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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. Meeting	DOBs & SSNs [partial] (1 page)	03/02/1998	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Thomas Freedman
OA/Box Number: 17542

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2015-0274-S
wr10799

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Sheet
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Food Safety
Country of Origin

Date: 3/2/98
Time: 3:00 pm
Room: 239
Host: Mary Smith
Contact: Essence Washington

[001]

Commerce
Donald Hodgen
Helena Stevens
Geri Word

[redacted] (b)(6)

US Customs head of Marketing
~~Sandra Bell~~
David Cohen
Ellen Daly

[redacted]

Asst Secret

USTR Sean Darragh
Audrae Erickson
Matt Rhode

[redacted]

They are leaving afternoon Monday
Rich Romenger Dep secret of USDA
FAS
FSIS
Market/Regulatory

USDA
Kevin Brosch
Ken Clayton
Paul Drazek
Eric Olsen

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FDA 1 Jim O'Hara
2 Janice F. Oliver
Thomas Gardine
Lloyd R. Lake Jr.
3 Melinda K. Plaisier

Treasury
Dennis O'Connell
Whit Wharthin

[redacted]

622-0220
Asst James Johnson
Dennis O'Connell
John Simpson recused

OMB
OTJ. Colauthier [redacted]

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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

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Clips & Interest

08/26/98 09:11 FAX 202 690 2119 USDA OSEC 001

(103)

[B] Glickman says he's not totally opposed to imported meat labels
By Gregory Wright. Bridge News
Washington--Aug 25--USDA Secretary Dan Glickman said today he is not totally opposed to labels on imported meat. but wants to ensure such an action would not fuel trade tensions with other countries. Glickman's statement conflicts with an internal USDA memo that said the agency is against the labeling plan.

"I would like to see if we can work out sensible labeling." Glickman told reporters.

Sen. Tim Johnson, D-S.D., is trying to push legislation through Congress to label meat as imported or domestic to help domestic producers. The labeling legislation was added to the Senate version of USDA's fiscal 1999 funding bill, which Congress has not yet passed.

News reports today said an internal USDA memo criticized the labeling plan because it could cost the government $60 million a year to enforce and could cause other countries to respond by taking similar action against the US, which could hurt US meat exports.

But Glickman said he had not fully reviewed the memo from USDA's Food Safety and Inspection and Foreign Agriculture services, and the memorandum was released to the public too early.

Glickman said he talked to Johnson today and would be open to negotiating labeling legislation that would not be "trade distorting and impractical to manage."

Meanwhile, the Clinton administration announced today it is creating a food safety council to coordinate government agency efforts to ensure US beef, fruits and vegetables are not contaminated with bacteria.

The council, which is co-chaired by USDA, the Department of Health and Human Services and the White House Office of Science and Technology Policy, in 180 days also will respond to a National Academy of Sciences recommendation that a new government agency be created to solely oversee US food safety.

US food industry officials are against such a plan, saying it would create more needless government bureaucracy. End

13:44 25 Aug RTRS-Glickman says USDA willing to support meat labels

WASHINGTON, Aug 25 (Reuters) - The Clinton Administration is willing to work with lawmakers on a proposal to require country-of-origin labels on meat sold in U.S. grocery stores, Agriculture Secretary Dan Glickman said Tuesday.

"I would like to see if we could work out sensible labeling to give consumers information about the source o the products," Glickman said at a news conference. "I think we can get something done."

Glickman's statement comes after reports of a USDA internal memo that apparently said the labeling requirements would be too expensive, would cause a backlash from trading partners abroad and would confuse consumers in the grocery store.

The memo was moving up "internal operations" at USDA. Glickman said.

The Secretary said he has met with officials in the department to emphasize the need for the USDA to work with members of Congress on the meat labeling issue and spoke with Senator Tim Johnson, a democrat fron South Dakota who has sponsored a bill to require country-of-origin labels on imported beef and lamb, this morning.

"I told him I wanted to work with him to see if we could come up with successful language," Glickman said.

The Secretary said there are several issues regarding meat labeling that need to be addressed, including how to deal with processed and canned meat. He also said it was important to consider the impact the labels could have on trade.

"We have to make sure we come up with something that is not totally trade distorting," he said.

The proposal to require country-of-origin labels on meat has been enthusiastically supported by the Nationa Cattlemen's Beef Association who say the labels would help U.S. consumers make informed decisions at the meat counter and would boost domestic meat sales.

But the proposal has been met by strong opposition from foreign competitors, especially Canada.

((--Barbara Hagenbaugh, 202-898-8394, fax 202-898-8383,

Food Safety Council Set

Panel Is to Coordinate Federal Role

W Post 8/26/98 A17

(110)

By Rick Weiss
Washington Post Staff Writer

President Clinton yesterday signed an executive order calling for the creation of a new interagency council to coordinate the dozen or so federal offices that share responsibility for assuring the safety of the nation's food supply.

The move came less than a week after the release of a National Academy of Sciences report that criticized the patchwork nature of the current federal food safety system. That report called for the creation of a single, powerful food safety authority—either an individual person or a new agency—to oversee food safety in this country.

While many food safety advocates had applauded the call for a centralized authority, they also expressed doubts that such a change would win the congressional approval that would be necessary, given the food industry's opposition to the plan and Congress's inaction on other food safety initiatives already before it.

The president's decision to create a Council on Food Safety represents about as much as he could do on his own without congressional action, observers said. Several representatives of food safety groups said they supported the approach, as long as it ultimately reduces, rather than increases, bureaucratic inefficiencies.

"It will be helpful if it's one step in the journey to a more rational food safety system," said Caroline Smith DeWaal, director of food safety at the Center for Science in the Public Interest. "But if it's used as a roadblock by agencies that don't want to progress, then it could be detrimental."

The council is to be jointly chaired by Dan Glickman and Donna E. Shalala, the secretaries of Agriculture and Health and Human Services, along with the head of the White House Office of Science and Technology Policy, Neal Lane. Its mission is to develop a "comprehensive strategic plan" for federal food safety activities, taking into account the recommendations of the academy report and input from food producers, processors, retailers and the public. The council is to present its findings and recommendations to the president in six months.

At a minimum, experts said, the council may facilitate better budgetary coordination among the various agencies that deal with food safety. By eliminating overlapping budget requests and regulatory gaps, they said, those agencies should be able to present to the Office of Management and Budget a more convincing case for food safety funding.

