicates to the consumer that it refers to a geographic region in the United States.

In conclusion, the current requirements established by the farm bill and USDA's guidance are seriously flawed. Another look the Public Law 170–171 is needed to exempt all processed foods and

USDA's voluntary country of origin program should not become mandatory without significant and substantial change.

Thank you for the opportunity to testify on this important issue, and I would be pleased to answer any questions.

[The prepared statement of Mr. Buckman appears at the conclusion of the hearing.]

Mr. HAYES. Thank you, sir. Again, we appreciate your fine testimony, and my first question would be, now that you all have heard the testimony, have you all come to agreement this is not that great an idea, or do we need to go on with questions? OK. I just need questions. One comment, then I am going to call on my ranking member to go first, and we will alternate back and forth in the questioning process.

Several of you mention the fact that you wanted something that was simple, understandable, flexible, realistic, common sense. This is Washington, this is not Hometown, USA. I need to remind you that early, and the law of unintended consequences is the most active law that we deal with in this town.

First, I want to call on my friend, Mr. Mike Ross, who is a ranking member from Arkansas for any questions he might have.

Mr. ROSS. How many can I ask?

Mr. HAYES. You have 5 minutes.

Mr. ROSS. Let me start, if I may, with Mr. Connelly, with NFI. Based on your testimony on page 2, Mr. Connelly, if country of origin labeling is not necessary for fish, because current law works so well, why do we have to go to the trouble of inserting language in the 2002 farm bill to prevent Vietnam from sending boxes of tra and basa filets into the U.S. labeled as things like Cajun Delight and Delta Fresh and I guess the followup would be, Mr. Connelly, did you know that apparently, that are Cajuns that do not associate themselves with Vietnam and there are folks in the Delta that do not associate themselves with Vietnam, and yet we had labeling names like Cajun Delight and Delta Fresh, and wouldn't this be classified as what we would call down in south Arkansas and the Delta as misleading?

Mr. CONNELLY. Mr. Ross, if there were a mislabeling of the product, there were laws on the books, FTC and FDA, dealing with seafood that—we should have a discussion with FDA and FTC, if you believe the fish was mislabeled. However, this committee and Congress decided to actually legislatively require that the fish coming in from Vietnam be labeled as tra and basa, and so you have actually solved the problem legislatively. I would leave it that.

Mr. ROSS. OK. So you are trying to say that you feel like there was existing rules and regulations on the books to deal with this mislabeling.

Mr. CONNELLY. Saying that through the Food and Drug Administration and the Federal Trade Commission, there are requirements as to what can be labeled food of the United States, and the FDA, the requirement is that it be truthful and not misleading in any way, and then relies on the FDA to define what actually would be, for fish and seafood, would be truthful or misleading, and if the FDA had a difference of opinion, the we probably should have been going to the FDA. But again, you have solved that problem legislatively in last year's language, or 2 year's ago language.

Mr. ROSS. But you would agree that if you were a consumer and you were at the grocery store and you picked up a package called Cajun Delight, you probably wouldn't think of that being a product of Vietnam. Or if you wouldn't, that is fine. I am just curious.

Mr. CONNELLY. I am not a marketing person, so I don't know, but I try to put everything through the screen of my wife, who is this woman raising four children here in Virginia. I personally don't think, and I have talked to her about it, she really doesn't care where a product comes from to a great extent, if it meets her desire for quality, taste, ease of preparation, price, value, et cetera. So, the first thing she is looking for is not where the product comes from, but does it feed our family at a price that we can afford and in a manner that we can convince our four children to eat a healthy fish.

Mr. ROSS. Even my tie says made in USA, and just about everything that we as consumers purchase, we know where it comes from, except the food that our children consume, but I will leave it at that. Mr. Warren, what proof can the producer offer to processors to create a verifiable audit trail for USDA, in your opinion?

Mr. WARREN. Congressman, the several items I mentioned that are already in existence about the fact that the FDA requires a statement from the grower that has to do primarily with the first critical control point in the system. Does the plant receive safe and wholesome product? And this statement, and I have a copy of it attached to my testimony that does go for, recognizes the hazards that want to be protected, and that farmer has to sign a statement. Also, as in recognizing the language in COOL, many processing plants are adding that line that they can verify that it is indeed, in our case fish are hatched and raised and grown, and I will also, listening to the testimony, certainly these other commodity groups do have significant issues to discuss.

We are fortunate, I guess, in that we are looking at a home grown industry. We do not deal in foreign fish being raised. We raise our own domestic native species of fish. Our processing plants process just channel catfish, and obviously, the burdens are much less for our industry, since we don't have the complications that these other industries have discussed.

Mr. HAYES. Chairman Goodlatte.

The CHAIRMAN. Thank you, Mr. Chairman. Mr. Place, you point out in your testimony that you can't solve your problem by sourcing U.S.-only peanuts because you have to go through the same regulatory process for U.S. peanuts as for foreign peanuts. I assume that you would prefer a law like Florida's, that doesn't require labeling of domestic products.

Mr. PLACE. If I had my preference, I would prefer that we were stricken from the law, that the word peanuts had simply not appeared there. The one point I would like to make is under the current law, and you can see the packaging that we use is very expensive, because we are trying to make the statement that we are providing to the customer the very best product that we can get and, frankly, it is U.S.-grown peanuts. But under the law, we still have to go and retool, because it doesn't say a product of the United States with regard to peanuts, so no matter what happens, we are caught in a very difficult situation as a small business.

The CHAIRMAN. Thank you. Mr. Stuart, can you provide the committee with any economic studies that demonstrate that Florida's labeling law provides Florida producers with higher prices than producers in neighboring States without these laws?

Mr. STUART. Mr. Chairman, I am not aware of any specific studies that have been done in Florida. I know that we are working on some economic analysis right now, and the potential benefits of this law to producers nationwide, but suffice it to say that there has been a tremendous amount of support emanating from Florida over the years for a national country of origin law, because in the marketplace, the salespeople and the owners, the growers of fruits and vegetables in the State, have felt the State law has been extremely beneficial to their operations, so while we don't have a quantifiable study that I can point to, it has been the producers in Florida that have been very, very strongly behind the movement towards a national country of origin law.

The CHAIRMAN. But no evidence to suggest that what has been done in Florida actually results in higher prices in Florida for producers.

Mr. STUART. I don't have any empirical documentation to show, no.

The CHAIRMAN. Mr. McClung, it seems to me that if I am a retailer, I have one of three options in dealing with increased costs, regulatory burdens and legal liabilities that will be associated with mandatory labeling. One, pay them myself, two, pass them on to my customers, thereby making me less competitive, or three, imposing them on my suppliers in the form of lower prices. Which of these do you think your customers will choose?

Mr. MCCLUNG. You are going to get me in trouble, Mr. Chairman. There is great concern that the cost of country of origin labeling will buck down to the supplier. Of course, ultimately, the consumer probably winds up paying the additional cost, for the most part, over time. I think what you can be reasonably sure of is that the retailer probably will not be the cost. It will be one of the other two alternatives, or a combination thereof.

The CHAIRMAN. Thank you. Mr. Connelly, currently U.S. Customs' J list exempts fresh seafood from the historical country of origin labeling mandate. What are the unique hurdles to maintaining accurate labeling of fresh fish at the retail seafood counter that have led to your being exempted from the Customs requirement?

Mr. CONNELLY. Mr. Chairman, I would ask you to think about when you go to your own fresh fish market, either here, or back in the district, whether it be a market or in a grocery store, fresh fish is typically laid out on a bed of ice, brought out daily, et cetera. Typically, you will have some scallops mixed in there, some shrimp, other fish, obviously awfully difficult to label individual shrimp or individual scallops as to where they were captured or brought in from, so that is probably the most unique example.

The CHAIRMAN. Is there a difference, in terms of whatever right to know the customer has between the two types of fish?

Mr. CONNELLY. I don't know the answer to that.

The CHAIRMAN. I don't see one, myself. I don't see a difference. Mr. Warren, the 2002 farm bill contained a provision prohibiting any species of fish from being labeled as catfish, unless it was the

species of catfish raised in U.S. catfish, channel catfish. So, what was formerly Vietnamese catfish is now Vietnamese basa or kurti. I am sure I am not pronouncing that right. The products are therefore differentiated in the marketplace by name. Country of origin labeling will not provide any additional market differentiation. So, my question is, aren't U.S. catfish already differentiated in the marketplace by a statutory restriction on the term catfish, and what additional differentiation would mandatory COOL provide?

Mr. WARREN. Well, I appreciate your question. We are in the process of having our decisions challenged by the Vietnamese government, so I don't want to get into an awful lot of comments, but I would say I have confidence in the American consumer, that they realize that our domestic industries have a myriad amount of regulatory issues that are confronted. We are growing food in water. I think under the Joint Subcommittee on Aquaculture, there are 25 Federal agencies that have something to do with the growing of catfish, and so I would like to take advantage of that sources of oversight and regulatory concerns, and pass this on for the consumer's information, and I would trust their judgment to make an informed decision one way or another, but I think that issue alone, the public deserves to know that this is a product of their legislative, regulatory system, has produced a product that is probably the safest and most healthy in the world.

The CHAIRMAN. What will you do to extend that information to them? Will you conduct a media campaign, or a public relations campaign of some kind to try to differentiate? Because I am not sure that with most products, most people pay a whole lot of attention to that. In fact, the competing products many times appeal to the American desire to have unique products from different parts of the world, and try to differentiate themselves the other way, by saying this is a fine Argentinean Black Angus grass-fed beef, or some other product from some other part of the world, and I am not at all sure that the American consumer that is attuned to buying so many products from so many different places finds it to be automatically a disadvantage that something is from outside the country. It seems to me that if you are going to make that case, you are going to have to go to additional lengths to create the impression that there is a difference in the quality.

Mr. WARREN. Well, that is what our industry has been built in, is promoting to the public the qualities and the controls and the environment that our product is grown in. In fact, in the last 12 years, our advertising arm of the industry has spent over $50 million of farmers' money, that have contributed to going out and, as you are suggesting certainly, writing an advertising effort, promotional effort, to try to make, to promote the advantages of first, eating fish, second, realize that one thing that is good about our seafood industry is the diverse quality and quantities and different kinds of seafood. I don't eat catfish all the time myself, believe it or not.

The CHAIRMAN. Well, let me follow up on that question. There is a very, very, very good point. You spent $50 million promoting your product, that is very good. How do you promote it with the consumer now to differentiate your product from a Vietnamese product?

Mr. WARREN. My instincts tell me that the way you promote your product is you promote your good features.

The CHAIRMAN. When the customer goes to the store without mandatory country of origin labeling, with all the money you have spent, what are you telling them that causes them to buy your product as opposed to the Vietnamese product?

Mr. WARREN. Well, I don't get into that point, because actually, each product should stand on its own. If these other products have desirable traits, then they should promote those facts.

The CHAIRMAN. I understand that, but my question is you go to the store, you have heard all about the money that you have spent has told me all about the wonders of your product, and I want to go and look for it, how do I know it is your product as opposed to the——

Mr. WARREN. That is one reason I am excited about having this country of origin labeling, is so that don't have to go through those hoops.

The CHAIRMAN. I understand, but what are you doing? What hoops are you going through?

Mr. WARREN. Well, we are continuing to promote the positive aspects of our product.

The CHAIRMAN. But I hear about the positive aspects of the product. I go to the store, and you are not telling me how to differentiate. Is that right?

Mr. WARREN. Well, yes, and in fact, we got laws that said it is not only a different species, it is a whole different family of fish. It is like talking about yak and beef.

The CHAIRMAN. Look, I understand that, and we just made a change in the law to help you in that regard. And presumably, you will tell them to look for the label for catfish, and——

Mr. WARREN. We will, and we will not attack our competitors.

The CHAIRMAN. I am not asking you to attack them. I am just asking you why it is we have to go one step further, when you are already spending a large amount of money to promote your product and your product is called by a different name than the product that you are competing with.

Mr. WARREN. Well, believe it or not, some of the enforcement is not as stringent as we would like.

The CHAIRMAN. And you think this enforcement will——

Mr. WARREN. This will be another brick, as we lay down our wall, trying to protect our interests.

The CHAIRMAN. It might be a very expensive brick.

Mr. WARREN. Well, hopefully not. I understand, and certainly, some industries, as I have heard here today, have a legitimate concern on that, but it just so happens, we, as I said, we are unique. We are a completely domestic industry. We export very little. It is just a fraction, and, here again, it is a homegrown industry using native species and a single species processing system.

The CHAIRMAN. Well, I like catfish. I thank you very much, Mr. Chairman.

Mr. HAYES. You all noticed the light went out. Do you know what that means? That means I serve at the pleasure of the Chair. Ask any question you want.

Mr. Pombo from California.

Mr. POMBO. Thank you, Mr. Chairman. Starting with Mr. McClung if I can. You testified that previously, your organization was in favor of country of origin, and now they have taken a position opposed to it. Can you delve a little bit more into why that decision was made?

Mr. MCCLUNG. I would be pleased to. There was, early on, a belief that consumers would buy American, hopefully, if they knew the product was grown in the United States, and that is essentially why the Texas Board voted to support country of origin labeling. But there has been a realization as time has gone on that the likelihood of that happening was not very great in our opinion, that the consumer, we look at what has happened in Texas with imports. We see that the consumer is delighted with imports, if those imports meet the criteria that the consumer establishes, and that the country of origin does not seem to be a big variable in that equation. Then we look at what the possible costs of this labeling requirement would be, and what the disruption is between the supply side and the buyers, retailers in particular, and it seems to us that on balance, it is not a desirable piece of legislation as it is currently written. I want to emphasize here that has nothing to do with the consumer's right to know. The consumer does have a right to know, but the issue in our minds is that the consumer doesn't really care very much.

Mr. POMBO. You said that the cost was part of the factor in that decision. What costs are you referring to?

Mr. MCCLUNG. There are a number of costs involved here. The retail community is not happy about this law, as I am sure you know, Mr. Pombo, and they are insisting on a number of steps from the supply side on certification requirements, on third party independent audits, on the contractual language when they buy product that absolves them of all responsibility if there are concerns later about the accuracy of the country of origin, et cetera, and these things all are expensive. There also is the indication from the buyers that if this law goes into effect the way it was originally written, and the way the USDA guidelines initially were released, that there would be a shift in the buying patterns that retailers would not be dealing, for example, would not feel themselves able to deal consistently with small suppliers. How much of that is entirely genuine, and how much of it is overstating the situation, I am not sure, but the bottom line for my people is they look at it, they say we don't see that there is much in the way of benefits here, we do see that there is a considerable potential downside and they reversed their position accordingly.

Mr. POMBO. You said that a number of your members have relationships with foreign companies and bring in produce into Texas, repack and sell. Does that produce, under the regulations, under the law the way it is structured right now, does that produce coming in from Mexico have to be labeled as being a product of Mexico?

Mr. MCCLUNG. Yes, sir. It does, to meet Customs requirements, and now, to meet some of the Bioterrorism Act requirements, but then when it is repacked, it does not necessarily, when it is broken up once it is on the U.S. side, it does not necessarily have to carry——

Mr. POMBO. But under COOL, under country of origin, it would have to maintain its product——

Mr. MCCLUNG. Yes, sir. All items would have to be identified as to country of origin.

Mr. POMBO. And the retailers are asking the producers to indemnify them on the fines and to guarantee that that product is truly where you said it came from.

Mr. MCCLUNG. Yes.

Mr. POMBO. And you are now accepting, or being asked to accept that responsibility. If that product is coming in from Mexico, how do you know that it was produced in Mexico and it was not shipped in there from Nicaragua or somewhere else, repacked and shipped in to the United States, and now you have accepted the responsibility as to what the country of origin is, but you are not exactly sure where it came from.

Mr. MCCLUNG. Well, most of the product that comes from Mexico, and I might add, from Central America as well, is produced under some sort of a cooperative arrangement between the importer and/or the seller on the U.S. side and the producer in Mexico, because it has to meet production requirements, pesticide use requirements, those sorts of things, so we have got a pretty good idea that the product is not being trans-shipped through Mexico from elsewhere, but even, I might point out, if it were, and we were deceived as buyers in that regard, we still bear the legal responsibility under these indemnification requirements, if the retailer is fined, we would have to assume that responsibility, if we agree to those requirements.

Mr. POMBO. Mr. Chairman, if I may just ask one more question of Mr. Connelly, it is my understanding on fish that if it is caught on a U.S.-flagged vessel, it is U.S. product, and if it is caught by a Canadian vessel or a Japanese vessel, that it becomes product of that country, even if those ships are side by side, catching out of the same fishery, the same fish. It just matters which flag that ship happens to be flying on that day. How does that give the consumer any information that is worth anything to them under those kind of rules?

Mr. CONNELLY. I would have to say that I don't think that is what the consumer wants to know, is what flag vessel caught a fish, or a piece of seafood. That doesn't provide a level of information that would be helpful, and to my wife, when she is at Safeway, it is not going to help her make an informed decision of a product.

Mr. POMBO. But is it not misleading to the consumer to have one tray of fish that says U.S. fish, because it was caught under a U.S. flag, and another tray of fish that says Japanese fish because it was caught under a Japanese flag, but both fish came from the exact same fishery, the same school of fish. Is that not misleading to the consumer?

Mr. CONNELLY. It would appear to be, but you start to get into how fish is processed, and it is somewhat like Mr. Place's example of nuts, a lot of the fish that you eat doesn't come from one specific fishery. A processor might pull it in from three or four different places, and it might be from some domestic product, some foreign product, and when it is processed, it is in a fish stick, for instance, it becomes commingled or blended in to a single fish stick or some-

thing you get at McDonalds or something like that. Our concern, frankly, in a situation like that is U.S. producers will look at that and say, under the proposed guidelines, it would be less expensive for us to actually have this processed in Mexico, where it is just labeled now a product of Mexico, and it will come in as a single product of Mexico, rather than trying to segregate it was a Japanese fish, it was a U.S. fish, it was a Chilean fish, it was a Chinese fish, a Russian fish, why not just send it down to Mexico, process it and bring it up here as a product of Mexico, and that is one of the unintended consequences that I think the Chairman was referencing. And I think that is one of the points that Mr. Buckman was trying to make on the processing side.

Mr. POMBO. Thank you very much.

Mr. HAYES. Thank you. What do you do if it is a migratory fish? Mr. Ross.

Mr. ROSS. I think Mr. Pombo raises a good question, and I think that is an example of how sometimes when we leave some of these laws to be implemented through regulation, that we run into problems like this. It is not in the law that says that a flag flying will determine the country of origin. It is actually the regulation that has come out of the law from the Agency. The regulation established by the Agency that has given us that.

Mr. POMBO. If the gentleman would yield.

Mr. ROSS. Sure.

Mr. POMBO. Just for a second. It was actually in the law, and the law was even more complicated than that, and we have wondered from the beginning how it was going to be implemented, because particularly with fish, I don't see how in the world you ever do it.

Mr. ROSS. It is my understanding it was done by regulation. It may very well be in the law. OK, you are right. It was in the law. We were wrong. Well, that is stupid. We ought to take it out of the law. I want to first go back to Mr. McClung, is that correct?

Mr. MCCLUNG. Yes, sir.

Mr. ROSS. When you stated for the record at this hearing that the consumers don't care where the product comes from that they consume, that their children consume, what source were you citing?

Mr. MCCLUNG. Mr. Ross, what I was really referring to was that we have become such significant importers through Texas of Mexican product, and our experience has been that as long as that product meets the consumer's requirements in terms of quality and appearance and cost, that the consumer, the country of origin is of no consequence to the consumer. It is an empirical observation. I don't have to data to cite for you. I believe there is some data that food marketing institutes and others have, but I don't have it.

Mr. ROSS. So that was basically an opinion.

Mr. MCCLUNG. It is an opinion based on our experience, sir, yes.

Mr. ROSS. OK. I won't name the store, but one of the discount dollar stores, if you walk into them today, into one of their stores, almost all of the fruits and vegetables on the shelves say "Product of Spain." Sometimes, titles are misleading, so help me understand. You are the president of the Texas Produce Association. To me, that sounds like you are representing people who grow products in the State of Texas. Is that correct?

Mr. MCCLUNG. The Association represents both importers of product and domestic producers.

Mr. ROSS. Oh, so you are not here just representing Texas farmers.

Mr. MCCLUNG. No.

Mr. ROSS. OK. All right. That explains it a little bit more clear for me, then, because I was confused. You have got product on the shelf at these discount stores that say "Product of Spain," and if I was representing U.S. producers, it looks like to me I would be proud of my farm families and want them to have on the can product of the United States of America, but if part of your revenue for your association is coming from importers, then that helps me understand, your position a little bit. If I could go back to Mr. Warren for a moment. Think with me, here, Mr. Warren, if you can. Do you know of any program in place or records being maintained for seafood commodities to trace potential diseases or safety hazards, if they were to occur in the United States, and if none, would you consider a lack of these records a breach or a potential breach of homeland security?

Mr. WARREN. I would hesitate to give a definite answer, because I am not that knowledgeable across a wide range of different requirements, but I will answer the question, I would think certainly knowing where a product comes from if a situation does develop, then obviously, you have got a much quicker way to go to the source.

Mr. ROSS. Let me ask you this. What effect does country of origin labeling have, or will it have on the catfish industry? And, if you could, share with me any positive or negative reactions to the implementation of country of origin labeling as it relates to the catfish industry in the United States of America.

Mr. WARREN. Well, as we said, repeating myself, it is going to be a minor cost to the industry, because in fact, the industry is already providing the information as required in the country of origin. It gives us an opportunity to identify our product, where it is coming from, and the implication being—taking advantages of all the positive things that we do to our product to help ensure its safety and wholesomeness.

Mr. ROSS. Mr. Chairman, I think I am out of time. If I can have a few more minutes now, or I can come back. Whatever pleasure the Chair. Mr. Stuart, of Florida Fruit and Vegetable Association, are your views coming from importers, too, or does that support your revenue?

Mr. STUART. All domestic growers, Mr. Ross, and we are very proud of it.

Mr. ROSS. OK, and as I understand it, you are supportive of this legislation.

Mr. STUART. We are, and if I can add to the comment that my good friend from Texas made, we have studies, and we do have studies, Mr. Chairman, regarding consumer preferences on country of origin labeling, and the industry's own trade publication, The Packer, at various times over the last several years, have conducted surveys into consumer preferences and desire for country of origin labeling, and found the numbers to be rather substantial, in the 70 to 80 percent range.

Mr. ROSS. Let me make sure I understand you. That's 70 or 80 percent that don't care where their food comes from?

Mr. STUART. No, of consumers that want to know the country of origin of the product.

Mr. ROSS. Oh, they want to know?

Mr. STUART. Absolutely.