Indeed, one of the prime functions of the council, according to the president's executive order, is to present to the OMB an annual unified budget for the funding of the president's Food Safety Initiative. Congress so far has been less than enamored by that initiative, which aims to develop and implement new, science-based food inspection systems. The president requested $101 million for the initiative for fiscal 1999, but legislators have, so far indicated they are willing to budget just a fraction of that amount—in part because of their apparent dismay over the lack of coordination among the agencies that would spend it.

"If this council could have an impact on how OMB allocates budgets between FDA food safety and USDA food safety, that alone would be a huge improvement," said Carol Tucker Foreman, who coordinates the Safe Food Coalition, a District-based advocacy group, and was USDA assistant secretary for food and consumer services from 1977 to 1981.

Agriculture Secretary Dan Glickman said in an interview that the council had great potential to speed implementation of the many food safety initiatives already launched by the Clinton administration. "We're just getting these meat packing plants in order and inspectors up to speed," Glickman said, referring to new federal inspection procedures required since January. Although the council may conclude that bigger changes are needed, he said, "to totally reorganize our food safety system and move to a single agency right now would wreak havoc" with these positive changes.

In addition to Shalala, Glickman and Lane, the new food safety council will include the secretary of commerce, director of the OMB, administrator of the Environmental Protection Agency, assistant to the president for domestic policy, and the director of the National Partnership for Reinventing Government. The council's first public meeting will be held in Arlington on Oct. 2.

08/26/98 09:12 FAX 202 690 2119 USDA OSEC 009

NY Times Editorial 8/26/98 A18

Defeat of the killer tomatoes

(128)

Good news, consumers. According to trade press accounts, the Centers for Disease Control is on the verge of reducing sharply the number of deaths it attributes to food-borne illness. Rather than the oft-cited estimate of 9,000 deaths a year resulting from tainted food, the agency now puts the figure at somewhere between 2,000 and 3,000, Food Chemical News reports.

Interestingly, the story goes on to report health officials are preparing for a backlash once the new numbers appear. Backlash? Against good news? Well, good news about food safety is bad news for persons who believe that only expanded federal bureaucracy can do the job: Why spend more money to fix what may not really be broken?

Undeterred by these happy tidings, President Clinton has taken a break from his vacation to sign an executive order creating a government panel to oversee food safety. The President's Council on Food Safety would comprise the secretaries of Agriculture, Health and Human Services, and Commerce, along with the heads of the Office of Management and Budget, Environmental Protection Agency and the National Partnership for Reinventing Government. Make that Re-enlarging Government.

Now on the face of it, the naming of another bureaucratic acronym with the laudable task of overseeing food safety is commendable. Presidential spokesman Rahm Emmanuel said the group would help modernize a food-safety system that Teddy Roosevelt put in place. And the National Academy of Sciences did just release a report calling, among other things, for the naming of a food czar with sweeping powers to reorganize and streamline existing regulatory supervision of the food supply. Right now, there are 12 agencies using 35 statutes doing the job. Rearranging the regulatory furniture seems in order.

But right at the top of the report's executive summary, the NAS cites the estimate of 9,000 deaths related to food-borne illness, which may give people a misleading idea of what's really at stake here. The CDC began using that figure about 10 years ago, say officials at the Georgetown Center for Food and Nutrition, but other federal food-safety experts played it down as an estimate or extrapolation. These qualifiers magically disappeared when regulators got hold of it, and the 9,000 deaths became official.

Says the center, the figure "is given a lot of credit for fueling the President's Food Safety Initiative and assorted other programs. It also became a clarion cry for many well-meaning people who conscientiously demanded food safety reform without knowing the history of the figure. And the figure became irresistible to those who have orchestrated the politicization of food safety." CDC officials could not be reached for comment.

Lost in all this is the apparent success of other, earlier initiatives in promoting food safety: the implementation of new meat, poultry and seafood monitoring systems, for example, the approval of irradiation technology for food products or the provision of information related to safe food handling practices. If anything, food safety seems better than ever.

Sure it's a good thing to cut back the bureaucratic and statutory dead wood, eliminate overlapping jurisdictions and coordinate responsibilities of government at all levels. And maybe the creation of one more government council will really do that.

But perhaps the most important recommendation in the NAS report is its emphasis on using strong, science-based risk analysis to deal first with the biggest risks facing consumers today. The good news, as mentioned above, is that when scientists determine what those risks are, food safety is likely to be a tiny one.

(127)

Eating safely

Hungering for an American food czar

Mpls Star Tribune 8/2/98 Editorial A10

Liberals and conservatives can get into great quarrels over the proper role of government. But on a few things they agree: When a fire breaks out, firefighters should show up. When bullets fly, cops should rush in. And when tainted food is headed for market, food-safety inspectors should stop it. These are things government should do: Shield people from dangers they can't fight off on their own.

For the most part government delivers on this proposition — except when it comes to food. While other public-safety officials rely on state-of-the-art techniques, the folks charged with keeping food safe are stuck with antiquated methods and hamstrung by a baffling bureaucratic tangle. That's the conclusion of a report delivered to Congress last week by the Institute of Medicine, a government-appointed group of science advisers.

The report zeroes in on the food-safety system's biggest flaw: It isn't a system. About a dozen U.S. agencies bear responsibility for assuring that food is fit to eat; each lives by its own rules. Some agencies use embarrassingly outmoded techniques — like the "poke and sniff" practice that still prevails for meat and poultry.

So the U.S. government has been wielding a food-safety sieve instead of a shield, and the upshot has been dire: Every week brings new episodes of food contamination, causing an annual toll of 9,000 deaths and 81 million illnesses. These food-borne illnesses are dreadful for those who suffer them, of course, and they're expensive as well. The scientists found that food poisoning costs the nation up to $37 billion a year in medical treatment and lost work time.

This would be merely lamentable if it were unavoidable. But as the report emphasized, most food-borne illness could readily be prevented simply by thoughtful strategy. What it will take, say the scientists, is a federal food czar — a single official charged with guaranteeing food safety.

This czar needs more than a title. He or she also needs power, a palace and modern weaponry. Thus the scientists urge creation of a centralized agency to manage all food-safety programs. They recommend changes in law to ensure that inspection, research and enforcement are based on solid science and tested prevention tactics. They favor development of a national food safety plan to fight the special perils that accompany Americans' increasing reliance on imported foods.

In short, the scientists recommend just what the country's food-safety critics have long been urging: Create a system. Apply sound science. Develop rational safety standards. Inspect and enforce. In fact, this advice is so practical that the Clinton administration has already taken it to heart. While the advisers were still writing their report, the White House was seeking $101 million to reform the food-safety program. But so far Congress has been reluctant to go along: Just before the August recess, the Senate approved just $68 million — and the House a paltry $16.8 million — of the administration request.