Mr. ROSS. Based on scientific studies, 70 to 80 percent want to know, Mr. McClung, whose revenue stream comes from importers says the consumer doesn't care. I am a little confused here. Can you help me?

Mr. STUART. Well, again, the surveys that are—and it is not just The Packer, there have been other surveys that have been conducted over the last several years that have indicated that consumers do want to know the country of origin of their product. Is it that the number one or number two item, price and quality, perhaps not. But they are interested in nutritional labels as well, and that may not be at the top of the list either. Country of origin is an important issue for some consumers. So, yes, in our minds, the research that we have seen over the years, the labeling information for country of origin is important to consumers.

Mr. ROSS. If I could go to Mr. Place. I am real interested in your testimony, because I am a small business owner. I have got 12 employees back home. I know what it is like to meet a payroll every Friday, and the last thing that I want this Congress to do is to hurt small business, and I am confused and maybe you can help me here, your testimony indicated that basically this law would probably put you out of business.

Mr. PLACE. That is my testimony, sir.

Mr. ROSS. And I am trying to figure out, I am hearing testimony that it seems like those who are representing U.S. producers thinks it is a good idea, and those who are representing importers thinks it is a bad idea, and some of you testifying saying 70, 80 percent of consumers want to know where their product's coming from that their small children consume and others of you say that the consumer doesn't care. If the consumer does not care, and if at times, you are not able to get all the peanuts and so forth and so on you need to put into your product that you package and sell, I mean, I guess what I am saying, if Mr. McClung is right, and the consumer doesn't care, then why is it going to put you out of business if you have to put on the can that it did come from Vietnam or China?

Mr. PLACE. OK, let me address that issue this way, and I think you will relate to it well. Generally speaking, small businesses have to find a niche market in order to compete with those that most of these gentlemen represent. Our niche market is in quality products, where the package itself says we are providing them with the very finest of whatever the product may be, so as we relate that to peanuts, we purchase peanuts in any event, and as I mentioned to you, United States peanuts, but under the current regulation, we would be required to go back and retool all these boxes. We have already retooled twice in order to comply with the regulations pertaining to what the ingredients are. It is a very expensive proposition for us.

Now, the next item that I would say to you, they mentioned some words such as it would be problematic, it would be burdensome. For me, it is catastrophic because of my size. I cannot continue to do this and we had a lot of the boxes already printed because I have to do them in such large quantities, and for that very reason, if you look at our box, this lid will fit on six SKUs because I can't afford to print it in all six, with all six recipes on a separate box.

Then when we talked about peanuts, and they say people want to purchase a product that says a product of the United States, when you put them in a mixed nuts, typically, we have got nuts in there that are not even grown anywhere in the United States, and to suggest to me that a consumer is going to read through that entire label to find out that the peanuts came from the United States is just utterly absurd. Nobody here raises cashews, as far as I know. What about Brazil nuts, and they all go into mixed nuts.

The other item that I would mention to you that is very disconcerting to me is, on its surface, it would seem to me, as was mentioned by Mr. Kushner, FDA and USDA already have a definition that talks about cooked products, their definition of processed food items, and yet, under the definition that is being used by agriculture, nuts that we shell, we roast, we put different ingredients on such as salt, corn syrup, we flavor them, they say that does not materially change the product and it is still subject to this law, and the best example I can give you is they exempt peanut butter. You come to my factory store, walk in, do you know how you get peanut butter from me? You walk out on the shelf, you take the peanuts off the shelf that I have that are shelled, they are roasted, they are salted. You can buy them also with honey roast on them, you give them to me or one of my employees, we put them in a mill, which would be similar to putting them in your blender at home. I run it through this mill, put a jar under it, slap the label on it, now it is peanut butter and it is exempt, and I think this goes to the Chairman's statement of how absurd some of the regulations are that come out of Washington.

Unfortunately, small business does not have adequate voice in Washington because as you know, with the description you just gave, we have to focus like a laser on the everyday operation of our business, and we frankly don't have time to be here in Washington seeing after these interests, unless it raises such a high level of interest on our part and may put us out of business can we afford to be here, either time-wise or financially. I hope that answers your question.

Mr. ROSS. So, your nuts may come from different places each time, and each time they come from somewhere else, you are saying you have to——

Mr. PLACE. Every peanut that we have purchased since 1966, as far as I know, has come from the United States, and the United States peanut, at least at the point where I am sitting here with you, is recognized as producing the finest peanuts that have been available here. I am not an expert to be able to say where they would come from or what their quality would be in the future. I can say unequivocally that the product out of China is not going to compete with the best product that we produce in the United States.

Mr. ROSS. Well, if you are using U.S. peanuts, why is it you are having to keep retooling or reprinting your boxes? It is a pretty box by the way. It is very attractive.

Mr. PLACE. Under the current regulation that shouldn't apply to us, I have to reprint all the boxes right now, because I have to now add the word United States, which is utterly absurd in mixed nuts. Our preference would be OK, if you are going to have it say country other than the United States, perhaps someone could make an argument that that has some validity, but to propose that we go back and redo all our boxes so that they say a product of the United States is the very thing that drives small business out of business, and I am sure that the members of this committee are fully aware that even though each one of us only contribute a drop to the Nation's economy, together as a whole, small business represents over 90 percent of all the corporations in America. We employ more than 30 or 40 percent of all the employees, and we generate at least 30 to 40 percent of all of the revenue that individuals take home in their paychecks, and yet, we cannot come as a united voice, because we are all so small.

Mr. ROSS. Let me, in closing—and let me thank you for creating jobs and doing the things that you do, and that is why we are having these hearings. We want to find ways, I mean, the purpose for this law was to help American businesses. It was not to hurt.

Mr. PLACE. Well, the irony of the statement that you just made is that when I started in business in 1972 is when I personally started, I was put into business by a Small Business Administration loan, and I think it would be an absolute irony that an unintended law that is passed by the same body that provided me a start in business put the stake through my heart.

Mr. ROSS. One last thing, and that is why, again, why we are having these hearings. We need to know how the fact that you tell consumers that your product is from America is going to hurt you, and it is interesting to hear from you. Instead of just throwing all the boxes away that you have got, I see stuff all the time, on the bottom of something, just a little bitty sticker that says made in China or made in Taiwan or made in Hong Kong. Couldn't you just get some little stickers to stick on those pretty boxes instead of throwing them all away?

Mr. PLACE. Well, I think what I would have to do is send this box around so you could see the problem that is created. The problems that were created through the request or, ultimately, laws that required us to put every single thing that is in the ingredient label, and I might say, one thing that did help small business when you came out with the ingredient requirements was that you did provide an exemption for extremely small businesses and the exemption was centered around the quantity of a particular SKU that was produced.

Our company has never reached the point where any single SKU met the minimum, and so each year, we would go through this convoluted process of filing with the regulatory party, and continuing our exemption, but because of the marketplace, as we gradually reached the point where it was necessary to retool, then of course, we have added to the box, because we are trying to say it is a qual-

ity product, the consumer expects us to meet the highest quality standards of whatever product it is they are purchasing.

Mr. ROSS. Thank you. And I have purchased your products in the past, and I will in the future, and if you want to just stick a little label on a box instead of throwing it away and tell me where it came from, that would be fine with me.

Mr. PLACE. Well, the problem that we have, it may not be fine with those that are determining the regulation, because if you will read it, it requires type size, location, which panel it is on and to this point, they haven't allowed us to put anything on the bottom.

Mr. HAYES. Chairman Goodlatte.

The CHAIRMAN. Thank you, Mr. Chairman. I have no further questions. I thank the panel for their very valuable contribution today.

Mr. HAYES. Mr. Ross, back to you. I have got a couple questions. If you want to organize your notes just a minute. Mr. Stuart, you have got a voluntary program in Florida. It apparently is working very well. Why do we not pursue that course around the country instead of, again, coming to Washington for relief, where relief is rare indeed?

Mr. STUART. Mr. Chairman, the law in Florida is not voluntary. It is a mandatory requirement.

Mr. HAYES. All right. Now, we will get into the whole process of parsing words. It is mandatory to you, we look at it kind of as voluntary up here, because of the number and the flexibility and all of the different things you don't have to do in the Florida law, compared to what, and again, we haven't seen what USDA says, it would seem to me that if you go for the flexibility that I like, the simplicity, and all those things, this is not the place, history says you are going to find that kind of relief.

All of our discussion today, as valuable as it is, is going to probably change at least a little bit when USDA issues that rule, and we will continue that conversation at this point, but it does seem like, and again, going back, if I can find it, you have made some excellent points in your testimony about the fact that we need to use the term "may' instead of "shall" on page 2, on page 3, may require verifiable record keeping. Then we go over to page 4, blended products, kind of exempt that. Purchase notification, simple and straightforward, so the wisdom in what you are saying, to me translates into voluntary, rather than Federal mandatory. No downstream liability on page 5 for validity of information.

Mr. STUART. Well, Mr. Chairman, if I can try and answer some of those questions.

Mr. HAYES. Sure.

Mr. STUART. I didn't write them all down, but going back to the Florida law, the Florida law is very specific that retailers must provide country of origin information to consumers in their stores. That is where the law is similar.

Where the law is dissimilar between the State and Federal law is the fact that it does not apply to domestic products, so only imported products are covered under the Federal law. In other areas, such as the enforcement mechanism, the fines, the requirement on retailers, it is indeed a mandatory law. What I was citing in terms of using the term may in my testimony is I was citing the actual

language of the law. The law is flexible, the way we read it, looking at it, the terminology used in the law specifically says may when it comes to record keeping. It certainly says may when it comes to the fining authority that the Congress has given the Secretary of Agriculture.

So, what we have argued and what I have tried to convey in my testimony is that within the law, USDA has sufficient flexibility to write a regulation that can make this law as non-burdensome as possible. In our opinion, it is all about the rule, and I think Mr. McClung has essentially said the same thing. Until we see what the final rule looks like, and we haven't even seen a proposed rule yet. We have seen a voluntary guideline that has created a lot of the consternation in the industry. If you listen to a lot of the testimony that you have heard here today, a lot of the concerns that have echoed by just about every member of this panel has focused on provisions in the voluntary guidelines. If the rules come out in a manner that is flexible for the industry, it provides basically, reaction to the spirit of the law, I think ultimately this law is implementable in a fashion that will as least burdensome and least costly as possible to all segments of the industry that are impacted by this.

Mr. HAYES. I am not trying to put you on the spot. I am not trying to give you a hard time.

Mr. STUART. No. No, that is fine. This to me is the essence of the conversation.

Mr. HAYES. That is fine, we just don't typically do that kind of thing when we make laws up here. Just a little bit of history, we had an extensive discussion in this committee on the issue, and we decided in the committee and I think there is probably more expertise here than there is in the full House of Representatives, we decided even though there were reasons for and against, that it would be better not to get into that business. It went to the floor, you see how many members there are in this committee, and on the floor, someone else introduced it, and quoting from The Packer, some of you all may have seen it, this is about a recent fruit and vegetable meeting, the bottom line is this. Do the benefits outweigh the costs or vice versa? This is no time for exaggeration or hysteria, but for reasoned and careful analysis.

All I am saying, and I would just as soon you didn't quote me, sometimes reason prevails in committee and hysteria breaks out on the floor, but again, here is something else important, talking about fruits and vegetables. Our industry's first priority must be shaping the regulations that will implement this law to be as practical and least costly as possible, even though those who advocate repeal must be aware that changing any law is inherently more difficult than shaping regulations and can never be a sure thing. I think that is very good wisdom for all of us to follow, and——

Mr. STUART. Chairman Hayes, if I may?

Mr. HAYES. Yes, sir.

Mr. STUART. I think that is exactly what I was trying to convey, once again, is that the industry's focus needs to be on shaping a rule that makes sense for this industry. Again, and I hate to be repetitive, but the law provides the Department the flexibility to do that.

Mr. HAYES. We will have to—and again, not to be argumentative, we will see what they have. There is such a diversity of interests and products and ideas, migratory fish, the stationary peanuts and on and on, so let us see, I have got so many papers, are you ready, Mr. Ross, with another question, while I try and relocate my own?

Mr. ROSS. Mr. Chairman, I just want to thank the panel for coming today and sharing their views with us, and I can't thank you enough for your expert testimony, all of you, regardless of where you are on this issue. I am not sure where I am. I am somewhere in the middle on this in terms of I think consumers have a right to know where their food comes from. If we know everything else, where our clothes come from, and our watches and just about everything we purchase, I want to make it clear that as we move forward with these hearings, that we are having them for a reason, and that is we want, very much, to find a way to make this work.

Now, when I say make it work, make it work for American consumers, and to make it work for American businesses, and I think all of you have shed some light on that today, which will be helpful to us as we try to take what, I guess, has become a controversial law and try to make some common sense out of it. I don't think there is anyone in this room put aside who you represent and where your money comes from, I don't think there is anyone in this room that really believes that the American people have the right to know where the food that their children and grandchildren is consuming is coming from.

Now, that is an easy statement to make and it sounds good, and getting from that statement to implementing it in a way that does not put Mr. Place out of business is definitely a challenge as we move forward with these hearings, but that, the end result, that I think, I know that I want is simply for consumers to be able to know where their food comes from, just as they know where their clothing comes from, and if consumers really don't care, then I think we have all wasted a whole lot of time. Although I was pleased to learn from Mr. Stuart that he has scientific evidence to back up that 70 or 80 percent of consumers do care. And if there is other studies out there to indicate anything different, I wish you would share them with me personally and with this committee.

I think it is important that we see all studies that are available on this issue, as we move forward, and for those of you here representing foreign interests, I think foreign interests should be very concerned, because personally, I do believe consumers care, and consumers are a lot quicker to go down to a dollar store and buy a product made in China than they are to go to the grocery store and purchase a product for their children or grandchildren to eat that comes from some Third World developing country.

Mr. Chairman, I guess that was more of a comment than a question. I have no other questions.

Mr. HAYES. Thank you, sir. Gentlemen, we have been joined by the gentleman from Georgia, Mr. David Scott. I hate to throw everything in your lap. Would you like to ask these fine panelists a question, David?

Mr. SCOTT. Mr. Chairman, I think that the testimony was well-spoken. I apologize. I had about three or four emergencies all at the same time. So, no questions.

Mr. HAYES. Well, we appreciate you coming. A couple questions, Mr. Stuart or Mr. McClung, Mr. Kushner, or Mr. Buckman. We heard today that existing PACA records would suffice in complying with the law. Can you tell me what specific information is on the records that would enable retailers and suppliers to meet the requirements of country of origin labeling? I think I understand the question.

Mr. STUART. Mr. Hayes, let me try and answer it, if I can, for you.

Mr. HAYES. Let me get them to answer first.

Mr. STUART. OK.

Mr. HAYES. I will come back to you with another one, you can work on that one, too. Mr. Buckman.

Mr. BUCKMAN. I would like you to repeat your question, please, to be clear about it.

Mr. HAYES. OK. I have heard today that PACA records would suffice in complying with the law. Can you tell me what specific information is on those records that would enable retailers and suppliers to meet the requirements of country of origin label. What is in the PACA law now that would be the same?

Mr. BUCKMAN. Certainly. Within the current PACA regulations, if in the transaction between a buyer and a seller, PACA licensees, country of origin is declared, the processor or supplier must be able to provide documentation under PACA to the Agency on review to substantiate the country of origin.

The issue that needs to be considered here is that the proposed guidelines, and whatever the final guidelines, and the final rule are issued by USDA, presently, with the forward retail records provisions, creates complexity that retailers do not have the capability of complying with. At present, under the Customs Act, there is a much simpler approach to country of origin declaration, which I believe presently addresses the issues of catfish from Vietnam and other foreign products coming in to the country.

Mr. HAYES. OK, do you want to take a whack at that, Mr. Stuart?

Mr. STUART. Certainly, Mr. Chairman. For the fruit and vegetable, for the perishable agricultural commodities covered under PACA, any information that is conveyed between a seller and a buyer as part of that transaction, and that can include everything from the quality of the product, the price of the product, the grade of the product, the count, all of that information is required to be factual under PACA, so if, in the process of going through a transaction, a seller conveys information to the buyer as to the country of origin of that product, that information has to be valid or there are penalties under PACA that apply here. PACA currently requires records to be maintained by all licensees for 2 years.

So, essentially what we are suggesting is under PACA, there is no need for an additional record keeping system, at least for fruit and vegetable industry folks that are involved with this law, if that information were to be conveyed through the distribution channels from the grower/shipper level all the way through to the retailer.

Mr. HAYES. Well, it seems logical that if there are going to be accurate labeling claims, a verifiable record keeping system is necessary from the producers to the retailers. What is the point in

having a law that mandates country of origin labeling if there is no required record keeping to justify the claim, which would go back to your comment about if it is voluntary, then it is much better.

Mr. STUART. Well, again, I have never suggested that it be voluntary, but if the information is conveyed from the seller to the buyer under PACA in some format, then that information has to be correct. What I suggested in my testimony is that in Florida, there is no requirement for record keeping. We don't see that it is necessary here, but should USDA require it, which they clearly have discretion to do under the law, it could be handled under PACA, and no additional burden of record keeping would be needed, essentially because PACA already requires those records. And I might also say that PACA does not require those records to be kept for 2 years by the retailer at each individual location. It would just be at the location of their choosing, and we fully support that.

Mr. HAYES. Mr. McClung, there is a little bit of a confusion in my mind. Now, Mr. Ross, apparently, is under the impression, and I am not sure it is right or not, you represent Texas, but do you have dues-paying members of your association who are from Mexico and other countries, or just producers in other countries that send produce through your association?

Mr. MCCLUNG. The latter, Mr. Chairman. I don't have members in Mexico, but many of my members—the produce industry in Texas is concentrated in the Rio Grande Valley just across the border from Mexico. Many of my members are shippers who source both in Texas and from Mexico, and many of them are producers as well.

Mr. HAYES. OK. That didn't seem to be the impression that you had. He is not getting any money from Mexico for his Association. He is getting from Mexico produce.

Mr. ROSS. Let me ask this question.

Mr. HAYES. To produce revenue.

Mr. ROSS. Let me ask this question to make sure I—maybe to clarify for both of us. Do you have members who import fruits and vegetables from other countries?

Mr. MCCLUNG. Yes, sir.

Mr. ROSS. Thank you. Mr. Connelly said that consumers don't care where their food comes from, that their little babies consume. Do you agree with that?

Mr. MCCLUNG. Let me clarify that point, and if you ask me for data, I don't have it. I agree with Mike Stuart that consumers say on surveys that they care where food comes from, but in practice, what goes into a consumer purchasing decision is a fairly complex matter. They are looking at the product, they are trying to judge quality with their eyes, they are looking at the cost. Those concerns are more important to them than the origin of the product, so while they will tell you that they care about where it comes from, they don't use where it comes from, provided the more important criteria are met in their minds, to make their purchasing decision. I hope I am not making it overly complex, but I believe that is what the difference is.

Mr. ROSS. I mean it seems to me that those who are representing produce that is being grown in America seem to want this law, and

those who are importing product from other countries that may or may not have been grown with pesticides that were banned here 10 years ago, seem like they are opposed to country of origin labeling. I am just trying to get to the root of it here. It would seem to me that the only logical reason, and tell me if I am wrong, it would seem to me that the importers of produce are opposed to it, because they really do think consumers do care, and they don't want to have to say that it is from a Third World developing country and so forth and so on.

Mr. MCCLUNG. I have growers in my organization, Mr. Ross, who are strictly domestic producers in Texas, and they are split on this issue. There are those who think that there is a benefit to them in mandatory country of origin labeling, and there are those who think that the costs and the difficulties in dealing with their buyers outweigh the benefits, and I think that, as Mike and I have both testified earlier today, until we know exactly what the regulations are, it is very hard to get at the truth of that matter. The importers are not very concerned about having to label as to country of origin. They have been, in the first place, a lot of times, you go to the grocery store, and the onions, or the watermelons, or the cabbage, or whatever it happens to be, tomatoes, very often are labeled as to country of origin voluntarily now. Lots of times you know where it is from, and that does not seem to have a great impact on the buying decision, if the product is attractive to the consumers.

So, it is not that my importers are put off by the requirement for COOL labeling because they think they will lose market share. It is because they don't want the cost associated and the legal requirement associated with it.

Mr. HAYES. We have been joined by Mr. Randy Neugebauer of the great State of Texas. Mr. Neugebauer, would you like to question our panel of experts?

Mr. NEUGEBAUER. Thank you, Mr. Chairman. And I would apologize if this is a redundant question, but I think the thing that has been brought up about the COOL issue is that some of the proponents of that have tried to paint it as a safety issue, and others have tried to say that it is a—as you were saying a while ago, it was a consumer issue, but I would be interested to the panel, it doesn't appear to me that the way the legislation is written today, that it really provides any additional safety to food products over what is currently in place by some other regulations.

Mr. KUSHNER. Mr. Chairman, I would like to respond to that question. It is clear, and there has been no meaningful debate, that this is not a safety issue. There is nothing about mandatory country of origin labeling that would enhance safety at all. All food products that are sold in the United States, whether imported or produced domestically, and sold in interstate commerce are subjected to the same food safety requirements. A product that is adulterated, as that term is defined—and it is very broadly defined in all of the laws that govern food processing—applies the same to any product sold in U.S. commerce regardless of its origin and subjects that food to regulatory action by FDA or the Department of Agriculture as appropriate.

I also have been thinking about a question that Mr. Ross asked at the beginning of the hearing regarding an apparent representa-

tion of geographic origin. As I understand Mr. Ross's question a Vietnamese product's label implied that the product was a Cajun seafood. I am not an expert in seafood, but as I understand the country of origin labeling provisions and the history of them they were enacted for a very discrete purpose, that is to close what some perceive to be a regulatory gap for products on the so-called J list, the Customs list under which certain products, including fresh produce, are exempt from labeling when particular sold at retail. The legislative history makes it very clear that the sponsors recognized that most products that are sold in the United States are subjected to country of origin labeling.

There is an abundance of law already on the books in the United States, administered by the Food and Drug Administration and the Department of Agriculture, again depending upon the product at issue, that prevents labeling that is false or misleading in any particular. That is a very broad prohibition. The statutes prohibit representations that would render a product misbranded subject a food to regulatory action. There is a specific regulation, as I recall, that prohibits false or misleading representations of geographic origin. Therefore, even in the absence of country of origin labeling, or in spite of it, if a claim is made about the geographic origin of a product, and the claim is flase or misleading, that product is subject to regulatory action and the producer and distributor of that product are subject to potential criminal action under existing law. That has been the case for 100 years.

Mr. NEUGEBAUER. One of the other questions would be, those that are proponents say, well, some of the produce, for example, that is imported into the United States is not subject to the same regulations as produce grown in the United States, for example, that certain chemicals in fertilizers that are used in other countries, we do not allow those to be used, and so that way, the consumer would know that if it was a USA grown produce that they would be getting produce that was under the same rules for certain chemicals used in agriculture. What is your response to that?