It's a pity, because food safety isn't a partisan issue. After all, even Newt Gingrich has to eat now and then. He shouldn't have to worry that the food on his plate may be out to get him. Neither should his fellow Americans.

Clinton creates council to halt food-borne illness

(New throughout, previous EDGARTOWN, Mass.) 110

By Barbara Hagenbaugh

WASHINGTON, Aug 25 (Reuters) - President Clinton on Tuesday set up a food safety council aimed at drastically reducing food-borne illnesses in the United States that kill an estimated 9,000 people every year and make up to 81 million others sick.

"My administration is committed to ensuring that the American people enjoy the safest food possible," Clinton said in a statement from Martha's Vineyard in Massachusetts, where he is vacationing.

The President's Council of Food Safety will be headed by U.S. Agriculture Secretary Dan Glickman, Health and Human Services Secretary Donna Shalala and White House Office of Science and Technology Policy Director Dr. Neal Lane.

The formation of the council comes on the heels of last week's report by National Academy of Sciences experts who recommended that the United States appoint a powerful food safety chief who would have budget and staff control over all U.S. food safety operations.

It also recommended establishing a science-based regime that would identify and prevent the major food risks, such as chemical or microbial contamination.

Currently, more than 12 federal agencies have some role in protecting the nation's food supply with many jurisdictions overlapping. For example, the manufacturing of frozen cheese pizza is regulated by the Food and Drug Administration, but a frozen pizza with pepperoni or other kinds of meat falls under Agriculture Department jurisdiction.

Many on the NAS panel supported the creation of a single food safety agency, an idea that has been opposed by industry.

The first job of the president's council is to analyze the NAS recommendations and report back to the White House in 180 days, Clinton said. However, the chiefs of the council said consolidating food safety may not be the best alternative.

"We need to be outcomes-oriented rather than organization-oriented," Glickman said at a news conference.

Some government watchdogs said the administration's decision to appoint a council may lead to the continuation of the current confusing patchwork of food safety policies.

"We think the NAS calls for much greater action," Caroline Smith deWaal, head of food safety at the Center for Science in the Public Interest, said. "This is a case where three voices may not be as good as one."

But others said they thought it was better for the government to move slowly on changing the food safety system and the council was likely to take some bureaucracy out of major decisions.

"It does place the horse in front of the cart," Brian Sansoni, spokesman for the Grocery Manufacturers of America, said. "They are not willy-nilly changing all rules and regulations. That's a positive approach."

Interest in food safety has been accelerated since the record recall of more than 25 million pounds of tainted ground beef a year ago and a series of high-profile food poisoning cases.

Democrats have introduced a bill to create a new food safety agency, but the bill's sponsor, Sen. Dick Durbin of Illinois, acknowledged the legislation had little chance of being passed.

Shalala and Glickman pressed for Congress to approve the administration's request to boost food safety spending and pass several proposals to expand government authority to regulate imported food and strengthen enforcement procedures.

REUTERS

Rtr 21:23 08-25-98

:SUBJECT: GROI FDPR USA GEN

Received by NewsEDGE/LAN: 8/25/98 9:29 PM

Clinton creates Council on Food Safety 110

EDGARTOWN, Mass., Aug 25 (Reuters) - President Bill Clinton signed an executive order on Tuesday creating a President's Council of Food Safety to come up with a plan to make the nation's food supply purer.

He told the council to review a recent National Academy of Sciences report on food safety and to come up with a report and appropriate response.

"Under our current food safety system, several different federal agencies have responsibility for improving food safety," Clinton said in a statement.

He called the Academy's report, which suggested creating a uniform set of food safety rules, thoughtful and highly informative.

The NAS report said the current system of regulating food was too confusing and hit-and-miss. It recommended a science-based regime that would identify and prevent the major food risks, such as chemical or microbial contamination.

An estimated 9,000 Americans die and millions get sick each year from eating contaminated food. Recent scares include several out breaks of a deadly strain of E. coli bacteria, which can kill the very young and very old.

"The Council will have three primary functions, including developing a comprehensive strategic federal food safety plan, advising agencies of priority areas for investment in food safety and ensuring that federal agencies annually develop coordinated food safety budgets," the White House said in a statement.

The new council will also oversee the recently established Joint Institute for Food Safety Research.

REUTERS
Rtr 21:15 08-25-98

:SUBJECT: GROI FDPR USA GEN

Received by NewsEDGE/LAN: 8/25/98 9:22 PM

Clinton Appoints New Panel To Coordinate Food Safety

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—President Clinton appointed a Council on Food Safety to coordinate food-safety research, enforcement and education now performed by a patchwork of agencies.

Among its duties, the panel will report on a study, released last week, that warned the nation's food supply could be endangered by outdated laws and fragmented enforcement.

The panel will be jointly headed by the secretaries of agriculture and health and human services and the president's adviser for science and technology. Among the panel's five other government entities are the secretary of commerce, the head of the Environmental Protection Agency, and the director of the Office of Management and Budget.

Mr. Clinton made the appointment by executive order, to develop "a seamless, science-based food-safety system." The panel won't have any regulatory authority, but will coordinate the budgets of other agencies that deal with food safety, advise on spending priorities and point out research gaps.

Although the Health and Human Services Department stressed that the U.S. food supply is "unmatched in quality," it estimated that tainted food causes about 9,000 deaths a year.

WSJ 8/26/98 A24

Federal panel formed to protect food supply

110

By Anita Manning
USA TODAY 8/26/98 D4

President Clinton, by executive order, created an eight-member federal council Tuesday charged with improving the safety of the national food supply.

The announcement, which followed by five days a report from the National Academy of Sciences (NAS) suggesting ways to streamline federal food-safety activities, got thumbs-up from consumer and industry groups.

The joint chairs of the President's Council on Food Safety will be Agriculture Secretary Dan Glickman, Health and Human Services Secretary Donna Shalala, and Neal Lane, assistant to the president for science and technology.

By Ric Feld, AP

Glickman: Heading 'into the next frontier of food safety'

Its task will be to come up with a plan that incorporates recommendations from the NAS and others, coordinates food-safety budgets and targets federal research.

The president "wants us to avoid the turf trap of stovepiped or duplicative efforts," Glickman said, "and move boldly and strategically into the next frontier of food safety, which is science and technology."