Mr. MCCLUNG. Now, this is an issue that goes back many years, as I think you probably know, Mr. Neugebauer. Basically, it works like this. There are, it is true, that it is possible in some countries to use chemicals that are not used in the United States. Often, that is because they have pest problems that we don't have in the United States, but regardless, it is true. However, they are required to meet the same residue requirements, for product that is imported into the United States, as domestic product has to meet. In some instances where there are products that are used elsewhere that are not used in the United States, the FDA, or EPA sets, FDA sets import requirements, residue levels, but if the issue is that the product is not safe, or is less safe, than product from the United States, then I don't believe that the regulatory agencies would stand for that, and I defy anyone to indicate that that is really true.

Mr. NEUGEBAUER. Yes, sir.

Mr. STUART. If I might add to that, and John is right, the one caveat to that I would like to just throw out for discussion, and this somewhat goes to the food safety issue, but it is really not a food safety issue. It is a marketing issue, and it goes to product differen-

tiation. We have had instances in the fruit and vegetable industry going back for the past 10 or 12, 15 years, where there have been incidents that certain commodities have had food safety problems related to the mostly microbial food safety problems that have impacted a specific commodity. When that food safety issue hits the media and people become aware of it, there is no way, at the current time, for consumers to be able to go into a supermarket and differentiate products between U.S. or foreign products, or foreign products from U.S. products.

One of the benefits of labeling, and I think we need to recognize, is that for this industry, to the degree that if a food safety issue does arise and becomes a public issue and affects the marketplace, again affects the marketplace, consumers will have the ability to differentiate between a foreign product and a U.S. product, or between foreign products, which could help mitigate the potential damage to domestic or imported product, depending on what the specific situation might be.

Mr. NEUGEBAUER. But does that necessarily have to have a label? I mean, for example, we are going through that issue right now with, the Canadian beef and U.S. beef, but w have temporarily suspended the importation of that, but where would labeling have impacted that process?

Mr. STUART. Well, if, for example, there was a microbial contamination issue that applied to a particular domestic or imported commodity, and consumers had no ability to distinguish, which they don't now, at retail, when they purchase those commodities, the downstream impact to the industries tends to be across all commodities, and if you have domestic producers that are shipping that commodity into marketing channels at the same time imported product is moving into those domestic channels, what tends to happen is consumers don't purchase any of them, and if there were some way to distinguish in the marketplace between a domestic and a foreign product, or a foreign or domestic product, and again, I am not pointing at either one, I am just saying consumers would have the ability to make that distinction.

Mr. NEUGEBAUER. Mr. Chairman, thank you.

Mr. HAYES. One more question, Mr. Stuart, while we have got you wound up. If we got a Florida law, why do we need a Washington law? In your case.

Mr. STUART. Well, I think that—as I attempted to answer the question of the chairman earlier, our producers have found it beneficial in Florida. They believe that the broader application of that law at the national law would be beneficial as well to all producers in the United States Less than 10 percent to 15 percent of the produce that is grown in Florida stays in Florida. It is shipped throughout the United States and in some cases in international markets.

Mr. HAYES. Follow up, Mr. Kushner, so you don't think there is a safety issue here at all.

Mr. KUSHNER. I don't think this is a safety issue at all, certainly not one that is addressed by country of origin labeling. The laws are already comprehensive and quite adequate. In fact, the discussion that we have just had about the hypothetical or the theoretical microbial problem with fruit or vegetables underscores the wisdom

behind Congress adopting a processed food exemption. All processing facilities in the United States, regardless of where their raw materials have come from, are subjected to FDA and USDA oversight, in some cases continuous USDA inspection. In all cases, these plants and the products they produce, are subject to FDA and USDA regulatory requirements governing sanitation, food safety, labeling and the like. I just can't anticipate with respect to processed foods or even with raw commodities, that would be addressed by country of origin labeling.

Mr. ROSS. Grocery Manufacturers of America, what is that?

Mr. KUSHNER. GMA is a trade association of the Nation's manufacturers of food products and other products sold at the grocery store, the association has a very diverse membership including large food processors and some very, very small food processors, many of which import raw commodities and process them in plants throughout the United States; some of them process products in facilities around the world export them.

Mr. ROSS. Would Spam be an example?

Mr. KUSHNER. That would be an example of a product is produced by Hormel Foods. I think Hormel is a GMA member. Spam is a processed meat product.

Mr. ROSS. First of all, do you think that the FDA should have enforced the labeling law on the Cajun Delight label from Vietnam?

Mr. KUSHNER. Respectfully, I don't know the issue, but certainly, the first thing I would have looked at is the label and the context in which the claim was made. If it appeared that the labeling was false or misleading in any particular, or more specifically, if a false representation of geographic origin was made, either expressly or by implication, I would have asked FDA to take action against the product under the Federal Food, Drug, and Cosmetic Act, not under any new labeling requirements.

Mr. ROSS. So what if we got some product that is being shipped here, say, from Moldova, and the country of Moldova has shipped some tomatoes to the United States of America, and it is later determined that some pesticide that has been banned here for the last 10 or 15 years was used there, and we now know it causes cancer, and people are going to start dying. If we had a country of origin labeling, couldn't we at least be able to define the country of origin as a means for safety to throw away those tomatoes instead of throwing away all the tomatoes in the world that are in America?

Mr. KUSHNER. Well, that is assuming, of course, that we make this determination pretty quickly, because raw agricultural commodities lose their identity fairly soon after they enter the country, but FDA does issue import detention alerts all the time. When there is a specific problem identified in a particular country, because of a pesticide that is either illegal in the United States or that maybe has never been considered but has been found to be unsafe, or some other unsafe condition, FDA will prevent the product from entering the country in the first place. I think FDA will use its detention authority even more aggressively in light of the new bioterrorism regulations that will soon go into effect.

Mr. ROSS. Mr. Warren, will this law help keep your catfish farmers in business, or is it going to put them out of business?

Mr. WARREN. No, I don't think the law is that dramatic to our industry, as the chairman of the Agriculture Committee has commented. We do have existing legislation that can be helpful. Certainly, this would be another helpful tool.

Mr. ROSS. So, it is not going to hurt you?

Mr. WARREN. It should not.

Mr. ROSS. Mr. Place, your testimony is it is going to hurt you.

Mr. PLACE. One more time, my testimony is that it puts our company in peril.

Mr. ROSS. OK, Mr. Stuart, you say it is going to help your producers in Florida.

Mr. STUART. Yes, sir.

Mr. ROSS. Mr. McClung, you say it is going to hurt the majority, although not all of your producers in Texas.

Mr. MCCLUNG. Yes, sir.

Mr. ROSS. And Mr. Connelly, you still don't believe the consumer cares.

Mr. CONNELLY. Well, I think I said that my wife doesn't care.

Mr. ROSS. OK.

Mr. CONNELLY. I would also say to Mr. Stuart's comment in going to the word, the Chairman talked about parsing words, I think it is important to look at what a study says people will want and what people will pay for. There is all kinds of green labeling out there, where everyone says yes, I want green labeling, I want green labeling, but when they are asked to pay 3, 5, 10 percent more, they won't do it, so I think it is important to look at the actions of the pocketbook rather than what a survey says.

Mr. ROSS. And Mr. Kushner basically doesn't think safety is an issue, and Mr. Buckman, I am sorry, but I can't nail you down on anything right now, but I have learned a lot today, and we have got an awful lot of varying opinions on this, obviously, and this is just one of many hearings we will be having and believe me, I as much as anyone want to find a way to make this work. We are not trying to put anybody out of business, at least not if it is an American company.

Mr. HAYES. Thank you, Mr. Ross. Let me explain to the panel what you have just described. You have just described what a great job the staff, Pam and others, have done in putting a panel together that reflects a whole host of different opinions. Now, my last question for you is do any members of the panel have a question for Mr. Ross, since he came in after I did, or me either, for that matter? Seriously. And Mr. Place, you had your hand up.

Mr. PLACE. Let me see if I can squeeze this in as in the form of a question, and that is that I think we stand at a crossroads, Mr. Ross, in relationship to peanuts. We ask ourselves, and I would ask you, who do you believe is the main competitor with peanuts in the snack food industry. May I answer to that for you?

What I am alluding to is that peanuts compete with all the extruded type products, such as Cheez-Its and Niblets and all the other things that are out there. We stand at a crossroads, because peanuts have received so much positive feedback, but the only thing that is inhibiting a vast increase in peanut sales is their price as compared to these other so-called snack foods, and they stand in the envious position of being able to say, well, there is at

least four diets out there right now that are touted to be healthy, help us reduce weight and peanuts are the thing to eat as a snack food.

Furthermore, there are numerous health studies that show that it is beneficial, reducing heart attack, it reduces cholesterol. They stand at a point where if they can keep their price down, it will be extremely beneficial to the farmer, the producer and the retailer, and yet, this regulation will be foisted upon them and they will be force to increase their prices.

Mr. HAYES. Thank you. I was supposed to ask him what his opinion is and that makes it a question. Anybody else got a question? Mr. Buckman.

Mr. BUCKMAN. Yes, I will try one here. As I have listened patiently, I think I have observed, Mr. Ross, that you recognize that the naming of the flag vessel for fish origin may not provide meaningful information to consumers purchasing fish. That points to some willingness on your part to look at the complications of this bill. From your standpoint, in my reading of the regulation, it appears that the intent was to exempt processed foods from this regulation. Was that your understanding?

Mr. ROSS. I am not sure I am prepared to fully answer that right now, I mean, in terms of processed foods. It would probably depend on how you define processed foods. I think the point I was making earlier is when we think of country of origin labeling, we think of consumers having the right to know where the food is coming from that their children or grandchildren are going to consume. And it is a very complicated issue, I mean, Mr. McClung is here speaking against the bill. He indicated in his testimony he has got members that actually support the bill. National cattlemen are against this thing. The Arkansas cattlemen are for this thing. We have got people all over the place on both sides of the aisle on this thing.

Like a lot of things in government, I think the intent was good and I think by the time the final product came out of conference committee, it was all screwed up, and that is the purpose for this hearings and why I think we need to continue to try and find a way to make this thing work, and if we can't, just give me country of origin labeling on catfish and I will leave everybody alone.

Mr. CONNELLY. Mr. Chairman.

Mr. HAYES. Mr. Connelly.

Mr. CONNELLY. When we have talked about right to know, it is interesting that beef is involved, peanuts, fruit and vegetables, fish, et cetera, but poultry was not included, and poultry is certainly consumed at a much higher rate than seafood, unfortunately, not as high as beef, but if it is consumer right to know, it seems odd to leave a fairly significant protein mix out of the equation.

Mr. HAYES. We are heading down the home stretch. Anybody else want to take a shot here?

Mr. MCCLUNG. Well, I will. If I might, once again, depending on what comes out of USDA when they release the regulations, do you all believe it is reasonable that we could come back and try and fix this, some obvious problems with this legislation? For example, the certification requirement and the third party audit business which Mr. Peterson has tried to get out through the bill that he

has introduced, but I would like to know your opinion of the political likelihood of remedial legislation if we need it.

Mr. HAYES. Well, the 60-day comment period is crucial, and I would encourage and very strongly ask you all to take part in that process. Again, the uncertainty of not knowing what USDA is going to come out with—puts us all in a little bit of an awkward position, and as soon as we—and we are anxious to get our hands on it as you are to see where we really stand, and then, I think we will be much better prepared to deal with that. But again, if there are no further comments, we are genuinely and sincerely appreciate of you taking your time and coming to spend some time with us here in Washington. Thank you very much for your testimony, and without objection, the record of today's hearing will remain open for 10 days to receive additional material and supplementary written responses from witnesses to any question posed by a member of the panel.

The hearing of the Subcommittee on Livestock and Horticulture is adjourned. Thank you all.

[Whereupon, at 3:15 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF JERRY M. PLACE

Mr. Chairman and members of the subcommittee:

My name is Jerry M. Place and I am president of the Western Nut Company, Inc., a Utah corporation. As a member of the Board of Directors of the Peanut & Tree Nut Processors Association, I represent the 151 members of the organization whose primary objective is to improve and advance our industry. I also appear today on behalf of the members of the Snack Food Association, the National Confectioners Association, and the American Peanut Product Manufacturers, Inc., who manufacture and sell snack nut products.

Three weeks ago if someone had told me that I would be sitting before a subcommittee of the United States House of Representatives, I would have told them they were "nuts". But here I am. I appreciate that fact that you have set aside time to take testimony regarding country of origin labeling for certain commodities, especially peanuts.

I come before you today because of the grave implications mandatory country of origin labeling requirements, which are scheduled to take effect on September 30, 2004, will have on our industry and more particularly, small businesses such as my own.

Our factory and primary store is located near the heart of downtown Salt Lake City, Utah. The company was founded in 1966 and has seen steady growth since its inception. We are a family owned small business that processes, packages and sells roasted, salted and mixed nuts at distributor, wholesale, and retail pricing.

During the holiday season we sell our product at retail in all regional malls in the state of Utah and in several Idaho locations. Additionally, we have built a substantial loyal customer base through our catalog and website marketing. We have repeat customers in every state and the company continues to grow at a moderate but steady pace. In the more than thirty seven years of our existence we have prospered in both good and bad economic times.

We employ 30 to 35 full time employees and that number explodes to in excess of 250 employees during the fourth quarter of each calendar year. Our annual revenue is slightly less than $6 million. Our annual gross payroll is in excess of $800,000. I realize this is a tiny drop in the bucket of this Nation's economy, but it is our drop and it is everything to my employees, their families, my family, and me.

The nature of small business is such that each owner or entrepreneur must focus like a laser on daily operations in the industry in which he or she is invested. For most of us there is no such thing as a forty-hour workweek or a real day off. And we are genuinely hard-pressed to take time away from our business to lobby Congress. Why do we work as hard as we do? Primarily because we love our work and the benefit it affords our employees, our families and us.

I find it somewhat ironic that my first real venture into business was facilitated by a Federal program, namely a Small Business Administration loan. Now some

thirty-five years later the company I own with my two brothers-in-law is being placed in potential peril by a new Federal mandate—country of origin labeling for peanuts. I guess the Federal Government does "giveth and taketh away."

It is difficult to believe that the closure of small business operations such as ours was the intent of Congress when it included the mandatory country of origin labeling provisions in the most recent farm bill. However, this will be the likely outcome unless you in Congress correct the problem.

Based on the voluntary guidelines that USDA has already published, we anticipate that the mandatory country of origin program that will take effect in late 2004 will cover snack peanuts. I find this very hard to understand in light of the statutory exemption that Congress provided for "processed food items". Now I am no lawyer, but I do think I can understand the plain meaning of the term "processed food item". And if shelling, roasting and adding ingredients do not result in a processed food product that is materially changed from a raw in-shell peanut, then I certainly would like to know what it is that we do every day at our processing plant.

Implementation of mandatory country of origin requirements is simply a logistical and economic impossibility for a company of our size and would in effect put us out of business. Though we are small, we have in excess of 1,189 "stock keeping units" (SKU) that contain nuts. Of this total, 520 SKUs contain peanuts. The heart of our business is centered around gourmet nuts that are presented in custom award winning packaging. Under a mandatory country of origin labeling program as currently contemplated by USDA, we would be required to pre-print each and every one of our gift boxes in advance in every possible combination of various countries of origin. We do not have adequate inventory storage space to house the proposed packaging inventory. Additionally, it would be virtually impossible to track the movement of individual peanuts as they move through our processing operation from receiving, through processing, on to packaging where the appropriately labeled box would have to be to receive the product. I have enclosed with this testimony one of our holiday season 2003 retail catalogues that will give you an idea of the complexity involved in providing appropriate labels for each different product. I'm also submitting for the hearing record copies of comments filed earlier this year that the Peanut and Tree Nut Processors Association and the Snack Food Association jointly submitted to USDA, which explains in more detail our view that roasted and shelled peanuts constitute a "processed food item".

One might say, "simply purchase domestic peanuts". We do. But that is no solution for me because we have to provide country of origin labeling for U.S. peanuts too. And pray tell, what do we do in a year when the domestic peanut crop fails, as it has periodically in the past, and there is inadequate supply? Furthermore, how would the small U.S.-based nut processor compete price wise with imported prepackaged products that carry a country of origin label of the Nation where the peanut was processed and packaged rather than the actual origin of the peanut? That is exactly the position my company will be put in if the farm bill's country of origin labeling requirements for peanuts are not altered.

Some of the larger corporations in our industry may be able to comply with the proposed regulations because they can push the cost back on the grower or spread the cost over a huge volume. Other large corporations have simply said that they are investigating the option of relocating to Ontario, Canada or Mexico. Still others have indicated the possibility of exiting the peanut business altogether and concentrating on almonds or cashews. None of these alternatives is an option for a company of our size. We would simply be out of business!

I think I speak for all the little guys in our industry when I say please reconsider this whole idea of mandatory country of origin labeling for peanuts. Why would it be in the best interest of our nation to encourage large processors to leave the country, put the small processors out of business and discourage new start-up operations? And perhaps most importantly for members of Congress who represent peanut-growing regions, what will all this mean for peanut growers here in the U.S.? That is one question I can answer with confidence. It means reduced returns for producers, and decreased consumer demand for snack peanuts as retail costs go up to pay for mandatory labeling.

In short, everybody loses—nobody wins. Does this make economic or political sense? I think not.

In the most emphatic of terms I respectfully ask you to move as expeditiously as possible to correct this situation so that we can avoid the unintended but nevertheless adverse consequences of mandatory country of origin labeling for peanuts.

Thank you for your attention and consideration of this important matter.

STATEMENT OF MICHAEL STUART

On behalf of its producer members, Florida Fruit & Vegetable Association (FFVA) appreciates the opportunity to share its views with the subcommittee on implementation of the country of origin labeling (COOL) provisions contained in the Farm Security and Rural Investment Act of 2002 (farm bill). FFVA strongly supports mandatory country of origin labeling of fruits and vegetables, and over the past several months has provided both formal and informal input to the U.S. Department of Agriculture (Department) as it formulates labeling regulations to implement the law.

Mandatory origin labeling for produce will be an important tool for giving U.S. consumers the chance to make a more informed choice about the foods they buy. It is the same information that consumers in many other countries enjoy, as was recently reported by the General Accounting Office. National surveys consistently show overwhelming consumer support for origin labeling of produce. Just as important is the support from producers. Mandatory origin labeling ensures that their products have a consistent identity in a crowded marketplace. Further, it makes it easier for consumers to identify and purchase domestically grown fruits and vegetables.

The farm bill labeling provisions for fruits and vegetables is sound in our opinion, and provides the Department sufficient flexibility to create a workable set of regulations for the produce industry. We do not believe it was Congress' intent to create an untenable burden for producers of covered commodities, or their customers at retail. Congress did not intend that the Department create unnecessary and unworkable rules that would add needless cost to the food production and distribution system in the United States. At the end of the day, however, the success or failure of the law will depend greatly on whether the Department's regulations are flexible and workable, or draconian and costly.

Over the past several months, considerable controversy has developed over COOL. Opponents have labeled the law "fatally flawed," and have urged its repeal in Congress. And while the focus of the criticism has been the law itself, in reality it is the Department's "voluntary guidelines" (guidelines) that have generated most of the concern within the industry. A recent editorial from the Packer addresses why overreaction and exaggeration by retailers and others is unnecessary and inappropriate. (Attachment I)

The guidelines were published by the Department in October, 2002—just over 4 months after the law's passage. They were highly prescriptive in nature, and created a significant record-keeping burden for businesses throughout the distribution chain—from producers to retailers. For the produce industry, the guidelines failed to recognize or take advantage of existing statutes such as the Perishable Agricultural Commodities Act (PACA), which regulates transactions between sellers and buyers, or the Tariff Act of 1930, which requires labeling of imported packaged products. USDA's cost estimates of the impact of the guidelines exacerbated the controversy by suggesting that the industry would be hit with a $2 billion price tag. A recent General Accounting Office (GAO) study questioned the assumptions used by the Department in its analysis, and further recommended that it collaborate with industry to identify existing programs as alternatives for accomplishing many of the law's requirements. (Attachment II) FFVA has consistently recommended this approach to USDA.

The record-keeping mandate in the guidelines, while rooted in the law, is not required by it. The statute states: "The Secretary may require a verifiable record-keeping audit trail that will permit the Secretary to verify compliance." Since the language says "may" as opposed to "shall," Congress specifically left the decision on record keeping to the Department. It is not bound to require record keeping at all and as we suggested, modest "tweaking" of existing regulations is all that is needed to implement this new law. Similarly, in the area of enforcement—another controversial issue—the statute states: "If the Secretary determines that the retailer has willfully violated [the act], after providing notice and an opportunity for a hearing, the Secretary may fine the retailer in an amount of not more than $10,000 for each violation." And then only for intentional violations after an opportunity for a hearing. The law does not mandate the maximum fine for each violation, as some opponents would lead you to believe. The Department clearly has broad discretion in creating an enforcement matrix that penalizes only the most egregious offenders who consistently and intentionally violate the law.

In the comment period following the release of the guidelines, FFVA submitted both written and oral comments to the Department suggesting ways to improve them developing a more workable, flexible, and less burdensome mandatory regulation. The following is a summary of those recommendations.

The Department should develop separate regulations for each covered commodity specified in the Act.

While the Act's principal goal is simple and straightforward (i.e. providing country of origin information to consumers), we believe the Department should recognize that each covered commodity has different production, distribution, and handling systems. Further, they are each regulated under a different set of laws. We have suggested that the Department provide separate sets of regulatory requirements under the law depending on the nature of the specific covered commodity.

Point of purchase notification should be simple and straightforward.

The statute identifies a wide array of notification methods that can be used at the discretion of the retailer. These include, label, stamp, mark, placard, or other clear and visible signs on the covered commodity or on the package, display, holding unit or bin containing the commodity at the point of final sale to the consumers. Congress wisely left it to the retailer to determine how best to assure that such information is provided. Thus, the retailer has maximum flexibility in fulfilling the law's requirements.

We have suggested to the Department that the regulations be similarly flexible in the terminology used to denote origin. The guidelines mandate that terms such as "Grown in Country X" or "Produce of Country Y" be used. This is too prescriptive. In the regulations, we have recommended that the Department accept the listing or marking of the individual country name, or recognized abbreviation (i.e. United States or USA) as being sufficient to meet the requirements of the statute.

FFVA also strongly supports the Department incorporating a common sense approach in evaluating the effectiveness of the notification system selected by a retailer. For example, if the retailer has a bin or display of fruit, and a significant amount of the fruit is individually labeled with the country of origin, then the Department should not require additional labeling of the fruit even if some are missing a label. The test of the sufficiency of the notification method should be whether the consumer could make a reasonable decision regarding the country of origin of the produce at the point of sale. It is recognized that labels can fall off in transit. The retailer should not be penalized if such a situation has occurred.