Caroline Smith DeWaal of the Center for Science in the Public Interest, which favors establishment of a separate food-safety agency, said the action to set up the council "is the logical next step for the administration" after the NAS report, "but this should be a temporary measure, a first step on the road to a much more unified food-safety structure."

08/26/98 09:14 FAX 202 690 2119 USDA OSEC

(110)

Clinton creates safety panel to cut food-caused fatalities

Appoints Glickman, Shalala, technology director Lane

REUTERS NEWS AGENCY

President Clinton yesterday set up a food safety council aimed at drastically reducing food-borne illnesses in the United States that kill an estimated 9,000 people every year and make up to 81 million others sick.

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Some government watchdogs said the administration's decision to appoint a council may lead to the continuation of the current confusing patchwork of food safety policies.

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Miss Shalala and Mr. Glickman pressed for Congress to approve the administration's request to boost food safety spending.

(129)

EATING WELL N.Y. Times 8/26/98 C5

Marian Burros

U.S. Eases Up on Irradiation, Antibiotics

IN little-noticed actions, the Food and Drug Administration has given the food industry more leeway in two controversial areas: the use of antibiotics in animals and the labeling of irradiated food.

Even though many consumers would like type large enough to be read without a magnifying glass on foods that have been irradiated, the Food and Drug Administration has decided that the same size type that is used to list ingredients is large enough. The type size usually depends on package dimensions. The ruling took place earlier this month, and new labels will change whenever old stocks have been used up.

The National Food Processors Association had sought a reduction in the size of the type, and according to a news release from the association, the F.D.A.'s action on irradiation "will help advance the use of this important safety tool."

But Caroline Smith DeWaal, the director of food safety for the Center for Science in the Public Interest, a consumer-advocacy group, expressed concern over the action.

"When consumers were surveyed two years ago, the biggest thing on their minds was notification of irradiation," she said. "If irradiation is as good as the food industry says it is, they should put big banner labels on the food that has been irradiated rather than hide it from consumers."

In fact, the industry association is moving beyond small type: it has petitioned the F.D.A. to eliminate the requirement for any irradiation labeling at all.

In the matter of antibiotics, the F.D.A. has increased the allowable level for residues of tetracycline in milk from 140 parts per billion to 300 parts per billion. The agency says it established higher levels after re-evaluating the data. The new standard is already in effect. Antibiotic resistance was the subject of a recently released report from the National Academy of Sciences, which found that humans can contract antibiotic-resistant infections from food animals.

"There are already too many antibiotics used on the farm," said Patricia Lieberman, a scientist at the Center for Science in the Public Interest. "Increasing the tolerance for them seems to be moving in the wrong direction."

In another action, the F.D.A. approved the use, beginning Aug. 5, of the antibiotic fluoroquinolone in livestock. It has produced drug resistance in campylobacter in chickens, and according to the Centers for Disease Control and Prevention, fluoroquinolone-resistant salmonella is also beginning to appear.

"The more we use antibiotics on the farm, the more likely antibiotics that doctors want to use to treat people will not be effective," Ms. Lieberman said.

The F.D.A. approved the use of the antibiotic with the understanding that its maker, Bayer, would voluntarily limit or stop its sale if the agency determines that its use in cattle leads to antibiotic resistance in bacteria that cause human disease.

Third, industry and the retail sector are strongly opposed to country of origin legislation because of the costs it would impose. While many agricultural producers support such legislation, others do not, in part because of concern that country of origin labeling would be used unfairly against U.S. exports. As you know, the U.S. exports nearly 60 percent more agricultural products than it imports.

Fourth, the Administration has generally objected to country of origin labeling when it has been considered by our trading partners. If the Administration were to support country of origin labeling, it could be seen as protectionist by our trading partners and would obviously limit our ability to object to such requirements in the future.

Fifth, it is possible to require country of origin labeling of imported products under our GATT and WTO obligations, provided that all imports are treated similarly, the difficulties are reduced to a minimum, and the labeling does not seriously damage the product or unduly increase its costs or decrease its value.

In general, Senator Graham's legislation appears to be consistent with U.S. rights under Article 9 of the WTO agreement. However, it is possible that an exporting country could challenge these labeling requirements as unduly increasing the costs of their product, for example, because the labeling requirements imposed on domestic retailers will (1) either be passed on to the exporting countries, making their product less competitive, or (2) make domestic retailers less likely to market imported products.

Sixth, the Department of Agriculture would be required to enforce Senator Graham's legislation, as well as any similar legislation on meat and poultry, without any additional personnel or funding. At a time of limited budgets, we question whether this would be the most effective use of our resources, particularly given the need to more effectively address food safety.

I appreciate the concerns that have given rise to this legislation, but I am concerned about its potential adverse effects in terms of costs on domestic industry, possible export problems, and resource implications with respect to food safety. I have directed USDA officials to develop alternative legislation that would minimize these potential problems should the Administration decide to support country of origin labeling. I expect this draft legislation to be ready for interagency clearance by the end of next week.

Please let me know your thoughts. I would like to discuss this issue with you further.

food Country orig.

The Truth About Meat Labeling

Opponents of meat labeling have gone out of their way to confuse the issue in attempts to stifle what they see as increasing support for Senator Johnson's legislation.

What are the facts, what is the truth?

- ***According to the Congressional Budget Office (CBO) this meat labeling legislation will not cost American taxpayers a penny, it is scored at zero.***

- ***Meat labeling enjoys wide bi-partisan support, with the following co-sponsors:***

Republicans	Democrats
Larry Craig - ID	Tim Johnson - SD
Conrad Burns - MT	Tom Daschle - SD
Craig Thomas - WY	Max Baucus - MT
Orrin Hatch - UT	Kent Conrad - ND
Dirk Kempthorne - ID	Bob Graham - FL
Ben Nighthorse Campbell - CO	Russ Feingold - WI
Charles Grassley - IA	Byron Dorgan - ND
Michael Enzi - WY	Tom Harkin - IA
	Bob Kerrey - NE

- ***Meat labeling is fully supported by the following major agricultural organizations:***

National Cattlemens Beef Association
National Farmers Union
American Farm Bureau Federation
American Sheep Industry Association

- ***The following countries already require labeling on meat, meat cuts, or meat carcasses:***

*Argentina, Australia, Bosnia, Brazil, Canada, Chile, Colombia, Costa Rica, Czech Republic, Dominican Republic, Egypt, El Salvador, Estonia, Guatemala, Honduras, Hungary, Indonesia, Israel, Korea, Latvia, Malaysia, Mexico, Philippines, Russia, Switzerland, Thailand, Turkey, United Arab Emirates, and Venezuela.

*European Union countries plan to have country-of-origin meat lableling in place by the year 2000.

**According to a 1998 survey prepared by USDA, Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division.*

PROPOSED AMENDMENT TO AGRICULTURAL APPROPRIATIONS CONFERENCE REPORT

At the appropriate place, insert the following:

SEC. ___. LABELING OF IMPORTED MEAT AND MEAT FOOD PRODUCTS.

(a) DEFINITIONS.—Section 1 of the Federal Meat Inspection Act (21 U.S.C. 601) is amended by adding at the end the following:

"(w) BEEF.—The term 'beef" means meat produced from cattle (including veal).

"(x) IMPORTED BEEF.—The term 'imported beef' means beef that is not United States beef, whether or not the beef is graded with a quality grade issued by the Secretary.

"(y) LAMB.—The term 'lamb' means meat, other than mutton, produced from sheep.

"(z) IMPORTED LAMB.—The term 'imported lamb' means lamb that is not United States lamb, whether or not the lamb is graded with a quality grade issued by the Secretary.

"(aa) UNITED STATES BEEF.—

"(1) IN GENERAL.—The term 'United States beef' means beef produced from cattle slaughtered in the United States.

"(2) EXCLUSION.—The term 'United States beef' does not include beef produced from cattle imported into the United States in sealed trucks for slaughter.

"(bb) UNITED STATES LAMB.—

"(1) IN GENERAL.—The term 'United States lamb' means lamb produced from sheep slaughtered in the United States.

"(2) EXCLUSION.—The term 'United States lamb' does not include lamb produced from sheep imported into the United States in sealed trucks for slaughter.".

(b) MISBRANDING.—Section 1(n) of the Federal Meat Inspection Act (21 U.S.C. 601(n)) is amended—

(1) in paragraph (11), by striking "or" at the end;

(2) in paragraph (12), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(13)(A) if it is imported beef or imported lamb offered for retail sale as muscle cuts of beef or lamb and does not bear a label that identifies its country of origin; or

"(B) if it is United States beef or United States lamb offered for retail sale as muscle cuts of beef or lamb, and does not bear a label that identifies its country of origin.".

(c) LABELING.—Section 7 of the Federal Meat Inspection Act (21 U.S.C. 607) is amended by adding at the end the following:

"(g) MUSCLE CUTS OF BEEF AND LAMB.—The Secretary shall provide by regulation that muscle cuts of United States beef, United States lamb, imported beef, and imported lamb offered for retail sale bear a label that identifies its country of origin.

"(h) AUDIT VERIFICATION SYSTEM FOR UNITED STATES AND IMPORTED MUSCLE CUTS OF BEEF AND LAMB.—The Secretary may require by regulation that any person that prepares, stores, handles, or distributes muscle cuts of United States beef, imported beef, United States lamb, or imported lamb for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to ensure compliance with the regulations promulgated under subsection (g).".

(d) BEEF AND LAMB LABELING STUDY.—

(1) IN GENERAL.—The Secretary of Agriculture shall conduct a study of the effects of the mandatory use of imported, blended, or content labels on ground beef, ground lamb, and other processed beef

or lamb products made from imported beef or imported lamb.

(2) COSTS AND RESPONSES.—The study shall be designed to evaluate the costs and benefits associated with and consumer response toward the mandatory use of labels described in paragraph (1).

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture shall report the findings of the study conducted under paragraph (1) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(e) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture shall promulgate final regulations to carry out the amendments made by this section.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section take effect 60 days after the date on which final regulations are promulgated under subsection (e).

(2) STUDY.—Subsection (d) takes effect on the date of enactment of this Act.

Food Safety Country of origin - EW

To - Tom
Fr - Eriz

EW

THE SECRETARY OF AGRICULTURE
WASHINGTON, D.C.
20250-0100

OCT 23 1997

MEMORANDUM TO THE CHIEF OF STAFF

FROM: **SECRETARY DAN GLICKMAN** Dan Glickman

Subject: **Country of Origin Labeling**

Senator Bob Graham recently wrote you a letter regarding S. 1042, which would require country of origin labeling of imported perishable agricultural commodities. You may be aware that Congressman Sonny Bono has introduced identical legislation in the House (H.R. 1232).

The bill would apply only to fresh fruits and vegetables that are imported and sold as fresh. Fresh produce that is imported and then processed into canned goods, for example, would not be covered. While flexible in how its labeling requirements are met, the bill does require that domestic retailers inform consumers at the final point of sale of the country of origin of perishable agriculture products and subjects them to fines for failing to do so.

I want to make several points. First, country of origin labeling is not a food safety issue. Food safety experts throughout the Administration believe that country of origin labeling would not improve our ability to detect and control outbreaks of foodborne illness. It is possible that a sophisticated system of bar coding would help from a food safety perspective, but mere country of origin labeling would not.

If the Administration were to support country of origin labeling, it should not do so on the basis of food safety. One potential justification could be that consumers have the right to know a product's country of origin. However, some groups have expressed skepticism that consumers do in fact believe that country of origin is important information. Other groups have raised concerns that such labeling will be used to stigmatize imported food products through negative advertising campaigns. Finally, a consumer right to know argument could have implications for other labeling disputes, such as our current disagreement with the European Union over the labeling of products of biotechnology.

Second, at the request of Senator Daschle, the Administration has recently agreed to develop guidelines to assist the domestic meat and poultry industry in voluntarily labeling their products as being of U.S. origin. We would prefer that a similar voluntary approach be developed for perishable agricultural commodities. If the Administration were to support Senator Graham's legislation, it would be difficult not to support similar mandatory labeling requirements for imported meat and poultry products.

Third, industry and the retail sector are strongly opposed to country of origin legislation because of the costs it would impose. While many agricultural producers support such legislation, others do not, in part because of concern that country of origin labeling would be used unfairly against U.S. exports. As you know, the U.S. exports nearly 60 percent more agricultural products than it imports.

Fourth, the Administration has generally objected to country of origin labeling when it has been considered by our trading partners. If the Administration were to support country of origin labeling, it could be seen as protectionist by our trading partners and would obviously limit our ability to object to such requirements in the future.

Fifth, it is possible to require country of origin labeling of imported products under our GATT and WTO obligations, provided that all imports are treated similarly, the difficulties are reduced to a minimum, and the labeling does not seriously damage the product or unduly increase its costs or decrease its value.