Labeling of mixed or blended produce should simply list all the countries of origin of the commodities included in the blended product.

The guidelines require blended products, such as bagged salad, list each commodity component by country and predominance of weight, value or other measurement. The law does not require such detail. We have suggested that a simple declaration of the country of origin of the combined components be sufficient. For blended products containing imported components, origin-labeling requirements should mirror the declarations mandated by the Tariff Act of 1930.

We believe the Department should not use the general authority under COOL to improperly expand the regulatory requirements of the law or its scope. The Department does not need to incorporate into the regulation any provisions beyond those necessary to assure appropriate implementation of the law's requirements.

Record keeping is not necessary; but, if it is required in the regulations, should be based on the existing requirements of the PACA. These on-going requirements are well known to growers, shippers and retailers.

Again, COOL states that the Secretary may (emphasis added) require the maintenance of a verifiable record-keeping audit trail. The requirements contained in the guidelines create a tremendous burden on the entire industry, and are unnecessary. Florida's Country of Origin law has functioned well since 1979 without a mandated record-keeping system. Florida's law operates under the presumption of truthfulness of the information provided to the point of retail sale. However, in instances when false information is printed on the container, existing Federal and state law provides remedies that adequately address those situations. The Department should take the same approach in developing regulations for COOL. There should be no downstream liability for the validity of information provided by a product supplier.

In the event the Department should elect to utilize its discretion under the statute and implement a record-keeping mandate, we have suggested that it should be based on the current requirements of the PACA. Under PACA, retailers and suppliers are already required to maintain certain information and records associated with each produce transaction. This system is very familiar to all persons who operate responsibly in the buying and selling of produce. It seems a rather simple matter for the Department to acknowledge the existence of the current regulatory scheme, and refrain from creating an additional burden.

FFVA believes COOL is a fundamentally sound law that will provide consumers with information regarding the origin of the produce they purchase at retail supermarkets. In implementing the law, the Department has discretion to make it as sim-

ple or as difficult as possible for the industry. We have urged them to take the simple approach.

We greatly appreciate the efforts the Department has made to seek input from the industry on this issue—both formally and informally. The suggestions made by our organization have been made by many others, as well. We are hopeful that the draft regulations will be released soon, and will incorporate the flexible common sense approach recommended by the industry.

ANSWERS TO SUBMITTED QUESTIONS

In several of your testimonies the definition of processed food was discussed. Has your industry looked at a possibilities that would change the definition of processed food in order to be more efficient and workable in your industry, but that doesn't include ground meat into the exemption of the law?

The statute appears to give USDA broad discretion to define the scope of commodities affected by the "ingredients in a processed food item" exclusion. The Department's first attempt at delineation between covered and non-covered commodities under this exclusion is contained in the Voluntary Guidelines. Overall, we support the Department's definitions in the guidelines, but disagree strongly with the methodology used to prescribe labeling requirements (see response to question No. 3).

Mr. Stuart in your testimony you said that the Department should not use the general authority under COOL to improperly expand the regulatory requirements of the law or its scope.— Can you expand on that statement? As you may know my COOL Lite bill, H.R. 3083 requires the Secretary to use existing records, which I believe is one of your examples. What are others?

There are numerous laws impacting the sale and distribution of perishable agricultural products. Two laws are particularly important in relation to COOL—the Perishable Agricultural Commodities Act (PACA) and the Tariff Act of 1930.

PACA requires that any information conveyed by a seller to a buyer in a transaction be factual. So, for example, if I (as a grower/shipper) sell you (a retailer) 1,000 cartons of tomatoes and state that they are grown in the USA, then I am accountable under PACA that the information is accurate. If you (as a retailer) rely on the origin information provided by me to comply with the statute, there should be no enforcement liability to you if the information I provided is inaccurate. I would be in violation of PACA. This was the case even before the enactment of COOL. COOL merely requires that the consumer be able to determine the product's country of origin. There is no need under COOL to establish an additional liability for the retailer in this case. PACA's enforcement mechanisms, as well as the flexible penalties established in the COOL statute, are more than sufficient. Furthermore, both you and I, as licensees under the PACA, must keep all pertinent records of the transaction for a period of two years. Therefore, there is no need under the COOL regulations to impose additional record keeping burdens on suppliers or retailers.

Under current Customs regulations, a consumer-ready package must provide country of origin information if imported products are contained in it. Packaged salad firms, for example, are required by current regulations to show the country of origin if the package contains any imported components. Customs regulations do not, however, require a detailed listing of the origin of each individual component by prominence of weight or other factors, as is the case with the voluntary guidelines for COOL. In our opinion, the guidelines far exceed the requirements and scope of the law. The Department should adopt the basic labeling principal in Customs regulations and apply it to the COOL regulation.

In the testimony provided today there was a concern raised about the current legislation that would require ingredients to be identified according to weight, how would alphabetical be better if they are still required to be listed?

Again, FFVA has recommended to the Department that they adopt the approach already contained in Customs regulations and apply it to the COOL regulation. This would only necessitate listing countries of origin of the components of the blended product. Thus current requirements already in place and already used by the trade would be sufficient to implement COOL.

According to testimony delivered by General Counsel, U.S. Department of Agriculture, Nancy Bryson on June 26, 2003: "I would like to point out because of the way the statute is written, the requirement on retailers to do

country of origin labeling on September 30, 2004, is not really affected by the suspension of appropriations. We are not going to be writing our regulations. But if you look at the statute, our requirement to write regulations is separate and apart from the requirement that the retailers provide the information on September 30, 2004." Since the retailers are going to be held liable to a law that may not be funded what avenues are being perused to change the existing legislation?

We believe Congress should not prohibit the Department from writing regulations to implement COOL by suspending appropriations. We believe the USDA can and should use existing statutes and regulations and common sense in designing the final regulation. Additional legislation should not be needed if the USDA follows this approach.

STATEMENT OF JOHN M. MCCLUNG

Mr. Chairman, members of the subcommittee, my name is John McClung. I'm president of the Texas Produce Association, headquartered in the Rio Grande Valley of South Texas. I want to thank you for holding this hearing today on what we all know is one of the most controversial issues to face the produce industry in some years—Country-of-Origin labeling—and for giving me the opportunity to appear before you today to explain the Texas industry's position.

On August 22, the Board of Directors of the Texas Produce Association unanimously voted to attempt to rescind the current Country-of-Origin law, thus reversing a position taken over a year and a half ago. The 17 members of the board took this action fully recognizing that we currently have a Federal law that is undergoing rulemaking, so any vigorous attempt to void that law would be premature until the pending regulations issue and we have an opportunity to evaluate their impact.

In this regard the Texas industry's posture is entirely consistent with the position of the national produce organization, the United Fresh Fruit and Vegetable Association, that we should wait to see USDA's regulations before informed decisions can be made on possible additional actions, including seeking Congressional intervention.

Nonetheless, the board felt that the law as currently written might well be too prescriptive to allow the U.S. Department of Agriculture to develop regulations that are acceptable to the industry. We shall see. The members also felt that the basic premise of the law: that U.S. consumers would prefer to buy domestically grown fruits and vegetables if they only knew they were U.S. grown, is contrary to what we know about the marketplace and the variables consumers most often use in making their purchasing decisions. The only likely exception would be when there is a food safety scare of some sort, and then we generally loose the sector, anyway. And finally, they felt that the cost and disruption associated with compliance probably will outweigh any benefits. Again, the jury is out on this matter until we can digest the regulations.

Interestingly, the association board is made up largely of grower/shippers who, without exception, also are importers of Mexican produce. I'll come back to the significance of that point in a moment.

As I think we all know, the retail community has mounted an enthusiastic campaign to convince their fruit and vegetable suppliers that country-of-origin is a bad idea for a lot of reasons, and while my shippers are well aware of that systematic effort, I do not think it looms overlarge in the Texas association's position. We are not unaccustomed to being at odds on occasion with the buyers on issues of mutual interest, and simply are hopeful that the differences will be thoroughly aired and that where there is legitimacy to the threats of upheaval the best possible resolution will be reached.

I must add that some retailers are insisting on elaborate assurances of compliance with anticipated provisions of the law and regulations from their suppliers before the regulations are scheduled to take effect, and even before they are published. These demands are, of course, impossible to comply with. But they are more than an irritant as they often include audit requirements, hold-harmless agreements, and other provisions that are unacceptable to suppliers. One gets the impression that something more than buyer eagerness to comply with the law is at play here.

The Texas industry's view on country-of-origin labeling is obviously colored by our transitional role as a supplier of fresh fruits and vegetables to the nation. Just 20 years ago, Texas by most accounts ranked as third largest producer of produce in the U.S., behind only California and Florida. But in 2001, when the Congress appropriated money for "specialty crop" grants, and those dollars were distributed accord-

ing to each State's relative rank as a supplier, Texas was tied for tenth place with New York. While many factors contributed to that decline in the State's ranking, arguably the most telling was—and continues to be—pressure on domestic production from Mexico. Last year, some 180,000 semitrailer loads of produce entered the U.S. from Mexico, just under 40 percent of them through Texas. Each load is give-or-take 44,000 pounds. I don't have to tell you that that's a lot of onions, cabbage, melons, mangos, tomatoes, and other commodities.

Texas producers and shippers, seeing the writing on the wall going back many years, are heavily involved in growing, packing and marketing Mexican produce. Very few if any vegetable shippers remain in Texas who are not sourcing, one way or another, from Mexico. As a result, while Texas production has slipped the state retains its rank as a top supplier to the rest of the country, which is why I say we are going through a transition. And one thing we know is that consumers really don't care where their commodities come from, so long as they are of high quality, display well, and are priced right. These importers do not oppose country-of-origin labeling on the grounds it will cost them market share, but they generally do oppose it as an expensive and burdensome requirement of little or no practical benefit. They particularly note that there is no evidence consumers are clamoring to know where their produce originates most of the time.

Clearly the Congress is considering what it might do to fix this law if, in fact, it proves to be hopelessly broken. It might well be that converting to a voluntary program would be an option. In any event, we greatly appreciate the opportunity to work with you as time goes on. This concludes my testimony. Thank you.

STATEMENT OF JOHN CONNELLY

Chairman Hayes, Congressman Ross, and distinguished members of the subcommittee, my name is John Connelly, president of the National Fisheries Institute (NFI). Thank you for the opportunity to explain unique implications for the fish and seafood industry of Subtitle D of the 2002 farm bill requiring mandatory country of origin labeling of fish and seafood products at the retail level.

The National Fisheries Institute is the national trade association for the diverse fish and seafood industry of the United States. The NFI is a "water to table" organization representing fishing vessel owners & aquaculturalists, processors, importers, exporters, distributors, retailers, and seafood restaurants. Our members are committed to providing consumers with safe, sustainable, and diverse seafood choices. NFI is the leading voice for promoting seafood as the daily protein food of choice for feeding the world. The nearly 700 members of the NFI are involved in the vast majority of the seafood consumed in the United States.

Mr. Chairman, the United States had a mandatory country of origin labeling program for food prior to the 2002 farm bill. The Tariff Act of 1936 requires all imported food to be labeled as to country of origin to the point of the "ultimate purchaser", with a notable exception under the so-called J list for products difficult if not impossible to individually label—such as whole fresh fish. The U.S. Customs Service interprets the ultimate purchaser to be either the retail consumer or the person who subjects the imported good to a "substantial transformation" such that the final product is fundamentally different from the imported good.

Fish and seafood items imported in retail-ready packaging are therefore already labeled as to country of origin. Those products that undergo a substantial transformation in the United States are not required to be labeled as a foreign good since such labeling would unfairly deny the investment of U.S. labor and capital in the production of the final product. Nor are such products eligible to be labeled as Products of the United States as Federal Trade Commission rules require "Products of the United States" to be 100 percent U.S. goods. Foreign goods therefore are not masquerading as U.S. goods in the marketplace or if they are, they do so in violation of existing requirements. This requirement will have the perverse consequence of potentially driving fish and seafood processing out of the United States. If a company that mixes a variety of products in the U.S. will now be required to go through the significantly increased costs of segregating all the their products by country, then we run the real risk of that company siting their final processing facility in a single country and having that country be the "country of origin."

In addition, domestic fish and seafood producers who wish to label their products as "Product of the USA" may voluntarily do so consistent with Federal Trade Commission and Food and Drug Administration rules. Unlike meat, domestic fish and seafood does not need a regulatory program, either voluntary or mandatory, to proclaim their products are "Made in the USA". Fish and seafood are generally regulated by the Food & Drug Administration (FDA). The Food, Drug, & Cosmetic Act

(FDCA) requires all food labeling to be "truthful and not misleading". Fraudulent country of origin claims therefore can be enforced against by the FDA. In addition, the Federal Trade Commission has rules for declaring that products are "Made in the USA" that requires such products to be 100 percent U.S.-origin content and could also enforce against fraudulent country of origin claims.

It is for these reasons that the NFI believes that Subtitle D of the 2002 farm bill was unnecessary and unwarranted.

We are now deeply concerned about the manner in which the Department of Agriculture is implementing Subtitle D. If the voluntary guidelines issued by the USDA this year are any indication of the mandatory regulations, the program will be extremely onerous and impractical. While there may be some flexibility under the statutory language for the USDA to exercise its discretion in developing final regulations, we are concerned that many aspects of the program are strictly dictated by the statute.

I would like to focus on five key issues that pose considerable challenges for the fish and seafood industry.

Processed Food Exemption

The farm bill exempts "ingredients in a processed food item" from mandatory country of origin labeling. In the voluntary guidelines, USDA has interpreted this exemption in a manner inconsistent with, and often contradictory to, current Customs concepts of "substantial transformation". This is leading to considerable confusion in the marketplace about whether products have to be labeled or not. If a product is covered under Customs rules but exempt under USDA rules, does it have to be labeled? And vice-versa?

To highlight this inconsistency, I would like to provide two examples: cooked shrimp and filleted hoki (a New Zealand finfish). Under Customs rules it has been determined that cooking imported shrimp does not constitute substantial transformation. Therefore, a U.S. processor who cooks imported raw shrimp must continue to label the product with a foreign country of origin. USDA, however, is proposing to exempt all cooked products under the processed food exemption On the other hand, Customs has determined that importing whole, headed and gutted hoki and filleting it here in the US does constitute substantial transformation, exempting such product from labeling. USDA is proposing to require labeling of such product.

It would seem prudent, therefore, for the USDA to develop a definition for "ingredients in a processed food item" that is as consistent as possible with US Customs "substantial transformation" standard—a standard that fish and seafood companies understand and already comply with.

Labeling of Commingled and Blended Products

Currently the USDA is proposing that retail products that contain commingled or blended ingredients from multiple countries of origin be labeled as to country of origin by order of predominance by weight. In addition, the USDA is proposing that facilities that source similar raw material from multiple countries of origin, such as raw shrimp, must maintain verifiable segregation plans to keep the products from different countries separate from one another.

These proposals are utterly impractical and fail to recognize the fundamental nature of the production process. Facilities are run as efficiently as possible to produce a product for the consumer based on such criteria as quality, value, and price. In the case of shrimp, product from multiple countries of origin may be commingled at the bulk level to achieve the desired criteria. While maintaining a segregation plan throughout the production process may be possible, it is certainly not practical. It will require either the creation of redundant processing capabilities and/or the shutting down of the production process between batches of differing origin product in order to maintain the degree of segregation and ultimate labeling that USDA is proposing.

I believe these proposals stem from a concern at USDA that some may choose to add a de minimus amount of U.S.-origin product and then list the United States first in a list of countries of origin on the package. While this is a legitimate concern, the issue can easily be remedied by simply requiring an alphabetical listing of multiple countries of origin.

Further, the combination of multiple origin raw materials is dynamic and constantly changing. This will require seafood producers to maintain significantly more diverse inventories of packaging materials in order to comply with law. Not only does this add considerable logistical challenges to operations, it will also increase costs as packaging materials will need to be ordered in smaller batches and therefore greater costs. These costs could be considerably reduced if USDA would allow

a "May Contain" label listing multiple countries of origin or a table where the relevant countries of origin could be checked or marked.

RECORD-KEEPING REQUIREMENTS

Subtitle D authorizes the USDA to require a verifiable recordkeeping audit trail at all levels of the supply chain to verify country of origin claims. USDA is proposing that all levels in the supply chain maintain complete records of the downstream history of the product all the way to the level of the domestic grower (and presumably individual fishermen for wild-caught seafood which, of course, isn't grown) or the country of origin declared to Customs at time of entry.

Not only is it an incredibly excessive record-keeping requirement to expect everyone in the supply chain to maintain such complete histories of the product, the record-keeping burden falls far greater on domestic producers than on imported goods. Imported food must be accompanied by records throughout the supply chain that simply verify that the product comes from the country declared to Customs at time of entry. Domestic food must be accompanied by records that, presumably, identify the individual fishermen or grower of the product. This is virtually impossible. Fish and seafood products from dozens, in some cases hundreds of fishermen can be commingled in a fresh bulk form by primary seafood processors. There is simply no way to verify which fish came from which boat. Even in aquaculture operations, processing plants source fish from literally dozens of farms on any given day, commingling the fish from multiple farms not only at the plant, but on the truck picking up the fish at the farm gate.

The level of recordkeeping being proposed is simply impossible.

WILD VS. FARM-RAISED

In addition to country of origin, Subtitle D will require all fish and seafood products to be labeled as either "wild" or "farm-raised" even for products where this is only one kind (i.e. there is no such thing as farm-raised swordfish). Notwithstanding the obvious additional logistical and record-keeping burdens this requirement will impose on fish and seafood, the distinction between "wild" and "farm-raised" also present challenges.

For example, fishermen are now harvesting small bluefin tuna alive, releasing them into open-ocean net pens where they are grown and fattened on a highly nutritious diet before being harvested. Are such tuna "wild" or "farm-raised"?

This issue is particularly problematic for coastal shellfish. Many coastal shellfish operations involve the staking, claiming, leasing, outright ownership, or other form of reservation for exclusive use of shellfish beds in open water systems. The fact that the production from these beds is harvested from these open water systems could suggest that these products fall under the definition of "wild" shellfish. However, the fact these beds have been reserved for exclusive use in some manner may suggest that they have been removed from the "wild" domain and the products therefore considered "farm-raised".

In addition, some of these shellfish beds may be cultivated, manipulated, or otherwise developed with aquaculture-based practices further suggesting the products are "farm-raised". Yet again, municipalities or other "public" entities conduct some of this cultivation for the benefit of a public fishery thereby suggesting the products are "wild".

Without substantially greater regulatory guidance from the USDA than that proposed in the guidelines, the distinction between "wild" and "farm-raised" will remain unclear for the producing communities, an untenable situation especially given the potential fines and penalties mislabeling could lead to.

EXCESSIVE FINES & PENALTIES

Subtitle D authorizes the USDA to impose fines up to $10,000 per day per violation for mislabeled goods. These fines may be applied throughout the supply chain. While retailers may only be fined for willful violations, the rest of the supply chain may be subject to these onerous fines simply for making mistakes in what is an incredibly complicated system. This level of liability seems excessive and unwarranted. In fact, the threat of fines is so great the supply chain from the top down is already seeking to indemnify itself from fines over mislabeling that it feels it has little control over. That is, the individual fisherman or fish farmer will be the only one that cannot pass the liability down the line. Subtitle D should be amended to either lessen the level of the fines or target them towards intent so that willful violators are the ones at greatest risk.

Mr. Chairman, thank you for the opportunity to testify today. I would be pleased to answer any questions members of the subcommittee may have.

ANSWERS TO SUBMITTED QUESTIONS

In several of your testimonies the definition of processed food was discussed. Has your industry looked at a possibilities that would change the definition of processed food in order to be more efficient and workable in your industry, but that doesn't include ground meat into the exemption of the law?

The National Fisheries Institute (NFI) believes that an ingredient in a processed food item should be defined in such a way as to be entirely consistent with the concept of substantial transformation under U.S. Customs Service requirements for country of origin labeling under the Trade Act of 1936. Such consistency will help eliminate confusion throughout the supply chain and marketplace.

In addition, the substantial transformation standard of US Customs is an inherently fair standard, ensuring that products that have considerable investments of US capital and labor in their production are not required to be labeled as foreign goods.

In the testimony provided today there was a concern raised about the current legislation that would require ingredients to be identified according to weight, how would alphabetical be better if they are still required to be listed?

Alphabetical listing would allow facilities that commingle similar products from multiple countries or origin to continue to do so without needing to implement onerous and costly verifiable segregation plans to identify the relative contribution of these multiple sources to final products. At the same time, an alphabetical listing largely addresses concerns that a processor might use a de minimus quantity of US material in an attempt to list the US first in a listing of multiple countries of origin as most countries come before the US in any alphabetical listing.

NFI believes that American consumers could also be informed about package contents by allowing a label that states, "This package may contain products from X, Y, or Z country."

According to testimony delivered by General Counsel, U.S. Department of Agriculture, Nancy Bryson on June 26, 2003: "I would like to point out because of the way the statute is written, the requirement on retailers to do country of origin labeling on September 30, 2004, is not really affected by the suspension of appropriations. We are not going to be writing our regulations. But if you look at the statute, our requirement to write regulations is separate and apart from the requirement that the retailers provide the information on September 30, 2004." Since the retailers are going to be held liable to a law that may not be funded what avenues are being perused to change the existing legislation?

The NFI strongly supports any and all efforts to repeal or delay implementation of Subtitle D of the 2002 farm bill. The NFI believes any such efforts should apply to all covered commodities as they all have serious implementation challenges.

STATEMENT OF HUGH WARREN

Mr. Chairman, ranking member and members of the subcommittee, I appreciate the opportunity to provide testimony in support of the Country-of-Origin Labeling Law.

I am Hugh Warren and have been executive vice president of Catfish Farmers of America, Inc., (CFA) since 1989. Founded in 1968, CFA is the trade organization representing the interests of the farm-raised catfish industry with current membership representing forty states. Producer members account for approximately 85 percent of total catfish production.

Over the past two decades, the U.S. catfish industry has grown from a relatively unknown segment of the U.S. seafood industry to the Nation's largest aquaculture industry, accounting for over 70 percent by volume and over 60 percent by value of all U.S. aquaculture production of fish. Because farm-raised catfish has become a widely accepted food item throughout much of the U.S., (2002 production of 650 million lbs.), the demand for catfish should continue to increase as American consumers increasingly turn toward fish as part of a safe and nutritious diet.

The implementation of COOL should prove a minor issue with relatively no additional cost in the processing and marketing of catfish. For the most part, the catfish industry already meets the COOL requirements through the mandatory Food and Drug Administration's (FDA) Hazard Analysis Critical Central Point (HACCP) systems for food safety. This HACCP plan requires processors of fish and fisheries products to identify hazards that are recognized with their products, and help them formulate control strategies.