In general, Senator Graham's legislation appears to be consistent with U.S. rights under Article 9 of the WTO agreement. However, it is possible that an exporting country could challenge these labeling requirements as unduly increasing the costs of their product, for example, because the labeling requirements imposed on domestic retailers will (1) either be passed on to the exporting countries, making their product less competitive, or (2) make domestic retailers less likely to market imported products.

Sixth, the Department of Agriculture would be required to enforce Senator Graham's legislation, as well as any similar legislation on meat and poultry, without any additional personnel or funding. At a time of limited budgets, we question whether this would be the most effective use of our resources, particularly given the need to more effectively address food safety.

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Please let me know your thoughts. I would like to discuss this issue with you further.

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BOB GRAHAM
FLORIDA

Food labeling

United States Senate

WASHINGTON, DC 20510-0903

COMMITTEES:
FINANCE
ENVIRONMENT AND PUBLIC WORKS
VETERANS AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE
ENERGY AND NATURAL RESOURCES

October 23, 1997

Dan Glickman
Charlene
Kelley
Gene

why would we not support this legislation
EBB

Mr. Erskine Bowles
Chief of Staff
Executive Office of the President
White House
Washington, D.C. 20500

Dear Erskine:

I am pleased that President Clinton has recently elevated the food safety issue to the national agenda. This is a welcomed development.

I am writing to bring to your attention legislation Senator Craig and I have introduced which goes hand-in-hand with the Administration's overall goal of increasing the safety of food Americans purchase. Our bill, S. 1042, would require agricultural commodities imported into the United States to be labeled as to country of origin at the time of sale to the final consumer.

Giving American consumers the ability to make informed, educated decisions on the food they serve their families is a simple first step in assuring food safety. To illustrate, last year when the Centers for Disease Control (CDC) announced that Americans should avoid raspberries from Guatemala, there was no way for the residents of 49 states to comply with the CDC's directive.

Fortunately, the residents of Florida have had the ability to make informed decisions relative to the produce they buy since 1979. The Florida Statute is a simple, straight-forward model for what S. 1042 would provide all Americans no matter where they live.

I urge you to include our country of origin labeling bill in the food safety initiative the Administration is assembling. Should you or your staff have any questions or need more information please do not hesitate to contact me or Tom Greene or my staff at 224-0734.

Thank you in advance for your consideration of this important consumer information, food safety issue.

With warm regards,

Sincerely,

Bob Graham

United States Senator

BG/tag
Enclosure

Food Safety Country of origin - ew

To - Tom
Fr - Eric

THE SECRETARY OF AGRICULTURE
WASHINGTON, D.C.
20250-0100

OCT 23 1997

MEMORANDUM TO THE CHIEF OF STAFF

FROM: **SECRETARY DAN GLICKMAN** Dan Glickman

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If the Administration were to support country of origin labeling, it should not do so on the basis of food safety. One potential justification could be that consumers have the right to know a product's country of origin. However, some groups have expressed skepticism that consumers do in fact believe that country of origin is important information. Other groups have raised concerns that such labeling will be used to stigmatize imported food products through negative advertising campaigns. Finally, a consumer right to know argument could have implications for other labeling disputes, such as our current disagreement with the European Union over the labeling of products of biotechnology.

Second, at the request of Senator Daschle, the Administration has recently agreed to develop guidelines to assist the domestic meat and poultry industry in voluntarily labeling their products as being of U.S. origin. We would prefer that a similar voluntary approach be developed for perishable agricultural commodities. If the Administration were to support Senator Graham's legislation, it would be difficult not to support similar mandatory labeling requirements for imported meat and poultry products.

Conley 6/01/8 -SW

II

105TH CONGRESS
1ST SESSION

S. 1042

To require country of origin labeling of perishable agricultural commodities imported into the United States and to establish penalties for violations of the labeling requirements.

IN THE SENATE OF THE UNITED STATES

JULY 21, 1997

Mr. CRAIG (for himself, Mr. GRAHAM, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

---

A BILL

To require country of origin labeling of perishable agricultural commodities imported into the United States and to establish penalties for violations of the labeling requirements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Imported Produce Labeling Act of 1997".

SEC. 2. INDICATION OF COUNTRY OF ORIGIN OF IMPORTED PERISHABLE AGRICULTURAL COMMODITIES.

(a) DEFINITIONS.—For purposes of this section, the terms "perishable agricultural commodity" and "retailer" have the meanings given the terms in section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)).

(b) NOTICE OF COUNTRY OF ORIGIN REQUIRED.—A retailer of a perishable agricultural commodity imported into the United States shall inform consumers, at the final point of sale of the perishable agricultural commodity to consumers, of the country of origin of the perishable agricultural commodity.

(c) METHOD OF NOTIFICATION.—

(1) IN GENERAL.—The information required by subsection (b) may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the imported perishable agricultural commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.

(2) LABELED COMMODITIES.—If the imported perishable agricultural commodity is already individually labeled regarding country of origin by the packer, importer, or another person, the retailer

shall not be required to provide any additional information to comply with this section.

(d) VIOLATIONS.—If a retailer fails to indicate the country of origin of an imported perishable agricultural commodity as required by subsection (b), the Secretary of Agriculture may impose a monetary penalty on the retailer in an amount not to exceed—

(1) $1,000 for the first day on which the violation occurs; and

(2) $250 for each day on which the same violation continues.

(e) DEPOSIT OF FUNDS.—Amounts collected under subsection (d) shall be deposited in the Treasury of the United States as miscellaneous receipts.

(f) APPLICATION OF SECTION.—This section shall apply with respect to a perishable agricultural commodity imported into the United States after the end of the 6-month period beginning on the date of the enactment of this section.

○

SUPPORTER OF S. 1042: THE IMPORTED PRODUCE LABELING ACT

American Agriculture Movement of Arkansas

American Agriculture Movement/ American Corn Growers Association Of Illinois

American Farm Bureau Federation

American Corn Growers Association

California Agricultural Commissioners & Sealers Association

California Citrus Mutual

California Farm Bureau

California Women in Agriculture

Coalition of Labor, Agriculture and Business

Dade County Farm Bureau

Desert Grape Growers Association

Florida Citrus Mutual

Florida Farmers & Suppliers Coalition

Florida Fruit & Vegetable Association

Florida Tomato Exchange

Georgia Fruit & Vegetable Growers Association

George Peanut Producers Association

Grower-Shipper Vegetable Association

Grown in the U. S. A.

Indian River Citrus League

International Brotherhood of Teamsters

Made in the U. S. A. Foundation

Michigan Asparagus Advisory Committee

National Association of Farmer Committeemen

National Farmers Organization, Iowa

National Farmers Union

National Peach Council

National Onion Association

National Watermelon Council

Riverside County Farm Bureau

South Carolina Tomato Association

Texas Corn Growers Association

U. S. Business & Industrial Council

Western Growers Association

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: COUNTRY OF ORIGIN LABELING

DATE: SEPTEMBER 10, 1998

Background

During floor debate, the Senate added two amendments by voice vote/unanimous consent on import and country of origin labeling to the FY 1999 Agricultural Appropriations bill. Senator Johnson's (D-SD) amendment applies to beef and lamb; it does not apply to pork, poultry, or any other meat products. It requires "import" labeling rather than individual country of origin. Senator Graham's (D-FL) amendment, on the other hand, applies to all fresh and frozen fruits and vegetables sold at retail and specifically requires country of origin labeling.

The House FY 99 Agricultural Appropriations bill does not include either provision. However, legislation similar to these amendments has been introduced in the House. A bill mandating country of origin labeling for all meat products, HR 1371, was introduced by Rep. Chenoweth (R-ID) and currently has 39 cosponsors (24 Reps, 15 Dems, 1 Indep.). Several bills have been introduced in the House to require country of origin labeling on produce -- HR 1232 by Rep. Bono (96 cosponsors, 51 Dems, 44 Reps, and 1 Indep), HR 2332 by Rep. Everett (42 cosponsors), HR 3676 by Rep. Pallone, 29 cosponsors, and HR 4080 by Rep. Dingell (15 cosponsors). None of these bills has been the subject of a hearing or mark-up during this Congress.

USDA's Food Safety and Inspection Service (FSIS) currently requires imported product that is retail ready to be labeled with the country of origin. Product that will be further processed is also labeled, but that identity is lost during processing. For fruits and vegetables, current country of origin labeling is implemented by the Customs Service. Customs requires side panel labeling on frozen fruits and vegetables, and imported fresh produce must contain such information on shipping containers. Consumer ready products must also be labeled.

The House and Senate are expected to conference on agricultural appropriations in September. Various Members of Congress and constituencies have expressed interest in the Administration's position on this issue.

Recent Activity

Last week Secretary Glickman met with Senators Johnson, Craig, Burns, Baucus, and Dorgan (as well as staff from other offices, including Senator Daschle) to discuss the country of origin labeling amendment to the Ag Approps bill. In the meeting and in the press conference afterwards, Secretary Glickman made it clear that he was not there to give the Administration's position or support for the amendment, but rather to provide technical assistance relative to concerns raised by the amendment. He also indicated that other agencies, such as USTR, DPC, OMB, State, FDA and Customs must be consulted on this issue.

Secretary Glickman also reiterated that he views the issue from a consumer information perspective, but he doesn't want anything to be adopted that would cause major trade problems or take away resources from food safety and HACCP implementation.

The amendment, as adopted, would only apply to beef and lamb (not pork or poultry) and would require "imported" labeling rather than individual country of origin labeling, which is a legal problem relative to our trade agreements (and one of the areas in which USDA has provided technical assistance, which the Senators have indicated that they will change). It would apply to muscle cuts as well as ground and processed products. The amendment would not allow cattle that are shipped into the U.S. in sealed trucks for slaughter to bear the U.S. label (which is allowed under current law). On the other hand, cattle that were fed at a U.S. feedyard for 1 week, for example, would be labeled U.S.

The Secretary raised several issues, including dropping labeling on ground and processed products in lieu of a study (which may or may not lead to rulemaking on labeling on these products). The Senators expressed interest in this approach.

USDA also raised issues about providing for civil penalties for violations of the country of origin requirements if enacted. Currently, USDA can only impose criminal penalties (and the Administration is seeking broader civil penalty authority pursuant to Senator Harkin's bill). USDA also raised issues about providing USDA the authority to traceback product and expressed concerns that we did not want to divert resources from food safety to implement and enforce this amendment. (informal agency estimates of about $6.5 million for a study as well as rulemaking and enforcement)

An additional issue that was not raised in the meeting has to do with the timing of the amendment. As drafted, there are several different time frames, with 4 months being the tightest, for promulgating rules. USDA intends to communicate to staff about the need for realistic time frames for rulemaking.

USDA expects to meet with Senator Johnson's staff later this week to provide in more detail technical drafting assistance on the issues discussed in the meeting.

It is unclear what will occur on this issue during conference. Ways and Means Chairman Archer has objected to this amendment (as well as the fruit and vegetable country of origin amendment), and Senate Agriculture Chair Lugar and House Agriculture Chair Smith have also objected. Industry is strongly opposed, but the National Cattleman's Beef Association, National Farmers Union, and American Farm Bureau Federation strongly support. Consumer groups generally support country of origin labeling but do not view this as a high priority issue (they would support the traceback authority).

The bipartisan group of Senators with whom Secretary Glickman met indicated that they would fight strongly to include the amendment and also expressed interest in working to address some of the concerns about the amendment.

Administration's Views

The Administration has generally objected to efforts by our trading partners to impose such requirements on U.S. products. However, USDA has not found any statement of an official Administration position on country of origin labeling.

During congressional trade hearings, Administration officials have expressed concerns about the use of such labeling against U.S. products. During deliberations on fast track, the Administration agreed, at the request of Senator Daschle, to promote a voluntary labeling approach for U.S. meat products. USDA has held a public meeting to promote this initiative, but very little interest has been expressed by industry.

Food Safety

Country of origin labeling should not be characterized as a food safety issue. Imported meat and poultry products must be inspected in the exporting country under a system equivalent to the U.S. system, then it is subject to reinspection at the border. Imported meat and poultry that is further processed in the U.S. undergoes a complete inspection again under U.S. inspection.

However, while food safety experts generally do not believe that country of origin labeling would greatly improve our ability to detect and control outbreaks of foodborne illness, according to some it could prove useful in tracing back the origins of some outbreaks related to imported fruits and vegetables. FDA officials have disagreed with this assessment arguing that consumers rarely keep the fruit/vegetable containers that carried the tainted food.

A further consideration is the fact that the Administration is currently seeking additional funding for food safety. With limited budgets and efforts focused on actions directly related to improving food safety, the Administration should carefully consider whether implementing and enforcing country of origin legislation would be the most effective use of our food safety resources.

The Johnson amendment would be implemented by the Food Safety and Inspection Service (FSIS), which is responsible for meat, poultry and egg safety. In the absence of additional funding and personnel, FSIS would have to redirect resources away from food safety focused tasks in order to implement and enforce these provisions.