The FDA has identified certain possible hazards in the growing of catfish. The preferred method of control is for the processing plant to have on file a document, updated each year by the producer, identifying the farm and producer on a guaranty agreement form.

This form certifies that fish shipped to the processor are hatched, raised, and harvested in the United States. By virtue of the processor being in the United States the requirements for COOL in the United States have been met.

In addition, under the Code of Federal Regulations, Food Labeling Regulations, April 1994, requires the name and place of business of manufacturer, packer or distributor of food to be identified on the label. The statement of the place of business shall include the street, city, state and zip code address.

Many of the Nation's trading partners already require their own version of COOL. For example, European Commission Labeling Decision for Seafoods: A new labeling system for fish and fishery products has been introduced by the European Commission. The new rule, which has been in effect since January 2002, stipulates that the label should have the following information on all fish products at the retail counter:

- Whether the product is farmed, cultivated or caught in the wild in fresh or seawater.
- The country where the fish underwent its final processing state and
- The commercial name of the species being used for local sales along with the common term used in each member state. The scientific name is optional and can be displayed if the producer desires.

In an official statement, the Commission reported that considering the wide variety of species supplied, the EU considers it necessary to provide consumers with at least the basic minimum of information on the characteristics of aquaculture products. The new labeling rule, based on the traceability procedure, would impose additional responsibility on retailers, transporters and producers who have to keep accurate records on these aspects so that the officials can trace back the origin of the product and keep better control over quotas.

In the United States, producers and processors have worked diligently to ensure that farm-raised catfish is safe, wholesome, and is just plain good to eat. I cannot imagine why anyone would want to hide the origin of their product and deny the consumer an informed choice.

Thank you Mr. Chairman for allowing me to testify today. I will be happy to answer any questions you or members of the committee might have.

STATEMENT OF GARY JAY KUSHNER

Good afternoon. My name is Gary Jay Kushner. On behalf of the member companies of the Grocery Manufacturers of America, Inc. I appreciate this opportunity to testify before the subcommittee on Livestock & Horticulture regarding the mandatory country of origin labeling law enacted as part of the Farm Security and Rural Investment Act of 2002.

GMA is the world's largest association of food, beverage and consumer product companies. With U.S. sales of more than $500 billion, GMA members employ more than 2½ million workers in all 50 States. The organization applies legal, scientific and political expertise from its member companies to vital food, nutrition and public policy issues affecting the industry. Led by a board of 42 chief executive officers, GMA speaks for food and consumer product manufacturers and sales agencies at the state, Federal and international levels on legislative and regulatory issues. The association also leads efforts to increase productivity, efficiency and growth in the food, beverage and consumer products industry.

The American Frozen Food Institute (AFFI) also endorses the testimony I am giving here today. AFFI's more than 500 member companies are responsible for approximately 90 percent of the frozen food processed annually in the United States, valued at more than $60 billion. AFFI members are located throughout the country and are engaged in the manufacture, processing, transportation, distribution, and sales of products nationally and internationally.

GMA OPPOSES MANDATORY COUNTRY OF ORIGIN LABELING

GMA has consistently opposed additional country of origin labeling requirements, like those enacted as part of the 2002 farm bill. Additional mandatory country of origin labeling requirements do nothing to enhance the safety of the domestic food supply or the health of American consumers. Yet they involve increased costs for producers, manufacturers, retailers, and consumers, and undermine efforts to expand international markets for U.S. products. GMA maintains that position today and urges the subcommittee to support modification of the country of origin labeling provisions in the farm bill to provide for a voluntary, USDA-administered country of origin program that is market oriented and consumer friendly.

A voluntary system would enhance consumer choice but avoid the tremendous costs and uncertainties that mandatory country of origin labeling will bring. The very serious concerns GMA has expressed with respect to USDA's apparent plans for implementing mandatory country of origin labeling, as reflected in the Department's October 2002 voluntary guidelines, only underscore the need to move to a voluntary system.

GMA HAS URGED USDA TO BRING ITS GUIDELINES INTO COMPLIANCE WITH THE LAW

Together with AFFI, the National Food Processors Association, and the National Fisheries Institute, GMA submitted comments to USDA on the Department's "Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts". In those comments, GMA recommended several changes to the guidelines that USDA should adopt prior to promulgating binding regulations in order to comply with the law and historical regulatory precedent.

Most of the changes GMA recommended focused on USDA's interpretation of the exemption in the law for processed food items. Congress wisely included this exemption from the definition of "covered commodity," in recognition of the complexities already involved in labeling processed foods.

Rather than interpreting the processed foods exemption in a manner consistent with its common sense, plain meaning, USDA insists on an extremely narrow interpretation. Specifically, USDA interprets the exemption to apply only where (1) the processed food item is a combination of ingredients that result in a product with a different identity from the covered commodity (e.g., raw salmon in sushi or peanuts in a candy bar); or (2) the covered commodity has undergone a "material change' so that its character is substantially different from that of the covered commodity.

USDA'S INTERPRETATION OF "PROCESSED FOODS" IS INCONSISTENT WITH PRECEDENT

USDA's interpretation of the exemption is so narrow that it directly contradicts definitions of "processing" and "processed foods" used throughout Federal laws and regulations applied to foods. It also contravenes the stated intent of the sponsors of the country of origin labeling legislative provisions.

The Federal Food, Drug, and Cosmetic Act, which governs the production, processing, and labeling of virtually all foods other than meat and poultry, defines "processed food" as "any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, and milling." 21 U.S.C. §—321(gg). USDA has consistently used similar language in defining "processing" and "processed food" in connection with the many food related programs it administers. For example, USDA regulations governing its voluntary fruit and vegetable grading programs define "processed product" to mean:

> any fruit, vegetable, or other food product covered under the regulations in this part which has been preserved by any recognized commercial process, including, but not limited to canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

7 C.F.R. §—52.2.

USDA'S INTERPRETATION IS INCONSISTENT WITH LEGISLATIVE INTENT

There is no legislative history to support USDA's extremely narrow interpretation of the processed food item exclusion. Indeed, statements by the law's chief sponsors reveal that the farm bill provisions were intended only to extend country of origin labeling to those commodities not currently required to bear such labeling under the tariff laws, as interpreted and applied by U.S. Customs. As Representative Bono re-

marked, "virtually everything bears its place of origin except for produce. I believe that consumers want this to change.

USDA's interpretation of the processed food item exemption results in a mandatory labeling program that goes well beyond those boundaries. Frozen produce and shelled, roasted, and packaged peanuts—two items already subject to country of origin marking under the tariff laws—must comply with a second and potentially incompatible labeling requirement administered by USDA.

USDA's Interpretation will Harm Domestic Producers

By subjecting these and other processed foods to this extra mandatory country of origin labeling scheme, USDA will only exacerbate the costs of an already very expensive measure for the entire food industry, from farm to table. GMA fully expects domestic producers, as well as processors and retailers, to suffer as a result of mandatory country of origin labeling. In the frozen produce industry, processors will have every motivation to limit suppliers to simplify compliance with the program's record keeping and audit requirements. Relationships with some domestic suppliers will no doubt be discontinued.

Moreover, many processors of mixed frozen produce (e.g., vegetable stir fry, fruit salad) likely will move to eliminate domestic sources entirely because, ironically, as interpreted by USDA, mandatory country of origin labeling actually favors foreign producers. Under USDA's guidelines, mixed frozen produce produced entirely outside the U.S. from foreign origin produce need only bear the country of origin as determined by the tariff laws. Mixed frozen produce that contains at least some produce grown in the U.S., however, must bear labeling that provides origin information for each raw material and does so in descending order of predominance by weight.

Compliance with Additional USDA Country of Origin Labeling Requirements Will be Costly and Burdensome

Even for those producers who retain their full customer base, costs will rise. Country of origin labeling compliance will necessitate expenditures on additional labor, modified product segregation systems, record keeping, and audits. Again, GMA urges the subcommittee to act to prevent these surely unintended but enormously costly consequences.

If Congress Does Not Act to Revoke USDA's Country of Origin Labeling Mandate, the Scheme Must be Substantially Modified

The legal and statutory basis for GMA's consistent opposition to mandatory country of origin labeling administered by USDA as reflected in the Department's guidelines is stated in great detail in our comments to USDA. In short, GMA continues to believe that additional country of origin labeling is unnecessary and imprudent. If Congress does not act to revoke USDA's mandate, however, the scheme developed by the Department must be substantially modified before final regulations are adopted. A brief synopsis of GMA's recommendations follows.

- Final regulations should not apply to any peanut products other than in-shell peanuts sold in bulk at retail: Shelled, roasted and salted peanuts are clearly "processed" and should be exempt under the processed food item exemption. Moreover, these peanuts are already required to bear country of origin information under the tariff laws; subjecting them to mandatory country of origin labeling would be duplicative, costly, and unnecessary.
- Mixed processed food products (e.g., mixed frozen fruits and vegetables) should be clearly excluded from the final regulations: Mixed processed products, by definition, fall within the plain language of the processed food item exemption. USDA, in addressing mixed processed food products in its voluntary guidelines, adopted an impermissibly narrow interpretation of this exclusion.
- Frozen produce and frozen seafood should be excluded from the final regulations. Frozen produce and frozen seafood, already subject to country of origin labeling under the tariff laws, fall within the plain meaning of the exclusion for an ingredient in a processed food item and should be excluded from the final regulations.
- The requirement in USDA's guidelines to display the country where processing occurred should be deleted. Under USDA's guidelines, additional label information, beyond country of origin, must be provided in certain cases. This requirement goes beyond the statute and exceeds USDA's authority.
- USDA should not require multiple countries of origin to be listed in order of predominance by weight. Under USDA's guidelines, "commingled fungible goods" must be listed in the order of their predominance by weight, even though no such require-

ment appears in the 2002 farm bill. If incorporated in the final regulations, this provision would necessitate frequent and costly labeling changes, and add substantially to the compliance burden for the U.S. food industry.

SUMMARY

GMA has consistently opposed country of origin labeling as mandated by the farm bill. At the very least, the concerns that we have raised in comments with USDA and in our testimony today illustrate the need for aggressive oversight of USDA'of the 2002 farm bill country of origin labeling requirements.

GMA continues to believe, however, that this subcommittee would best serve the interests of American producers, processors, retailers, and consumers by abandoning the requirements enacted in the 2002 farm bill and adopting a voluntary program. A voluntary approach to country of origin labeling would eliminate the numerous unintended consequences of the current law, yet create a market-oriented system that provides origin information to interested consumers.

GMA looks forward to working with the subcommittee as it reviews the implementation of country of origin labeling and considers statutory changes. Thank you for this opportunity to testify and for your consideration.

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October 9, 2003

The Honorable Robin Hayes
Chairman, Subcommittee on
Livestock & Horticulture,
Committee on Agriculture
United States House of Representatives
130 Cannon House Office Building
Washington, DC 20515

Re: Country of Origin Labeling - Supplemental Testimony

Dear Mr. Chairman:

Thank you for the opportunity to address the Subcommittee on behalf of the Grocery Manufacturers of America, Inc. (GMA) at last week's hearing to review the mandatory country of origin labeling law. During the hearing, panel members were asked by Rep. Mike Ross about consumer expectations regarding country of origin labeling. I am writing to provide relevant consumer research data, and respectfully request that this information be included in the hearing record.

As my testimony reflected, GMA, the world's largest association of food, beverage and consumer product companies, strongly favors a voluntary country of origin labeling program that is market oriented, consumer friendly and much less costly for everyone in the product chain from producers to consumers. In addition, very recent research demonstrates that, even with the onslaught of publicity about this issue, consumers are not concerned about, and most are not even interested in, where a food product comes from.

In a nationwide independent survey conducted in 2003 for the American Frozen Food Institute (AFFI) regarding factors that affect purchasing decisions related to frozen fruits and frozen vegetables, less than one percent of respondents mentioned anything related to "country where a product is from" as a being a main factor in their purchasing decision. Significantly, this is the same result revealed by an identical survey fielded by the same company for AFFI in 1996. As evidenced by the 2003 survey, even after seven years of public debate and media campaigns by advocates of country of origin labeling, less than one percent of respondents consider country of origin important to their purchasing decisions when it comes to frozen produce. The top five motivators for purchasing in 2003 were price, taste, brand, quality and nutritional value.

The recent survey conducted for AFFI also revealed concern among consumers about the effects of new country of origin labeling regulations, with the potential for loss of jobs being of most concern. Consumers believe there is a possibility of negative consequences if additional labeling requirements are put into place and they are not quick to dismiss these issues.

Furthermore, an April 2003 survey by the International Food Information Council found that 77 percent of consumers could not think of any information "not currently on food labels" that they would like to see added. Of those that would like additional information, most identified nutrition information (9%) and ingredients (4%) as their top choices. Less than one-half of one percent of consumers surveyed mentioned country-of-origin labeling.

I am attaching for the Subcommittee's reference an AFFI report containing more information about the survey conducted for AFFI discussed above. More details on the International Food Information Council survey can be found on the internet at http://www.countryoforiginlabel.org/consumerattitudes.htm.

As I conveyed at the hearing, GMA believes that a voluntary approach to country of origin labeling would eliminate the numerous unintended consequences of the current law, yet create a market-oriented system that provides origin information to consumers who are interested. Even so, research demonstrates that consumer interest in this area is quite limited and very few consumers even consider where a food product comes from when making purchasing decisions.

GMA looks forward to working with the Subcommittee as it considers statutory changes to the country of origin labeling mandate. Please don't hesitate to call me if you, the Subcommittee, or your staff have questions or need further information. Thank you for your consideration.

Sincerely,

Gary Jay Kushner
Counsel to Grocery Manufacturers
of America, Inc.

Enclosures

Bill of Unintended Consequences:
How a New Country of Origin Marking Regulation Would Harm American Food and Agriculture

February 25, 2003

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Bill of Unintended Consequences: How a New Country of Origin Marking Regulation Would Harm American Food and Agriculture

Contents

Executive Summary:
The Unintended Consequences of the New Country of Origin Labeling Scheme

If the country of origin marking guidelines issued in 2002 by the U.S. Department of Agriculture were made mandatory, they likely would have significant unintended consequences on members of the frozen food industry who process and distribute frozen produce and frozen seafood products. Among these consequences are incentives to increase sourcing of some products from abroad and to decrease sourcing of domestic products, and to relocate domestic manufacturing facilities to locations abroad. These consequences are ironic given that the intent of new labeling regulations was to aid U.S. agriculture.

AFFI urges Congress to hold hearings to identify actions necessary to mitigate the negative consequences identified in this White Paper, as well as other consequences identified by members of the Food Industry Trade Coalition. It is AFFI's view that the severity and validity of the feared consequences necessitate remedial actions, potentially including repeal of the new country of origin marking scheme; promotion of an enhanced voluntary marking program rather than issuance of a new regulation in 2004, with the understanding that the voluntary program that resulted from the Farm Bill is not suitable; or, at the very least, elimination of the duplicative marking requirements on food products.

A consumer survey conducted independently for AFFI in January 2003 found respondents were concerned about the potential consequences of the new regulations; with 42 percent selecting as their top concern the potential loss of jobs due to processors or manufacturers' relocating outside of the United States. Only six percent indicated they were not concerned about stated potential consequences – including increased prices for frozen fruits and vegetables due to higher production costs, loss of jobs, and increased incentive to source fruits and vegetables for freezing from outside the United States. The results of the survey are consistent with steadily building anecdotal evidence that the new requirements in practice are not as attractive as some once considered them to be in theory.

The stated unintended consequences would be anticipated because of the following facts:

- The departure from the country of origin marking protocol established in the *Tariff Act of 1930* would set up different marking requirements based on the location of the site at which products from various sources are blended, and the origin of the source materials. In some cases, companies would face simpler and less costly requirements if processing facilities were housed outside the U.S. and if no U.S. products were used.

In 2002, 41 percent of total vegetable acreage in the United States was sold to the processed foods market. Providing incentives for processors to source from other countries would reduce demand for a significant portion of domestic vegetable producers' output.

- A new mandatory country of origin protocol in the image of the current voluntary guidelines would present food companies with a Catch-22 situation. They obviously would need to comply with the law. Yet companies blending domestic and imported ingredients in U.S.-based facilities would find compliance unnecessarily difficult – even unachievable – given current methods and infrastructure for product storage and processing. Importantly, this Catch-22 would exist even if the current program were maintained as a perpetually voluntary program in its current form.

- In addition to logistical complexities, the new country of origin marking scheme also would impose significant costs. It is important to note that these costs should not be considered in a vacuum. Rather, additional costs should be analyzed from the business perspective; that is, in the context of other costs of operating in the U.S., including but not limited to regulatory compliance, taxes and human resources costs.

- The logistical quandaries and costs of the new country of origin labeling scheme would not be outweighed by actual marketing benefits of selling products that list the U.S. as a source of the contents. Surveys conducted independently for AFFI in 1996 and again in 2003 found less than one percent of respondents cited country of origin as a factor influencing their purchasing decisions related to frozen produce. This result was virtually identical in the 1996 and 2003 surveys, despite the high level of publicity related to country of origin labeling proposals in the intervening years.

- Peculiarities of the new country of origin labeling scheme would make it possible for some companies to avoid the logistical quandary and costs associated with it by eliminating U.S.-sourced product from its blends, and/or relocating their blending operations to locations outside the U.S. Furthermore, considered simultaneously with other costs and burdens faced by U.S. businesses, these steps likely would be less costly than maintaining their current sourcing patterns and facility locations under the new requirements.

- In 2002, a highly significant 41 percent of total vegetable acreage in the United States was sold to the processed foods market.[1] Providing incentives for food processors to source from other countries could reduce demand for a significant portion of domestic vegetable producers' output.

This White Paper provides extensive supporting evidence for this strong case against the new country of origin marking scheme. It also responds to likely allegations that may be made by remaining proponents of the new marking scheme.

[1] United States Department of Agriculture.

Foreword

Leslie G. Sarasin, CAE
President and Chief Executive Officer
American Frozen Food Institute

> "When I'm working on a problem, I never think about beauty. I think only how to solve the problem. But when I have finished, if the solution is not beautiful, I know it is wrong."
> *- Richard Buckminster Fuller, scientist and philosopher*

The public policy process is not always pretty. Negotiation and compromise, particularly on issues that give rise to passions, can create a less-than-appetizing picture. Yet the hope is always that the finished product will be a positive and desirable step forward. The worst scenario is for the end result to be as questionable as the process that delivered it. Unfortunately, it appears this may be the case with the voluntary country of origin marking guidelines issued in October 2002 by the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), in response to language passed by the U.S. Congress as part of the most recent Farm Bill, the "Farm Security and Rural Investment Act of 2002."

In short, the law of unintended consequences may turn a perceived boon for U.S. agriculture into a bust. The new country of origin marking system was designed in theory to create a marketable advantage for U.S. products. However, in practice it may increase sourcing from outside the U.S. of some imported food products, and encourage relocation of some processing facilities to locations outside the U.S. Using specific details related to frozen produce and shrimp, this White Paper describes the realities that make this negative outcome likely.

Perhaps one of the reasons this unintended outcome will be hard for some to accept, or even to admit, is that the concept of a new country of origin marking scheme has become a rallying cry. The Tariff Act of 1930 established what is now a long-standing protocol for country of origin marking. Nonetheless, the past two decades have seen a host of proposed new approaches to marking on a variety of food and agricultural products. Some advocates have held up the banner of new marking schemes and demanded, "Are you with American agriculture or are you against American agriculture?" When issues rise to a symbolic level, details fade and turning back becomes difficult. Nonetheless, some of agriculture's most vocal advocates who helped lead the charge for new voluntary guidelines have begun to indicate that the potentially damaging end result, particularly with regard to some specific products, is far from what was intended.

American agriculture faces challenges. Our nation's policy priorities must include an ongoing effort to maximize opportunities for domestic food and agriculture businesses and employees. That being said, "do no harm" should be the first principle of any effort to do good things. It is important that Congress recognize that the unintended consequences of this country of origin marking scheme are far from beautiful. This is the wrong policy for American food and agriculture, and it needs to be fixed.

The Role of the American Frozen Food Institute

Based in McLean, Virginia, the American Frozen Food Institute (AFFI) is the national trade association that represents manufacturers and processors of frozen food products, as well as suppliers of goods and services to the industry. AFFI's membership of 520 companies is responsible for approximately 90 percent of the frozen food processed annually in the U.S., valued at some $70 billion. AFFI chairs the Food Industry Trade Coalition (FITC), a coalition of food processors, retailers and producers that seeks to expand overseas markets for U.S. products and opposes trade-distorting measures in the U.S.

This White Paper addresses the debate regarding the voluntary country of origin marking guidelines, and anticipated mandatory regulations, called for in the 2002 Farm Bill. Specifically, it focuses on the case studies of their impact on frozen produce and frozen shrimp.

This policy is a unique debate with unique concerns. However, AFFI has developed an expertise on the broader issue of the production, sale and marketing of country of origin marking. Though a country of origin marking system was established by the *Tariff Act of 1930* (19 U.S.C. 1304), a host of attempts to revisit the marking system have ensued. Particularly since then-Sen. James Exon (D-NE) introduced legislation related to origin marking in May 1987, flurries of debate on numerous proposals related to various food categories have occurred. AFFI has been integrally involved in the debate and consideration of various proposals that would modify, transcend, duplicate or contradict the longstanding country of origin marking protocol of the *Tariff Act of 1930*. AFFI's involvement in related issues has spanned the three branches of government and the federal and state levels of government. AFFI also has served as a credible resource for the media on related issues.

Leslie G. Sarasin, CAE, president and chief executive officer of AFFI, and other representatives of AFFI, have testified before congressional subcommittees on the issue of country of origin marking. AFFI's involvement also has included the filing of a successful lawsuit against the U.S. Customs Service in the Court of International Trade on a separate country of origin marking issue.

AFFI believes *voluntary* country, state or regional markings can be an effective marketing strategy for some companies and products and are consistent with the U.S.' obligations under the World Trade Organization (WTO). However, AFFI also believes that mandatory, and in some cases duplicative, country of origin marking requirements, as well as inappropriately constructed voluntary programs, only serve to confuse consumers and are inconsistent with our trade obligations, particularly if they result in each ingredient in a multi-ingredient product's having to be labeled with its country of origin.

Issue Status and Background on the Farm Bill's Country of Origin Labeling Provisions

On October 11, 2002, USDA issued voluntary country of origin labeling guidelines for meat (beef, pork and lamb), fish, shellfish, peanuts and produce, including frozen produce. USDA's action was in response to provisions contained in the 2002 Farm Bill, formally known as the *Farm Security and Rural Investment Act of 2002* (Public Law 107-171). This legislation, enacted May 13, 2002, added a new subtitle, "Subtitle D—Country of Origin Labeling," to the *Agricultural Marketing Act of 1946*. The statute directed USDA to issue voluntary country of origin marking guidelines by September 30, 2002, and mandatory country of origin labeling regulations by September 30, 2004, for the covered commodities.

The regulations to be issued in 2004 will require country of origin labeling for each of the covered commodities, which are defined in the statute as muscle cuts of beef (including veal), lamb and pork; ground beef, lamb and pork; fish and shellfish; and perishable agricultural commodities (defined according to the *Perishable Agricultural Commodities Act* [PACA], which includes fresh and frozen produce). Under the statute, country of origin labeling may be accomplished by labeling the package or the individual item, or by the displaying of signs at the retail point of sale.

USDA's implementation of the Farm Bill labeling provisions will directly regulate food retailers (except food service establishments, which are exempted by the statute) but will affect food producers as well. When fully implemented, the new law will require persons supplying covered commodities to retailers to provide the retailers with information "indicating the country of origin of the covered commodity." The statute also empowers USDA to issue regulations (to be effective after the two-year "voluntary" period) requiring producers and distributors of covered commodities for retail sale to "maintain a verifiable recordkeeping audit trail that will permit the Secretary [of Agriculture] to verify compliance with this subtitle" and regulations thereunder; the guidelines indicate that the recordkeeping period will be two years. Even absent such regulations, producers will be affected by the new law, as food retailers will demand that products supplied to them be accompanied by labeling in compliance with the new law, and if supplied in bulk, by the origin information necessary for compliance by the retail establishments.[2]

[2] Food Marketing Institute guidance to its membership, December 2002.

Effects of the Future USDA Regulations on Frozen Food Products

Frozen produce and frozen seafood of foreign origin already are required to be labeled for country of origin under Section 304 of the *Tariff Act of 1930* (hereafter, "Section 304"). However, these products also are covered commodities under the new country of origin marking scheme. Frozen produce and frozen seafood that are products of the United States, which are not now subject to mandatory country of origin labeling under Section 304, also would be affected. This would go well beyond the current opportunity for companies to promote their goods as a "Product of the USA" if they so desire and choose; it would mandate such marking. In effect, the regulation would mandate a marketing strategy that makers of qualifying products already are free to employ if they choose to do so.

In effect, the regulation would mandate a marketing strategy that makers of qualifying products already are free to employ.

The Current Labeling Requirement for Frozen Produce under Section 304

To comprehend the country of origin marking changes resulting from USDA's implementation of the marking provision of the Farm Bill, and to anticipate its substantial effects, it is necessary to understand the current longstanding requirements.

Under Section 304, as interpreted according to current U.S. Customs Service practice, fresh fruits and vegetables that undergo cutting, sorting, steam blanching and freezing, but not further processing such as cooking or combining with a sauce, are considered to retain the origin of the country in which they were grown for country of origin marking purposes.

For example, frozen green beans grown in Chile and frozen in California must be marked "Product of Chile." On the other hand, a frozen "meal solution" product that contains green beans grown in Chile would not be required to be marked for country of origin if the green beans were added to other ingredients such as sauce, meat and pasta in the U.S. In this process of making a finished good comprised of several ingredients, the green beans are considered to have been "substantially transformed." That is, the product as a whole is not considered to be "green beans," just as it is not considered to be "sauce" or "pasta"; it is a different product that is known as the sum of its parts. Under this interpretation, most types of frozen produce that are of "foreign origin" are required to display country of origin marking on the containers in which the product reaches the ultimate purchaser.

If a package of a single type of frozen fruit or vegetable resulted from the processing of the raw fruit or vegetable grown in different countries, the U.S. Customs Service requires generally that the package list all the foreign-source countries. For example, a package of broccoli with contents grown in Chile and Guatemala could comply with Section 304 with a label stating "Product of Chile and Guatemala."

If a foreign-source country is Canada or Mexico, the U.S. Customs Service allows additional flexibility through the optional use of an "inventory management method," under the North American Free Trade Agreement (NAFTA). Under this method, the producer could

combine broccoli from Canada and Mexico and use the first-in/first out method, the last-in/first out method, or an "average" inventory method to determine the country to list on the label as the country of origin. Regardless of inventory method, it is not necessary to list the United States as a country of origin for purposes of marking compliance under Section 304. Nor is it required that the countries be listed in the order of predominance. For example, if there is more broccoli from Canada than broccoli from Mexico in the package, it is not necessary for Canada to be listed before Mexico on the package.

Currently, frozen produce that was not grown in any foreign country need not be labeled as a product of the United States. Due to the longstanding practice of the marking of foreign-origin products under the Tariff Act provisions, consumers have become accustomed to presuming that a frozen produce product bearing no country of origin marking is a product of the United States.

Under Section 304, mixed fruit and vegetable products that have not been further processed beyond cutting, steam blanching, mixing, and freezing are considered to have the country or countries of origin of the countries in which the produce was grown. For example, a mixture of broccoli grown in Chile and cauliflower and carrots grown in the United States could be labeled "Product of Chile" (or, if preferred by the producer, "Product of Chile and the United States.") Marking of "Product of Chile" would still suffice if the sourcing of the ingredients changed, provided that Chile was the only foreign source country for any of the three ingredients. For such mixtures, it is not necessary under Section 304 to identify the country or countries of origin of individual fruit or vegetable ingredients, nor is it necessary to list the countries in the order of predominance.

General Effect of the USDA Guidelines on Frozen Produce, If Adopted as Regulations in 2004

The new guidelines, if promulgated as regulatory requirements with an effective date of September 30, 2004, would complicate substantially an already complicated country of origin labeling scheme for frozen produce, and in various ways. The changes are summarized below.

Frozen produce would be required to be labeled for country of origin even if entirely U.S.-grown. Thus, implementation of the changes in 2004 would require new labeling for all frozen produce of domestic origin. If the United States is one of multiple source countries for a commingled fungible good (a package of the same type of vegetable from various sources) or a mixed produce product (*i.e.*, a package of various types of vegetables), the country of origin label would be required to list the United States as a source country. Additionally, in either case, all source countries would be required to be listed in the order of their predominance by weight. This not only would require massive labeling changes upon implementation of the new regulation, but also would require numerous labeling changes throughout the regulation's existence in the event of sourcing changes in the composition of the product.

The new guidelines further depart from current country of origin marking practice under Section 304 by requiring country of origin labeling for produce ingredients in a mixed produce product that underwent blending or processing in the United States. That is, the country, or

countries, of origin would be required to be listed in a way that identifies the source countries, including the United States, on an ingredient-by-ingredient basis. If there are multiple source countries for an ingredient, the source countries would be required to be listed on the label, in the order of predominance by weight. Here also, changes in sourcing would require frequent changes in the retail labeling of the finished product.

Further complicating the origin labeling changes for U.S.-grown produce is USDA's interpretation of the Farm Bill's limitation of U.S.-origin designations to produce that is "exclusively produced in the United States." Produce grown in the United States and exported for processing to, for example, Canada, would be required under the USDA labeling scheme to identify the role of each country, *e.g.*, "Grown in the United States, Processed in Canada."

Examples of Different Labeling Requirements Depending on the Location of Blending Operations and the Origin of Source Material

There are substantial conflicts between Section 304 marking and the contemplated USDA country of origin labeling scheme.

There are substantial conflicts between Section 304 marking and the new country of origin labeling scheme. To address some of these conflicts, USDA officials have adopted an approach under which imported "covered commodities," whether imported as finished products or as ingredients in products to be processed in the United States, retain the country of origin that was determined for tariff purposes at the U.S. border at the time of importation. This approach, although apparently intended to help eliminate confusion, in many cases would produce anomalous and trade-distorting results.

For example, a commingled fungible frozen produce product consisting of broccoli grown in Mexico and broccoli grown in the United States would be subject to different labeling requirements depending on the location of the processing. If any processing occurred in the United States, the label would be required to identify both source countries in the order of predominance by weight; as well as the fact that processing occurred in the United States. If, as a result of seasonal variations or other commercial reasons, a package of the product contained more U.S.-grown broccoli than Mexican broccoli, the label would have to be revised to modify the order of the listing of the countries. Each such sourcing change would require a label change. The USDA contemplates "direct identification," *i.e.*, no inventory management method of the type permitted by Customs under the North American Free Trade Agreement (NAFTA) regulations, could be used to reduce the number of labeling changes.

In contrast, if all processing occurred in Mexico, USDA would regard the product as having retained the country of origin as determined for Customs purposes at the time of importation, *i.e.*, as determined for purposes of Section 304. The product described above, a commingled fungible good containing U.S.-grown and Mexican-grown broccoli combined in Mexico and exported to the United States, could be labeled "Product of Mexico" in all cases. Alternatively, the product could be labeled to list both countries of origin, at the option of the producer. The predominance of either source country by net weight, or fluctuations in the sourcing percentages, would have no effect on the country of origin label requirement.

The labeling scheme currently contemplated by USDA creates a major disincentive to housing blending operations in the United States. If the same operation were conducted in Mexico, the result would be exposure to significantly less onerous country of origin labeling requirements.

USDA officials have confirmed to AFFI their present intention that the new labeling requirements written in response to the Farm Bill would be triggered by blending or mixing in the United States, or by processing in the United States. According to these officials, the new labeling requirements would not be triggered by mere repackaging in the United States of imported bulk product. In the previous example, broccoli from the United States could be exported to Mexico (in fresh or frozen form, cut or uncut), and then further processed in Mexico to yield a commingled fungible frozen produce product, in bulk. It could then be packaged for retail sale in the United States and still retain the country of origin it had at the time of crossing the border into the United States. Such a product could be labeled according to the requirements of Section 304, that is, according to the current longstanding requirements. Because only repackaging, and not blending, combining or other processing, occurred in the United States, the product would not be subject to the more complicated country of origin labeling scheme that would be established by USDA under the new requirements. If information were available under a verifiable recordkeeping system to allow the more detailed origin labeling, the producer would have the option of labeling the product in this way, but that would be an option, not a requirement.

The disparity between the complex scheme of country of origin labeling required for the broccoli blended in the United States and the much more simplified labeling for the bulk or retail-packed imported broccoli reveals that the labeling scheme currently contemplated by USDA creates a major disincentive to housing blending operations in the United States. If the same operation were conducted in Mexico, the result would be exposure to significantly less onerous country of origin labeling requirements.

AFFI fears U.S. processors will have a disincentive to source product from U.S. growers if the same produce is available from outside the U.S. This is because, in many cases, including the United States as a source country and blending the product in the United States will place the finished product under a significantly more burdensome country of origin labeling scheme.

Similarly, a frozen produce product that entered the United States at some point during the production process would also be subject to the new requirements, under the current USDA interpretation, and must disclose the fact of the U.S. processing. Broccoli grown in Mexico and the United States that is processed in the United States (for example, by cutting or freezing) would require a label listing both countries of origin in the order of predominance by weight and also identifying that the product was processed in the United States.

Under the new country of origin labeling scheme, using a product-blending facility in the U.S. can subject a frozen produce package to a significantly more complex and costly marking requirement. This chart compares the required marking of a given product depending on where it is blended.

Blending Location	Required Label
United States	Produced from covered commodities with the following countries of origin: broccoli grown and packed in Mexico, processed in the United States; cauliflower grown and packed in Chile, processed in the United States; carrots grown and packed in Chile and processed in the United States; and carrots grown, packed and processed in the United States **(Label also would need to list contents in the order of predominance of the source countries).**
Mexico	Product of Mexico and Chile **Or, at the option of the producer:** Product of Mexico, Chile and the United States

In this example, the relocation of the processing to Mexico would greatly simplify the origin label to "Product of Mexico" or, if the producer so chose, a label identifying both countries of origin, in no particular order. Thus, in various ways, the USDA interpretation of the Farm Bill, if carried into final regulations, would place a disincentive on processing in the United States and on the use of U.S.-grown ingredients.

The country of origin labeling that would be required under the USDA interpretation for a mixed produce product with multiple countries of origin and processing could be highly complex. Under the guidelines, for example, a frozen mixed vegetable product that underwent some processing in the United States might be required to bear a label such as the following:

> Produced from covered commodities with the following countries of origin: broccoli grown and packed in Mexico, processed in the United States; cauliflower grown and packed in Chile, processed in the United States; carrots grown and packed in Chile and processed in the United States; and carrots grown, packed and processed in the United States

Furthermore, this label would be required to be altered according to the predominance of the source countries.

However, if the identical product were imported into the United States in finished form, whether or not repacked in the United States, the label could read simply "Product of Mexico and Chile" or, at the option of the producer, "Product of Mexico, Chile, and the United States," with the countries listed in no particular required order.

Businesses in the food industry consider the disparities between the country of origin marking schemes to be significant, and thus the potential negative consequences of the policy shift should not be dismissed as theoretical. The prospect of the new regulation has forced businesses to consider which actions would be prudent for their companies. A senior manager at a leading manufacturer of frozen vegetables told AFFI:

> "Make no mistake, our company would like nothing more than to maintain blending facilities in the U.S., and to continue to include domestic products in the sourcing strategy. However, 'like to' and 'can do' are different animals. A new marking regulation that includes the complexities of the current guideline would put relocation of facilities and/or more reliance on imported produce very much on the table. We hope the powers that be realize that we don't have to be in this situation, and resolve these very serious issues before a final regulation is issued."

Effects Of the Future USDA Regulations on Frozen Seafood Products

The Farm Bill provisions include detailed country of origin labeling requirements for seafood, which is defined in the statute to include both fish and shellfish. Whole fish and shellfish are covered, as well as "fillets, steaks, nuggets, and any other flesh" from a fish or shellfish. In addition to country of origin marking, the Farm Bill requires that labeling or signage inform the consumer whether the product is "wild" or "farm-raised."

The new guidelines include within their scope "all fresh and frozen fish and shellfish items" but exclude "cooked and canned fish products" and "restructured fish products, such as fish sticks and surimi." The guidelines further provide that "processed products where the fish or shellfish is an ingredient, such as sushi, crab salad, and clam chowder, are excluded."

Current Labeling Requirements for Frozen Seafood Products

Under current law, certain processing operations are considered to confer origin in the country in which they are performed. For example, processing that converts whole fish to fish fillets is considered to result in a "substantial transformation"; the result is that fish fillets, for purposes of Section 304, currently are considered to have the origin of the country in which they were processed from whole fish into fillets. For Section 304 purposes, whole fish and shellfish generally have the country of origin of the territorial waters in which they were caught. If caught or substantially transformed on the high seas, these products are considered to have the country of origin of the flag of the vessel on which they were caught or substantially transformed.

Seafood products that are considered to have domestic origin for purposes of Section 304 are not required to bear country of origin labeling. For example, fish that is filleted in the United States is excluded from the Section 304 labeling requirement, regardless of where the fish was caught or, in the case of farm-raised fish, raised. However, as discussed below, such a product

would be subject to country of origin labeling under the Farm Bill provisions as interpreted by USDA.

Complexity of Requirements for Frozen Seafood under the USDA Guidelines

The new guidelines would complicate significantly the country of origin labeling of seafood products, including frozen seafood products. Products considered to have domestic origin for Section 304 purposes would no longer be exempt from labeling. In another significant change from current law, the Farm Bill provides that a retailer may designate a seafood product as having United States origin only if the product is harvested (or, in the case of farm-raised fish, raised) and processed in the United States. Additionally, USDA would apply to commingled fungible and mixed seafood products the multiple origin designations prescribed for produce, as described above. As a further complication, the USDA guidelines, and the Farm Bill provision itself, require that the origin label identify whether the seafood product was wild or farm-raised.

The combined effect of the Farm Bill provisions and the USDA interpretations would result in labeling of frozen seafood products that could impose substantial burdens on processors. For example, a U.S. processor might combine in one package shrimp that is farm-raised and shrimp from a different country that is farm-raised or harvested from the wild. The package label would be required to identify the different countries of origin in the order of predominance and also identify, as to each country, whether the shrimp was farm-raised or wild. Changes in sourcing that affect the order of predominance, or the designation of "wild" or "farm-raised," would necessitate labeling changes.

As is the case with frozen produce, the required labeling for the finished, retail-ready product would vary depending on the location of the processing. Under the new approach, seafood of multiple countries of origin that was commingled prior to importation into the United States would retain its origin as determined for tariff purposes; however, the obligation to identify the product as farm-raised or wild nevertheless would apply.

An example illustrates the complicating effect of siting seafood processing facilities in the United States. If, for example, frozen shrimp is imported into the United States in bulk or in retail packages, with no processing or addition of ingredients in the United States, USDA would consider the product to have retained the country of origin that it had for tariff purposes at the time it crossed the border into the United States. If the shrimp had been raised or harvested in only one country, that country would be listed on the label as the country of origin. If the shrimp had been raised or harvested in multiple countries, these countries would be listed on the label, in no particular order. In both cases, the country of origin label under the USDA interpretation would be unchanged from that now required under Section 304, with one exception: the label would have to identify whether the product had been wild or farm-raised.

However, in the example of the frozen shrimp, the location in the United States of any blending or processing operation would render the country of origin labeling process considerably more complicated. Source countries, in that event, would be required under the new guidelines to be listed in the order of predominance by weight and also list, as to each,

whether the covered commodity was farm-raised or wild. As an example, a label for a frozen shrimp product processed and blended in the United States might read as follows:

> Produced from covered commodities with the following countries of origin: farm-raised shrimp from Thailand, processed in the United States; wild shrimp from Thailand, processed in the United States; and wild shrimp from Japan, processed in the United States

As is the case in examples related to frozen produce cited previously in this white paper, this label for frozen seafood would be required to be altered according to the predominance of the source countries.

Had the processing occurred entirely outside the U.S., the product label could bear an origin reference such as "Product of Thailand and Japan," with the countries listed in no particular order. The designation of "farm-raised" or "wild," however, still would be required to appear on the label. In the end, the new marking scheme would appear to place a disincentive on processing in the United States.

Consumer Opinion and Reason for Concern about the Effects of New Regulations

The outlook is grim for the unintended consequences of the country of origin marking guidelines, and eventual regulations. As has been described in this white paper, a policy intended to enhance the position of domestic producers may actually have the reverse effect. The policy, in some scenarios, creates a disincentive to source domestic products, as well as a disincentive to house processing facilities within the United States. In light of this, a logical question arises: would the policy simultaneously create any incentive to source domestic products and to maintain or build domestic processing facilities?

Some might argue that a sufficient incentive would counteract, or perhaps outweigh, the disincentives. Some might argue that consumers' interest in buying food products "Made in the U.S.A." would provide such an incentive; however, indicators do not provide hope that this is the case. Perhaps the most clearly stated obstacle to this position is that if manufacturers believed a simple "Made in the U.S.A." marking were necessary to compete, or would provide a marketing advantage, more manufacturers currently would provide a product that could be so labeled and market it accordingly. Current law – even prior to USDA's issuance of voluntary guidelines in 2002 – allows for voluntary use of "Made in the U.S.A." labeling, assuming it qualifies for such designation.

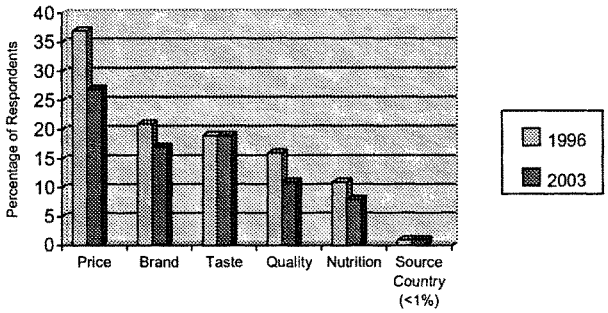
Use of "Made in the U.S.A." labeling as a marketing strategy may not even be possible in some instances. Some commodities are not available in the United States on a consistent basis throughout the entire year; others are not available in the United States at all. These facts prohibit reliance on a "Made in the U.S.A." marketing strategy for most companies. However, as has been stated, those companies for whom such a strategy is possible are free to pursue it under current law.

Amid an onslaught of publicity, less than one percent of respondents consider country of origin as important to their purchasing decisions when it comes to frozen produce.

Consumer opinion provides further evidence that even if a "Made in the U.S.A." marketing strategy were possible for more companies, it would be unlikely to meet with sufficient success. Opinion Research Corporation conducted an independent nationwide survey for AFFI in January 2003 regarding factors that affect purchasing decisions related to frozen fruits and frozen vegetables. Less than one percent of respondents stated a response related to "country where a product is from" as a main factor. Significantly, this is the same result revealed by an identical survey fielded by the same company for AFFI in 1996. Between 1996 and 2003, there has been ongoing public debate about country of origin marking proposals offered by members of Congress and federal agencies. Advocates of changes in country of origin marking requirements have waged aggressive campaigns in the media. Still, amid an onslaught of publicity, less than one percent of respondents consider country of origin as important to their purchasing decisions when it comes to frozen produce.

The top five motivators stated by survey respondents were the same in 2003 as in 1996; however their rank order changed slightly. Price, taste, brand, quality and nutritional value were the top five motivators in 2003, in that order. In 1996, brand ranked ahead of taste.

Factors Influencing Frozen Produce Purchases



The independent survey conducted for AFFI in January 2003 also revealed concern among consumers about the effects of new country of origin marking regulations. The potential for loss of jobs due to the incentive for companies to house processing facilities outside the United States was of most concern to respondents. Only six percent of respondents indicated that the potential consequences were not of concern to them. This indicates that consumers believe there is a possibility of negative consequences if additional labeling requirements are put into place, and that they are not quick to dismiss arguments to this effect. The results of the survey are consistent with steadily building anecdotal evidence that the new requirements in practice are not as attractive as some once considered them to be in theory.

Question: The government has proposed additional labeling requirements for frozen fruits and vegetables. Which of the following possible consequences of these regulations is MOST troubling to you?

33%	Increased prices for frozen fruits and vegetables due to higher production costs
42%	Loss of jobs due to processors or manufacturers relocating outside of the United States
16%	Increased incentive to source fruits and vegetables for freezing outside of the United States
6%	None of these/Not concerned
3%	Don't know

A Word About Surveys by Proponents of New Regulations

Proponents of new country of origin marking regulations will point to surveys commissioned by them that they maintain indicate strong consumer support for such regulations. However, it is important to note differences in survey methodology that may inflate the perceived value placed by consumers on country of origin labeling in those survey results.

To determine top-of-mind factors that affect purchasing decisions, the question posed by AFFI regarding these factors did not list potential answers. It was up to respondents to name factors important to them, unaided by those conducting the survey. By contrast, surveys by other organizations may list "country of origin" as a potential answer. Still other surveys may focus solely on whether consumers would desire new regulations related to country of origin marking. In surveys in which country of origin is made a focus of the questioning, it is likely for responses to be skewed in a manner that overstates consumers' preferences for additional regulations.

Consumers believe there is a possibility of negative consequences if additional labeling requirements are put into place, and they are not quick to dismiss arguments to this effect.

A report by the Congressional Research Service (CRS) described factors that influence respondents' answers in surveys related to the country of origin of food products. Interesting findings reported by CRS, and sources cited by CRS, include the following:

- "Stated preference methods amount to polling consumers about the importance they attach to different product characteristics or about their willingness to pay for hypothetical products. The major problem with these methods is verification. It is impossible to know whether consumer responses to a survey match their marketplace behavior."[3]

- "When consumers are polled about country of origin and nothing else (often denoted as a single cue study), they overstate the importance of country of origin. Asking consumers to rank multiple characteristics reduces the overstatement. Chao notes that many single cue studies indicate country of origin to be important to consumers, while some multiple cue studies indicate that country of origin does not affect consumer perceptions."[4]

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[3] Geoffrey S. Becker, Congressional Research Services, "97-508: Country-of-Origin Labeling for Foods: Current Law and Proposed Changes," March 27, 2001.

[4] Geoffrey S. Becker, Congressional Research Services, "97-508: Country-of-Origin Labeling for Foods: Current Law and Proposed Changes," March 27, 2001, citing Rhonda Skaggs, Contance Falk, Jaime Almonte, Manuel Cardenas, "Product-Country Images and International Food Marketing: Relationships and Research Needs," *Agribusiness* 12(1996): 593-600, and Paul Chao, "Partitioning Country of Origin Effects: Consumer Evaluations of a Hybrid Product," *Journal of International Business Studies*, (1993): 291-306.

These findings may put into perspective findings that otherwise would seem to indicate strong consumer support for new regulations. An example is a survey conducted for the Desert Grape Growers League in 1996, as cited in testimony by the General Accounting Office (GAO) before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry. This survey found that approximately half of respondents would be willing to pay "a little more to get U.S. produce." The GAO testimony noted, "However, the survey did not specify the additional amount that consumers would be willing to pay."[5]

The GAO testimony also cited a survey conducted by the fresh produce industry, in which between 74 and 83 percent of respondents favored mandatory country of origin labeling for fresh produce,[6] although respondents rated other product information as more important to them. In this survey cited by GAO, consumers ranked information on country of origin fifth out of six factors, when the six factors were explicitly provided as options from which respondents could choose.[7]

The insights into survey responses described in the CRS report support the conclusion that consumers may not be as willing to pay more for domestic produce, nor nearly as supportive of new country of origin marking regulations, as surveys by proponents of new regulations would have one believe.

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[5] Robert E. Robertson, United States General Accounting Office, "Fresh Produce: Potential Implications of Country-of-Origin Labeling," testimony before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry, May 26, 1999, GAO/T-RCED-99-200

[6] An additional factor must be considered in viewing consumer responses concerning country of origin labeling of fresh produce: unlike frozen produce, fresh produce of foreign origin is exempt from country of origin marking under Section 304, when offered to the ultimate purchaser in bulk.

[7] Robert E. Robertson, United States General Accounting Office, "Fresh Produce: Potential Implications of Country-of-Origin Labeling," testimony before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry, May 26, 1999, GAO/T-RCED-99-200, citing a survey for *The Packer* newspaper in 1996.

Addressing the Critics

The issue of new country of origin regulations has become a hot-button topic among policy-makers, and proponents of changes to existing policy are not likely to reverse completely their stated positions. Among the likely criticisms of this White Paper may be allegations that the costs and consequences of the new USDA requirements will not be as dire as described, and that the cases outlined here are cases of the food industry's "crying wolf." Some may argue that the costs and consequences would not rise to the level of discouraging the sourcing of domestic products and discouraging the housing of certain processing facilities within the United States.

AFFI respectfully disagrees with those who would make these allegations. AFFI also notes what it considers to be the most serious flaw in such claims: they consider in a vacuum the costs of new labeling regulations. In fact, to a business that is evaluating sourcing options and conducting facility planning, the costs and consequences of new regulations likely will not be considered in isolation, but rather as an additional disincentive compounding burdens that already exist. Beyond costs, companies may determine that it is not feasible to comply consistently and reliably with the new marking scheme. Therefore, it is not AFFI's argument that provisions of the new USDA regulations comprise a "silver bullet" that will drive jobs out of the United States; rather, they may be the "straw that breaks the camel's back."

In a 2001 report, the California Farm Bureau Federation wrote, "It is the sum total of problems that is really hurting California agriculture – the strong U.S. dollar, foreign agricultural subsidies and dumping actions, skyrocketing energy costs and the ever-increasing burden of regulatory costs. Together these factors have had a devastating impact on our state's farm producers."[8]

To a business that is evaluating sourcing options and conducting facility planning, the costs of new regulations will not be considered in isolation, but as an additional disincentive compounding burdens that already exist ... Beyond costs, companies may determine it is not feasible to comply with the new marking scheme.

Similarly, the challenges facing frozen food manufacturers are broad, far-reaching and increasing. Human resources costs, regulatory compliance costs, taxes and other factors are evaluated not on an individual basis, but collectively as costs of doing business. Because of time constraints and the complexities of the new USDA guidelines, AFFI is not able to quantify, at this time, the total burden on the U.S. frozen food industry. However, one AFFI member, a U.S. processor of frozen produce, has estimated that the guidelines, if adopted as binding regulations, would require it to incur approximately $1.175 million in capital costs for new ink-jet printing systems for its frozen produce containers. This estimate does not include other compliance costs, expected to be significant, such as costs for

[8] California Farm Bureau Federation, "Crisis on the Farm," April 2001, http://www.cfbf.com/pdf/fcrisis_report.pdf

segregation of product and record-keeping costs.[9] These costs will be considered on top of existing costs, and the companies previously "on the fence" regarding their sourcing and manufacturing options may determine changes are necessary. Specifically, contemplated changes will include increased sourcing of imported produce and seafood products, as well as relocation of some processing facilities, particularly those related to product blending. As has been established in this White Paper, such actions would place some products under a simpler and less costly country of origin labeling scheme.

AFFI believes proponents of country of origin marking regulations do not believe new regulations alone would cure all of American agriculture's ills, a belief supported by the breadth of challenges and recommendations cited by organizations like the California Farm Bureau. To rule out the other extreme as well, new country of origin marking regulations alone would not be the complete demise of domestic sourcing and manufacturing. In the middle of the debate, however, is the definitive question: "would the new regulations do more to assist American agriculture in addressing its myriad challenges, or to create sufficient disincentives to maintaining domestic product sourcing and domestic manufacturing facilities?" AFFI maintains that the lack of country of origin marking's significant impact on purchasing decisions and the true burdens and costs of the regulations make the latter – disincentives to domestic sourcing and manufacturing – the more likely outcome.

Would the new regulations do more to assist American agriculture in addressing its myriad challenges, or to create sufficient disincentives to maintaining domestic product sourcing and manufacturing facilities? AFFI maintains the latter is the more likely outcome.

Furthermore, AFFI is not alone in this assertion. There are several prominent individuals who were supportive of the country of origin provisions in the Farm Bill who are expressing concerns with the implementation language offered by USDA in the form of the voluntary guidelines, and potentially the final regulation. For them, the resulting complexity, costs and consequences truly were unintended when the country of origin labeling section of the Farm Bill was considered. Fortunately, an opportunity remains for Congress to fix the problem and prevent these dire consequences. Such action must to be taken.

[9] AFFI, January 21, 2003, comments submitted to Mr. Barry L. Carpenter, Deputy Administrator, Country of Origin Labeling Program, Agricultural Marketing Service, U.S. Department of Agriculture.

Conclusion: AFFI Urges Congressional Action

AFFI urges Congress to hold hearings to identify actions necessary to mitigate the negative consequences identified in this White Paper, as well as other consequences identified by members of the Food Industry Trade Coalition. It is AFFI's view that the severity and validity of the feared consequences necessitate remedial actions, potentially including repeal of the new country-of-origin marking scheme; promotion of an enhanced voluntary marking program rather than issuance of a new regulation in 2004, with the understanding that the voluntary program that resulted from the Farm Bill is not suitable; or, at the very least, elimination of the duplicative marking requirements on frozen-food products.

STATEMENT OF KURT BUCKMAN

Mr. Chairman, Ranking Member Ross and members of the subcommittee. I want to thank you for providing an opportunity to comment upon this matter.

I am Kurt Buckman, director of Quality Systems Management for Birds Eye Foods, which has major facilities in California, Georgia, Minnesota, New York, Ohio, Pennsylvania, Texas, and Washington and Wisconsin State. I am here representing the National Food Processors Association, of which Birds Eye Foods is a member. NFPA is the voice of the U.S. food processing industry on scientific and public policy issues involving food safety, food security, nutrition, technical and regulatory matters and consumer affairs, and its members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers.

I am here to address specific concerns that the food processing industry has with USDA's country of origin labeling requirements and Public Law 170–171. Under the farm bill, the approach USDA has taken to country of origin labeling would be unnecessarily burdensome and operationally impractical for both processors and retailers. The Guidelines would over-regulate by prescribing country of origin labeling rules for products already required to display such labeling, creating the prospect of duplicative, confusing, and even conflicting requirements.

NFPA urges Congress to reexamine of these onerous and ultimately counter productive mandates and restructure the law enabling compliance with the intent without the unintended consequences. Under the farm bill, the approach USDA has taken in its recently proposed Guidelines, if issued, as binding regulations, would be administratively unsound and, NFPA believes, legally impermissible. The Guidelines would over-regulate by prescribing country of origin labeling rules for products already required to display such labeling, creating the prospect of duplicative, confusing, and even conflicting regulations.

I wish to briefly highlight several specific concerns:My comments today outline our concerns and some of the issues that must be considered in addressing the country of origin labeling requirements of the current voluntary program issued by USDA that will soon be mandatory.

The food industry has an ongoing requirement for country of origin labeling that predates the farm bill. Products of foreign origin , as determined under the US tariff laws, already are subject to country of origin labeling under a comprehensive set of regulations administered by the Customs Bureau. These regulations, codified at 19 C.F.R. part 134, interpret and administer the country of origin labeling requirement established by section 304 of the Tariff Act of 1930.

For example, Customs' regulations expressly require that packages of foreign-origin frozen produce be labeled so that the country of origin will be known by the ultimate purchaser of the product.

The statute includes items that are already covered under existing laws. These include frozen products, fruits and vegetables and processed peanuts. Frozen produce is a processed product because it requires precise cutting and blending of raw vegetables, steam blanching, and freezing by a technically sophisticated process. Peanuts in mixed nut products and other mixed snack food products also have undergone processing. USDA's guidance, given the statutory definitions used to identify covered commodities, conflicts with the explicit exclusion for processed food ingredients in the farm bill. I attribute this to wording in Public Law 107–171 direct that covered commodities include perishable agricultural commodities, defined by USDA to include processed foods like frozen foods and peanuts.

Bagged salads are also subject to the USDA country of origin labeling requirements. However, bagged salads are composed of processed ingredients, are subject to existing country of origin labeling requirements, and should not be subject to additional labeling mandates.

FRESH AND FROZEN FRUITS AND VEGETABLES.

The statute reference to Perishable Agricultural Commodity is too broad and includes frozen packaged fruits and vegetables, which are covered by Bureau of Customs and Border Protection country of origin marking. Section 304 (Customs) and the implementing regulations expressly require that packages of foreign-origin frozen produce be labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. We believe it is important to delete the definition's reference to frozen fruits and vegetables in order to be consistent with current law or for

USDA regulations for this product to be identical with existing Customs requirements.

PERISHABLE AGRICULTURAL COMMODITY

The definition of "Perishable Agricultural Commodity" should be interpreted to read as follows:

"Perishable Agricultural Commodity" means fresh fruits and vegetables of every kind and character where the original character has not been changed (for example fresh green beans would be covered, frozen or canned green beans would not; fresh oranges would be included, frozen concentrated orange juice would not).

Although the farm bill does not require records and verification at the farm level, it does contain a stiff penalty provision and burdensome 2-year records provision at the retail level for non-compliance. It makes no sense to assign retailers full legal accountability for notice of country of origin marking for processed foods. Consequently a costly and burdensome chain of records showing origin must be created at every retail location. Several retailers, having with between 50 and 100 stores, have told me of a $5 million initial cost. The retailer, quite logically, will seek verification from the suppliers concerning whether the commodity is covered by the statute and, if so, that the supplier has adequate records to verify the country of origin information supplied to the retailer. (many are requesting third party verification be provided). The supplier, in turn, will expect to receive assurance from their supplier through the distribution chain to the ultimate provider (grower or importer) of the product.and $2 to $3 million expected annual operating cost increases thereafter.

Conflict NFPA recognizes that the Bureau of Customs and Border Protection has jurisdiction over the country of origin marking requirements for imported products at port of entry as well as the labeling of packaged products offered for sale in the United States and containing imported ingredients including those repackaged in the U.S. The labeling requirements established by the farm bill raise problems for food processors in determining what labeling requirements apply to specific products.Congress should recognize Bureau of Customs and Border Protection jurisdiction and permit Customs rulings on such marking to continue in place or adopt regulations identical to those provided for by such Customs rulings. For packaged food products, this Customs' requirement is that means the package bears a statement Product of Country X with X representing the country in which the product was prepared and packaged in its final form. This statement would not satisfy the farm bill provision because the country in which processing occurred would also need to be stated, if different from the country of origin.

Another area of confusion between the USDA and Customs programs concerns what is meant by substantial transformation. It will be difficult to determine what the resulting required label statement would be. With regard to those parts of the proposed regulations that turn upon the conclusion that a product has been substantially transformed, we believe that the final rules should be made consistent with the long-standing interpretation of substantial transformation of product as determined by the Bureau of Customs and Border Protection. Under the new USDA rule With respect to the label statement in this section Grown and packed in Country X and Processed in the United States, applies however that would be required under the USDA program as we believe the current labeling permitted by Customs Product of Country X applies is sufficient to inform the consumer of the origin of the product. Under Customs requirements or not at all if substantially transformed We agree that an additional voluntary declaration Processed in the United States may be provided for fruits and vegetables, and request that it be made voluntary for seafood. .

The labeling requirements under the farm bill are extremely complicated and technologically difficult to achieve. an d will Order of predominance rules for country of origin marking cannot be operationalized. This will cause frequent and costly label changes or extraordinary spending on sophisticated marking equipment, if such equipment exists, providing with minimal benefit to consumers. For commingled fungible goods, USDA's voluntary guidelines require that the example, countries will be required to be listed in the order of their predominance of the ingredient by weight in a mixed product, even though no such requirement appears in Subtitle D. Blending technology in frozen processed foods is volumetric and percentages of components do vary among bags creating an untenable percentage marking scenario. Changes in the amount of a commodity from a given country could require a reordering of the list and a new label, even though there is no change in the originating countries. The requirement to disclose this level of detail in country of origin

information, which is of dubious value to the consumer, will greatly complicate the record-keeping and other compliance-related burdens on the U.S. food industry and require frequent, and costly, labeling changes. Any reference to listing of countries in order of predominance should be removed from the final document.

Example of how this could affect birdseye and the cost of making a label change: We disagree with the proposed requirement that the source of each individual item be identified and that the sources be identified in order of predominance by weight. The proposed interpretation could require a statement for mixed frozen peas and carrots each from country X and Y where X= Mexico and Y = Guatemala.

Peas from Mexico, Carrots From Guatemala, Carrots from Mexico, and Peas From Guatemala, Processed in the United States.

The requirement will create an unreasonably complex and likely unworkable labeling and recordkeeping nightmare for each product code lot while diverting resources from important food safety and security issues. Minor variations in the quantity of each item for individual code lots can require a new label. We believe an appropriate label statement Product of Mexico and Guatemala or Product of Guatemala and Mexico with no requirement for addressing the individual components or the order of predominance of individual ingredients will provide the purchaser with adequate information concerning the origin of the product and meet the intent of the law and the requirements of the current Bureau of Customs and Border Protection regulations for imported product under the Tariff Act of 1930 which apply to this product

The food industry is currently faced with complying with the farm bill country of origin labeling requirements on September 30, 2004. As of today, we have neither final guidance nor regulations. Retailers are unprepared to meet mandatory 2 year records requirements at retail stores and this is further hindered by absence of standardized records systems to meet this new and as of yet undefined requirement.

We can expect that products covered by the country of origin requirements will are entering commerce now, before products entering the channels of trade before mandatory requirements become effective. Covered foods and offered for retail on the grocery store shelves come September 30 will not all have been packaged that were not under industry programs to satisfy the USDA country of origin labeling requirements. We face financial risk due to non-compliance, business disruption, and costly enforcement penalties. Without consideration being given to products entering the channels of trade before mandatory requirements become effective, we are faced with the threat of non-compliance, business disruption, and costly enforcement penalties.

The statute does not make clear to USDA that it should not impose that labeling or recordkeeping requirements will be necessary on products packaged before the date the mandatory rules become effective. We believe it was Congress' intent to require the agency to have a final rule in place by September 30, 2004 and to provide for a reasonable compliance phase in period. However, USDA has indicated it interprets the statute as written to mean all products must be in compliance by that date. To require labeling to be in place at the store level for such products will have the effect of making the statute mandatory on the day it was enacted.

Finally, NFPA believes it reasonable and practical to provide that packaged covered commodities in the channels of commerce prior to the promulgation of any final rule be permitted to continue in commerce. Product that has entered the food chain (e.g., packaged frozen peas) and which otherwise complies with existing regulations (including existing country of origin marking requirements for packaged goods), but that may be at variance with any final rule issued by USDA, should be permitted to continue to proceed through the food chain to retail sale without the need to relabel or repackage the product. Congress has the responsibility to direct that USDA recognize that the Bureau of Customs and Border Protection subject to country of origin marking requirements establish imported packaged produce.

No recognition is given to State or regional programs that identify the origins of foods. We believe our position that State and regional labeling programs are designed or could be designed to provide proper documentation that the fresh fruit or foods included in the program does, in fact, originate in that State or region of the United States. and For example, the labeling of the product at retail Washington State Apples clearly communicates to the consumer that it refers to a geographic region in the United States. We request that Congress direct USDA to work with State and regional groups so that such programs can be recognized as compliant.

In conclusion, the current statute requirements as contained in the by the farm bill and USDA's guidance are seriously flawed. Another look at Public Law 170–171 is in needed to exempt all processed foods and the USDA's current voluntary country of origin program should not become mandatory without significant and substantial change.

Thank you for the opportunity to testify on this important issue, and I would be pleased to answer any questions you have.

ANSWERS TO SUBMITTED QUESTIONS

1. In several of your testimonies the definition of processed food was discussed. Has your industry looked at any possibilities that would change the definition of processed food in order to be more efficient and workable in your industry, but that doesn't include ground meat into the exemption of the law?

The issue is retaining the requirement for ground beef while exempting other packaged products. The Bureau of Customs and Border Protection (CBP) requires country of origin marking on all packaged produce including raw agricultural commodities. The only exemption was for unpackaged produce at retail.

The Federal Food Drug and Cosmetic Act Section 201 contains the following definitions:

(r) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(gg) The term "processed food" means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, or milling.

We suggest:

"Processed Food" means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, or milling that is presented in packaged form including cut and packaged fresh produce.

2. In the testimony provided today there was a concern raised about the current legislation that would require ingredients to be identified according to weight, how would alphabetical be better if they are still required to be listed?

The Bureau of Customs and Border Protection (CBP) permits the declaration of multiple countries of origin to appear in any order. Requiring they appear in alphabetical order without reference to the individual ingredients for multi-ingredient products would be no more difficult than the current CBP requirement. In addition, some provision should be made for product packaged before the effective date as well as allowing existing label stocks to be utilized as long as all foreign countries with a food/ingredient present in the product were listed on the package.

Alphabetical listing of countries would be better than listing according to weight for three principal reasons. First, as already mentioned it is similar to that required by CBP and thus would not mandate additional packaging. Second, if the rationale for the COOL requirement is to provide consumers with information on the origin of the ingredients used in their food products, then listing the countries in alphabetical order (Including the USA, see last paragraph) will accomplish this. Third, if there should ever be changes in production cycles due to weather conditions or product formulations (i.e. recipes), whereby the weight of an identical ingredient from Countries A, B, and C in the final product changed, the label for that final product could continue to be used, and a revised label based on weight of ingredient would not be necessary. This is positive from a variety of resource standpoints (cost and solid waste savings to name a few).

As alluded to in the above paragraph, because the law will require the declaration of any United States origin component there is a need to permit the use of existing label stock that do not bear the USA designation for some phase-in period. Preparation of new labels with countries in alphabetical order should be no more difficult than the current requirement—in some instances an additional country will need to be listed (i.e., USA).

3. In several of your testimonies the definition of processed food was discussed. Has your industry looked at a possibilities that would change the definition of processed food in order to be more efficient and workable in your industry, but that doesn't include ground meat into the exemption of the law?

Response: It was stated by my testimony frozen foods are processed by technologically sophisticated processes to covert raw perishable produce to a stable, preserved form. In the case of perishable vegetables we do this by a number of steps that include washing, cleaning, inspecting, blanching with heat, cooling and freez-

ing. It would be helpful if the farm bill were modified to replace the term perishable agricultural commodity with raw produce. In doing so the scope of the farm bill country of origin marking would be narrowly to assure that mixed processed products are outside the scope of subtitle D, section 281(2)(B) of the statute. It would delete any requirement to declare the country in which processing occurred. It would exclude from scope all frozen produce, frozen seafood, processed peanuts, muscle or ground cuts of beef, lamb and pork.

4. In the testimony provided today there was a concern raised about the current legislation that would require ingredients to be identified according to weight, how would alphabetical be better if they are still required to be listed?

Identification of country of origin by alphabetical order may be an overly complex remedy. Consumers interested in country of origin marking would be provided sufficient information if the package declared the countries of origin in any order. In short, one might ask; if a consumer wishes to purchase based on product country of origin marking what difference does the order of country declaration make? Alphabetical ordering provides no increased meaning than a random order list for blended foods. While alphabetizing simplifies the decision process as to how to set the order, it adds another meaningless point of regulation where marketers will need to verify compliance. The committee is advised to keep it simple. It is sufficient to declare the countries in random order.

5. According to testimony delivered by General Counsel, U.S. Department of Agriculture, Nancy Bryson on June 26, 2003: "I would like to point out because of the way the statute is written, the requirement on retailers to do country of origin labeling on September 30, 2004, is not really affected by the suspension of appropriations. We are not going to be writing our regulations. But if you look at the statute, our requirement to write regulations is separate and apart from the requirement that the retailers provide the information on September 30, 2004." Since the retailers are going to be held liable to a law that may not be funded what avenues are being perused to change the existing legislation?

Elimination of funding does not resolve the legal requirement established by the farm bill for country of origin marking. And clearly, this legislation has evoked strong response from many industry participants. USDA listening sessions, direct appeals made to congressional delegations and testimony before this committee have echoed all positions; pro - mandatory, con - mandatory and pro - voluntary country of origin marking. In addition there are numerous initiatives before the industry that may better consume market resources such as national food security, food allergen labeling and other food safety and public health initiatives. Prior existing country of origin rules under the 1930 Tariff Act had already established a meaningful country of origin marking requirement. It would be best for our industry if congress passed an authorizing law exempting segments of the food industry that have voiced strong opposition to inclusion under the law, namely frozen fruits and vegetables, meats and meat products and peanuts. Alternatively, the raw produce could be brought under country of origin requirements at retail sale, in greater alignment with the intent of prior legislative initiatives on Country of Origin Labeling in the past.

Thank you for this opportunity to offer additional comments to the committee. One additional comment is offered with respect to consumer research on country of origin marking is offered. According to longitudinal surveys conducted by the American Frozen Food Institute in 1996 and 2003.

Please note: "A consumer survey conducted independently for AFFI in January 2003 found respondents were concerned about the potential consequences of the new regulations; with 42 percent selecting as their top concern the potential loss of jobs due to processors or manufacturers' relocating outside of the United States. Only six percent indicated they we not concerned about stated potential consequences—including increased prices for frozen fruits and vegetables due to higher production costs, loss of jobs, and increased incentive to source fruits and vegetables for freezing from outside the United States. The results of the survey are consistent with steadily building anecdotal evidence that the new requirements in practice are not as attractive as some once considered them to be in theory."[1]

[1] Bill of Unintended Consequences: How a New Country of Origin Marking Regulation Would Harm American Food and Agriculture, American Frozen Food Institute, February 25, 2003

"Opinion Research Corporation conducted an independent nationwide survey for AFFI in January 2003 regarding factors that affect purchasing decisions related to frozen fruits and frozen vegetables. Less than one percent of respondents stated a response related to 'country where a product is from' as a main factor. Significantly, this is the same result revealed by an identical survey fielded by the same company for AFFI in 1996. Between 1996 and 2003, there has been ongoing public debate about country of origin marking proposals offered by members of Congress and federal agencies. Advocates of changes in country of origin marking requirements have waged aggressive campaigns in the media. Still, amid an onslaught of publicity, less than one percent of respondents consider county of origin as important to their purchasing decisions when it comes to frozen produce.

Additional consumer research is also published providing insight into concerns held by the majority of consumers about the unintended consequences of farm bill country of origin marking requirements.

5. The Government has proposed additional labeling requirements for frozen fruits and vegetables. Which of the following possible consequences of these regulations is MOST troubling to you?

33 percent Increased prices for frozen fruits and vegetables due to higher production costs

42 percent Loss of jobs due to processors or manufacturers relocating outside of the United States

16 percent Increased incentive to source fruits and vegetables for freezing outside of the United States

6 percent None of these/Not concerned

3 percent Don't know

A copy of this white paper is included for your consideration.

The position of Birds Eye Foods is that the requirements set forth by the farm bill and detailed by the USDA in the proposed country of origin marking rules unnecessarily replace the requirements of the 1930 Tariff Act. I ask, on behalf of my company, my industry and our retailer stakeholders, that frozen processed products be exempt and left under the 1930 Tariff Act requirements for country of origin marking requirements.

STATEMENT OF BOYD GEORGE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to supplement the record on the hearing for mandatory country of origin labeling for horticulture and livestock. My name is Boyd L. George, chairman and CEO of Alex Lee, Inc. Our company began in North Carolina in 1931 with seven employees and today we have more than 9600 employees. We are a privately owned holding company for three southeastern food retailing and distribution companies. These companies are Merchants Distributors, Inc., a wholesale food distributor; Lowe's Food Stores, Inc., a retail supermarket chain and Institution Food House, a foodservice distributor. Merchants Distributors, Inc. supplies over 650 grocery stores in 8 states. Lowe's Food Stores, Inc. currently operates 108 supermarkets in North Carolina and Virginia. Institution Food House serves 5200 restaurants, hospitals, schools, and nursing homes in North Carolina, South Carolina, Virginia, and Georgia.

The mandatory country of origin labeling that has been passed into law has some fundamental flaws. The preliminary regulations that USDA is set to issue will not solve the problems identified by country of origin labeling legislation. The law itself needs to be eliminated or significantly revised.

Country of origin labeling places the burden for labeling on retailers, the final link in the supply chain. Specifically, the country of origin legislation requires retailers to keep detailed records by item and store for every covered commodity received in the store for two years. The legislation provides that for any error in labeling or record keeping the retailer can be fined an amount up to $10,000. Retailers and wholesalers are simply not in a position to accurately determine country of origin. They basically have no way to trace, audit, or track down the origin and processing of the items that are covered by this law. For labeling to be accurate and effective, it must occur at the grower or rancher level. Clearly, this makes the most sense, because suppliers are the ones who know the origin of these products and how they are processed.

Despite the fact that there is little evidence that consumers are interested in knowing this information, country of origin labeling is still being imposed. Alex Lee

has never received a letter or request asking us to supply country of origin information. There is no evidence that consumers will pay extra for this data. The origins of this law did not come from consumer demands, but consumers will end up having to pay for it. The International Food Information Council performed an open-ended survey of 1000 consumers in April 2003 to find out what was on customers' minds without initially prompting them. When they were asked if they could come up with information that was not currently on food labels, only four out of 1000 brought up country of origin labeling. Evidently, country of origin labeling is not something on the minds of consumers. If our customers wanted country of origin labeling, we would provide it for them. Let the marketplace demand what information it wants.

Additionally, country of origin labeling threatens to seriously disrupt supply chains and relationships that have been developed over decades to provide consumers with quality, selection, and low prices. Starting on September 30, 2004, wholesalers and retailers will not be able to sell any covered commodities unless their entire life cycle has been fully documented. Even in the absence of USDA regulations, wholesalers and retailers that have not started to make the changes necessary to implement country of origin labeling, are already behind. Cattle ranchers needed to start the documentation process of the life cycle of their cattle six months ago in order to comply with the September 30, 2004 deadline, since eighteen months is the average period to go from birth to market.

Merchants Distributors supplies over 650 grocery stores in eight southeastern states. Approximately, 120 of our smaller independent stores currently do not have the technology to scan groceries through the front end of their stores. An example is Roger's Bestway, owned by Roger Shuck, in the mountains of the small country town of Danese, West Virginia. This is not the typical 50,000 square foot supermarket where you might be accustomed to grocery shopping. Instead, picture a small 20,000 square foot community-supported store with a pickle barrel on the floor and local grown produce displays. If Roger is going to comply with the law and keep country of origin labeling documentation, it would involve new systems at the front end, a computer, scanner, new invoicing procedures, extra retail merchandising space, new receiving documents, and a data archiving system to store 2 years worth of country of origin information. Even for a large modern grocery store, this is a logistical nightmare. A Lowes Foods Produce department has over 600 SKUs (stock keeping units) at any one time. The identity and source of these produce items changes weekly, determined by growing seasons and availability. At only one time, Lowes Foods could have as many as 10 different varieties of apples displayed for our customers to select. Just keeping the apple varieties separated and properly signed is problematic. Requiring that each variety also identify the country of origin and requiring records be kept for every type and its origin for two years is a monumental task.

Our customers at Lowes Foods express that they are more interested in buying regional produce, fruits and vegetables grown in their home state, than produce that may or may not be grown in the United States. Small local farmers and ranchers, who play an important role in our sourcing, will be disadvantaged by country of origin labeling. We feel we can offer our customers the best quality produce such as Perry Lowe Orchards in Moravian Falls, North Carolina. Perry Lowe Orchards is a small local farmer where Lowes Foods purchases apples for some of our stores in the western part of the state. Currently, we are at the peak harvest of North Carolina apples, which runs from mid August through October. North Carolina ranks seventh in apple production in the United States and has over 200 commercial apple operations comprised of 9,000 acres of apple orchards. Perry Lowe Orchards is active in the local community and provides apple tours for schools and other small groups in the fall in the mountains of North Carolina. The owners, Perry and Shirley Lowe, will be at a tremendous disadvantage over larger apple growers in the technology department. Presently, they do not sticker their apples and they provide our Lowes Food Stores with handwritten invoices, not an electronic copy. Obviously, the country of origin labeling requirements will be exceedingly difficult for Perry Lowe Orchards to find the resources to become compliant.

As you can see from this example, the smaller growers will be hurt more than the larger more vertically integrated suppliers, since they do not have the infrastructure and technology in place to comply with this law. This law was meant to protect the small producers, ranchers, and farmers and this is precisely who the law will hurt the most. In order to limit liability, wholesalers and retailers will have to source only from those who can afford to implement the extensive systems necessary to document country of origin. Small ranchers and growers will be less likely than larger concerns to afford these changes. The end result will likely be further consolidation in the agriculture industry. Although the intent of the legislation was to give favorable treatment to domestic producers, the effect is to require retailers and dis-

tributors to maintain unreasonable audit trails. Additionally, country of origin labeling threatens state and local origin marketing programs that have been designed to promote local products such as "Idaho Potatoes" or "California Grown". Local origin stickers are not sufficient to meet the requirements of the law since a "Product of the USA" sticker must be used. The law encourages wholesalers and retailers to favor pre-packaged products that are already labeled. Since seafood is harvested from all over the world, the supply chain is complicated. Country of origin labeling will even affect how seafood and meat is displayed in the case. Some examples would be separating and properly signing all the products by the country of origin. The typical service staff in meat and seafood departments will be challenged with keeping swordfish from Spain and swordfish from Costa Rica separate.

In conclusion, country of origin labeling will lead to massive disruptions in the supply chain and will significantly raise costs. The costs are estimated at several millions for implementation, technology, and labor to support the country of origin labeling law. Will Alex Lee pass on the supply chain costs downstream through higher prices to our end consumer or take it out of our operating profits, thereby limiting our ability to grow? Clearly the value (if any) obtained by this legislation is greatly outweighed by the cost to consumers. Should country of origin labeling be desired by consumers, let the market decide. Unnecessary record keeping and fines that only add costs to the consumer should not be mandated.

STATEMENT OF REGINALD L. BROWN

The Florida Tomato Exchange (Exchange) represents a substantial portion of the winter tomato production in Florida and in the United States during that time. The Exchange has been working on country of origin labeling for fruits and vegetables since the 1970's. We support the law as written.

The law has only two requirements: 1.) retailers must clearly identify fruits and vegetables with their country of origin; and, 2.) the retailer's immediate supplier must provide the retailer with the country of origin information of the produce it is supplying to the retailer. We hope this Committee will not take any action until the Department of Agriculture until the proposed regulations are issued by the Department of Agriculture, and then, only if the regulations are burdensome and unworkable. We are convinced that will not be the case.

The Exchange fully supports and endorses the testimony and submission of the Florida Fruit and Vegetable Association. We agree that the law is simple and that Congress did not intend that the implementing regulations be complicated, inflexible, or burdensome to anyone in our industry. We are hopeful that the Department of Agriculture staff has heard our pleas (and those many others) that the regulations need to flexible and should not create unnecessary paperwork or cost for anybody. And, we are hopeful that the Department will issue proposed regulations as soon as possible because we believe these regulations will be substantially different than the voluntary guidelines issued last year, that have been the basis for many criticisms and concerns.

Our growers main competition in the U.S. marketplace comes from Mexico and we are constantly aware of our competitive position in the U.S. market vis-a-vis Mexican imports. Because this is such a sensitive issue, we have been keenly interested in making sure that the playing field is as level as is possible. Labeling imported tomatoes or their containers, we believe, is important because it gives consumers a choice between U.S grown tomatoes and imported tomatoes. That is why we supported country of origin labeling in Florida which was enacted in 1979. That law was implemented by the state and it has worked well because it was kept simple. Congress has passed a simple straight-forward law and its implementing regulations must be kept simple as well.

We strongly believe that there should be separate rules for perishable agricultural commodities as well as for the other covered commodities. The Department already makes distinctions between perishable commodities and other commodities. In addition, the labeling law itself and its history in the House makes it clear that perishable agricultural commodities (fruits and vegetables) should be defined and enforced under the Perishable Agricultural Commodities Act (PACA). It already is a violation of PACA to mislabel the country of origin. And, more fundamentally, the perishable agricultural commodities industry is clearly distinct from other covered commodities. Production, distribution, processing, transportation, and even record keeping systems are all different than those for other commodities.

Accordingly, in the case of fruits and vegetables, separate regulations adopting the PACA regulations are more than adequate to meet the requirements of the labeling law. We strongly recommend that the Department adopt regulations that fit

this existing system of regulation of the perishable agricultural industry. Using a system already in place requires minimal change and minimal disruption to a system that require retention of documents and an automatic audit trail of the commodity from port of entry and from the domestic shipper to the retail outlet.

We also recommend that labeling at the retail level be simple, clear and efficient. Any sticker, tag, placard or other method of identification that provides the country of origin of the commodity should suffice. Further, with regard to mixed or blended fruits and vegetables, for the purposes of labeling, we strongly recommend that all countries of origin of the produce be identified. To require anything more is to exceed the mandate of the law. However, for the law to be effective that commodities from different countries should be segregated at all times.

In addition to our call for regulations that pertain only to fruits and vegetables, we note that for record keeping purposes this means that no record keeping requirements should be required of the industry beyond what the PACA requires. The Department knows exactly what documents are required to be kept under PACA and that these documents must be kept for two years after each transaction. All persons in the chain of sales of fruits and vegetables, from producer or importer to retailer, must and do keep records of each transaction. Such documentation already in existence is sufficient to meet the requirements of the law. There is no need and no justification for going beyond what is required pursuant to PACA.

Lastly, it is important to note that the law requires the supplier to the retailer to provide the retailer with information indicating the country of origin of the product. The law was written in such a way that the only clear way of reading it is that the supplier referred to in the law is the immediate supplier to the retailer. There is no one, no other supplier, who provides the product directly to the retailer. Thus, only this last supplier to the retailer has the obligation under the law to provide country of origin labeling information to the retailer. And, it is important to note that the labeling law does not require this supplier or any other supplier to maintain records concerning the country of origin. All the law requires is for the immediate supplier to the retailer to provide country of origin information to the retailer.

In addition, while the only punishment provided by the law is on the retailer, the law does not require that the Department impose the maximum penalty on a retailer each time there is a violation. Moreover, because the law only deals with willful violations, it is likely there will be few, if any, fines actually imposed on the retailers. And, in this case, the retailers have already have indemnity agreements with their suppliers requiring the suppliers to pay for the fine if the product is mislabeled at retail and the retailer incurs a fine.

The law does not penalize the immediate supplier to the retailer for not providing country of origin labeling information to the retailer or for providing incorrect labeling information to the retailer. And, there is no penalty provided in the law for the immediate supplier to the retailer or any supplier to maintain records on the country of origin. Notwithstanding the foregoing, if the Department determines that it is necessary to require record keeping, as we have stated above, we believe this situation can be fairly and adequately addressed by adoption of the PACA record keeping requirements for fruits and vegetables. As for passing on the country of origin information, suppliers should be required only to pass on labeling information by any means available, such as putting this information on the carton, the bill of lading, shipping manifest, or other document of electronic communication. Once that is done, then the PACA takes over and the information provided must be accurate. Again, because of PACA and its regulation of the entire industry, it is critical that Department adopt regulations specifically tailored to the fruit and vegetable industry.

The Florida Tomato Exchange believes the labeling provisions in the farm bill are good for our tomato growers and for other growers as well. We believe American consumers, if given the opportunity, will buy American. The law is fair since most of our trading partners also require such labeling of our exports to their countries. And, we believe the Department's final regulations will be simple, flexible, and workable.

The Florida Tomato Exchange has a long history in the struggle to get a country of origin labeling bill passed. It is now the law of the land and it needs to be implemented properly and efficiently. We believe this Committee should wait until the proposed regulations are issued to see how the Department has responded to the criticisms and recommendations made over the last year. Any other action is premature.

FRESH PRODUCE ASSOCIATION OF THE AMERICAS

General philosophical, and practical, opposition—The Fresh Produce Association of the Americas (FPAA), of Nogales, Arizona, is opposed to mandatory country of origin labeling in principle and for a number of practical reasons. FPAA is not opposed to voluntary COOL and, in fact, many of its members already have voluntary COOL for marketing reasons.

There is a long history of vigorous competition between Mexican fresh produce and American domestic produce during the winter months. The competition often has been acrimonious, with domestic interests trying various legislative and other tactics to halt or suppress Mexican competition. During these aggressive efforts carried out by domestic farm interests in the media and in Congress, there has been a well-recognized and -established pattern of denigrating the Mexican competition with various insidious and vicious charges of illegal use of pesticides, microbial contamination, packaging differences, etc. All of them have been shown to be false, misleading, or incredible exaggerations.

Nevertheless, such charges affect consumer confidence. As result of the these nonmarket battles, FPAA has become very sensitized to the underlying potential and possibilities for what we would call "label and libel." Once identified by mandatory COOL, insinuations can be directed at that produce. Without mandatory COOL, one type of fruit or vegetable looks pretty much like any other of its kind. Mandatory COOL, therefore, can be misused as a predatory competitive tool. That is why FPAA is opposed to mandatory—but not to voluntary—COOL on principle.

FPAA recognizes the benefits of branding for grower, producer, shipper, state, region, or country. With proper marketing strategies, voluntary regional or country labeling can provide definite advantages.

Imports are already marked for COOL—Every carton, container, or box used to import fruits and vegetables is marked for country of origin. COOL is already mandated by U.S. Customs law, but not at the retail level.

Consumers should be given COOL for all foods, everywhere—If COOL is purely a matter of providing information to the consumer, it should apply to ALL foods, including poultry. In addition, mandatory COOL should apply to restaurants as well as to all retail stores. Under the current law, a fruit must be labeled for COOL in a minority of retail stores (i.e., only those subject to PACA), but the same fruit if served in a restaurant does not need to be labeled.

Studies do not show consumers want COOL information at top of list—In fact, studies show that consumers do not list COOL high on their list of desirable information. Consumers ask for COOL only when asked if they want that information. If given a multiple choice list, consumers place COOL towards the bottom of the factors they use in making purchasing decisions. The importance of COOL, therefore, depends on the way a survey/poll question is asked, e.g., "What factors do you use in your shopping decision?" vs. "Do you want COOL?" (Studies were done by the Food Marketing Institute and also by The Packer publication.)

Costs and difficulties of mandatory COOL to domestic produce—It is important for everyone to remember that mandatory COOL applies to domestic as well as imported fruits and vegetables. While in a supermarket, one might conclude that nonlabeled produce is domestic while the labeled ones are imported, that is not what the law dictates. The law says ALL fruits and vegetables must be labeled at the retail level. The costs and difficulties of meeting the terms of mandatory COOL are much greater for the domestic industry than for importers. Imports are already labeled.

Everything is not labeled...there are exceptions for bulk-shipped items—Proponents say imported clothing, shoes, dishes, etc. are all labeled for COOL. Individual fruits and vegetables, therefore, should be labeled. It is important to remember that there are numerous bulk-shipped imports that are not individually labeled because the import container is labeled or because the individual items are too small to label. For example, if common nails are purchased in a box, they are labeled for COOL. Similarly, a box of Mexican tomatoes is clearly labeled for COOL. If common nails are bought in small quantities, each nail is not labeled; likewise, individual fruits or vegetables are not labeled because the import carton is labeled. The Tariff Act of 1930 created the J-list to deal with the realities of retail trade so that small items from bulk shipments need not be labeled individually, e.g., individual stalks of asparagus or each grape or every banana.

If there is no exemption for bulk shipments, everything then will have to be put in small, containers—pre-packaged with predetermined weight and/or quantity—to meet the COOL requirement. The result will be greatly limited shopping choices for consumers and much higher costs to consumers than any perceived benefits to them or anyone else.

PACA will be gutted—It is correct that the PACA law requires the same sorts of information that will be required under COOL. Unfortunately PACA does not apply to peanuts, meats or fish. Recordkeeping and other requirements of PACA provide no help to those who do not deal in perishable fresh produce. Even for fresh produce, there is no current PACA requirement to identify the country of origin on the paper invoice. It is in fact, a new burden on the industry to modify current invoices and bills of lading to create a paper trail under the existing documentation required by PACA.

Furthermore, it should be noted that PACA is funded by user fees. Since COOL will involve PACA, it will need additional funding to implement COOL. Without significant increase in PACA funding and personnel, PACA will run out of funds to carry out its primary task of assisting the fresh produce industry.

Importers do not oppose COOL—It is not true to categorically say importers oppose COOL while domestic interests favor COOL. Since fresh produce is already labeled for COOL, there is very little that importers have to do to meet COOL requirements. As fresh produce do not migrate or move around, and certainly are not raised in one country then harvested in another, the task of COOL labeling is relatively simple.

Some importers express great skepticism of COOL because they already are subject to many rules and see the costs associated with them. They see that COOL will be yet another rule that adds costs without providing any real benefits to consumers.

It is important to keep in mind that the primary burden of meeting mandatory COOL requirements is almost completely on American businesses—primarily on retailers but also meat packers, fish processors, etc. Many American businesses probably do not yet fully recognize the burdens and costs that will be placed on them by mandatory COOL.

COOL is not a tool for food safety—Reference was made to the use of COOL to distinguish food in case of recalls or alerts. It should be noted that ALL sales of raspberries declined dramatically after a FDA alert on imported raspberries from Guatemala. Even though raspberries are packed in retail boxes that are individually marked for country of origin, many consumers stopped buying ALL raspberries. COOL did not help to isolate and save the domestic producer. The experience also demonstrates that consumers do not look at COOL labels and do not pay much attention to origin.

There will be an endless requirement for additional labeling—The argument for mandatory COOL logically would have to conclude that if consumers want as much information as possible, and have a right to get them, there should be more mandatory labels. For example, consumers say they like recipes, nutrition labeling, and "green" labeling. If labeling is always about the consumers' right to get ever-increasing amounts of information, then there would have to be labeling for the information already cited, as well as, for pesticide use, use of child labor, environmental impact, etc. A slavish adherence to dubious consumer-rights could lead to completely illogical ends.

Mandatory COOL is a bad idea, whereas voluntary COOL has potential for great dividends for everyone concerned. With properly drafted guidelines and standards, voluntary COOL can help retailers, as well as farmers and producers. Voluntary COOL can be a strong marketing tool that provides important information to consumers without handicapping retailers or producers, and without costing enormous amounts of money that do not bring any direct or tangible returns.

We urge the Agriculture Committee to consider remedial legislation that will mandate the creation of a strong voluntary COOL program while removing the requirement for mandatory COOL at the retail level.