While the Food and Drug Administration (FDA) has jurisdiction over the labeling of fruits and vegetables, the Graham amendment gives the Secretary of Agriculture authority to enforce the legislation. USDA has neither the infrastructure nor the resources to implement this provision, and would suggest either FDA or Customs as the appropriate enforcement agency.

Trade

It is possible to require country of origin labeling of imported products under our GATT and WTO obligations, provided that all imports are treated similarly, the difficulties are reduced to a minimum, and the labeling does not seriously damage the product or unduly increase its costs or decrease its value.

The Administration has generally objected to country of origin labeling when it has been considered by our trading partners. If the Administration were to support country of origin labeling, it could be seen as protectionist by our trading partners and would obviously limit our ability to object to such requirements in the future.

While many agricultural producers support country of origin labeling, others do not, in part because of concern that such labeling would be used unfairly against U.S. exports. The U.S. exports nearly 60 percent more agricultural products than it imports. For example, it is possible that such labeling will be used to stigmatize imported food products through negative advertising campaigns. Similar efforts could be made to stigmatize U.S. exports to other countries.

In general, Senator Graham's amendment appears to be consistent with U.S. rights under Article 9 of the WTO agreement. However, it is possible that an exporting country could challenge these labeling requirements as unduly increasing the costs of their product, for example, because the labeling requirements imposed on domestic retailers will (1) either be passed on to the exporting countries, making their product less competitive, or (2) make domestic retailers less likely to market imported products.

While the same general challenge could be made against his amendment, Senator Johnson's amendment also contains language which appears to violate our international trading commitments. Specifically, the language appears to require the word "imported" on the label rather than allowing a specific country of origin, which would violate WTO Article XI. This concern has been expressed to Senator Johnson's staff but the necessary changes to the language have not been made.

In addition, Senator Johnson's amendment may raise other trade issues such as national treatment, particularly since it appears to be targeted at Canada. Under current law, cattle that is imported into the U.S. for slaughter is consider U.S. product. The Johnson amendment would require such product to be labeled as imported. However, if imported cattle are shipped into a U.S. feedlot prior to slaughter, even for one day, then the product would be considered U.S. under the Johnson amendment. The Canadian Agriculture Minister has expressed his concerns about the amendment to Secretary Glickman.

DPC has discussed the matter with Sean Darragh of USTR who expressed USTR's continued opposition to the concept of country of origin labeling. Faced with the prospect that the legislation may become law, USTR via Jim Lyons, suggested a change affecting the importation of live cattle. Sean Darragh stated that USTR would much prefer language specifying that the imported food will not simply say "Imported" but rather say "product of country X".

Consumer Right to Know

While country of origin labeling should not be supported on the basis of food safety, supporters argue that consumers have the right to know a food product's country of origin. For example, supporters argue that, if consumers can tell where their clothes come from, they should be given the same information about their food.

However, others have expressed skepticism that consumers do in fact believe that country of origin is important information. In addition, a consumer right to know argument could have implications for other labeling disputes, such as our current disagreement with the European Union over the labeling of products of biotechnology.

Enforceability and Costs

Any real or perceived benefits to consumers from such a labeling requirement would be directly related to the ability of agencies to enforce these new requirements. Industry and the retail sector are strongly opposed to country of origin legislation because of the costs it would impose.

To effectively implement the Johnson amendment, for example, all imported beef would need to be segregated and extensive records would need to be kept throughout the slaughter, processing, and distribution chain. Industry talking points against this amendment estimate that 20 percent of ground beef produced is the U.S. is made from imported lean beef blended with U.S. fed beef trimmings. This would be a difficult and expensive effort, with estimates ranging up to $60 million annually, depending on the level of enforcement.

The Graham amendment, on the other hand, applies only to those retailers that purchase in excess of $230,000 per year in fresh and frozen produce, or about 5,000 of the approximately 180,000 retail stores. However, these 5,000 retailers have approximately 30,000 locations nationwide, and enforcement at retail establishments would often need to include record checks at central purchase and distribution points. Preliminary estimates suggest that enforcement could cost between $15-20 million annually, again depending on the level of enforcement.

Congressional Interest

Many of the supporters of these provisions are from border states or from states that compete with imported products. In addition, while there is bipartisan support for these requirements, there is also bipartisan opposition. For example, both Rep. Skeen, chair of the House Ag Approps subcommittee, and Rep. Stenholm, ranking Democrat on the House Agriculture Committee, have expressed concern about these provisions. In addition, Ways and Means Chairman Archer has expressed his opposition to these provisions in a July 24, 1998 letter to Appropriations Chairman Livingston, and Agriculture Chairman Smith has also expressed opposition to authorizing these provisions on an appropriations bill.

USDA understands that the entire food processing and retail industry is attempting to meet with the Republican leadership.

Constituent Interest

The National Farmers Union, American Farm Bureau Federation, and the National Cattleman's Beef Association have strong grassroots support for the Johnson amendment. The pork and poultry industry do not support country of origin labeling, but they are also not covered by the Johnson amendment. The meatpacking and food processing industry vigorously opposes both amendments. Consumer groups generally support country of origin labeling. Fruit and vegetable producers do not have consistent support for or opposition to country of origin labeling.

Other Issues

The Johnson amendment in particular contains a number of potentially problematic provisions that may simply be due to inartful drafting. For example, one provision could be construed to change the statutory definition of meat.

7 pages

7/24/98

REASONS TO OPPOSE IMPORT LABELING FOR BEEF AND LAMB

Imported Meat Labeling Amendment Means Costly Government Over-Regulation and Market Intervention

1. The amendment would mandate all beef and lamb offered for sale in the U.S. and for export from the U.S., be accompanied by labeling identifying it as "United States." Imported." "Blended with Imported." or "Blended with __% Imported." Although the amendment would require this labeling immediately, no system is in place to track and verify supply channels to ensure compliance with this requirement. It is estimated the costs associated with the establishment of such a compliance system, as well as the labeling itself, to retailers, foodservice operators and the beef and lamb industry will exceed $100 million. These costs would result from the need to establish sorting and segregation systems to separately receive, process and store imported and domestic products, and to maintain a variety of label stocks, and would be incurred throughout the food chain. Significant capital and technological costs would be passed on to consumers.

2. Labeling of imported meat will have a negative bottom-line effect on the entire U.S. beef complex. Feeder cattle proceeds will drop because, in order to avoid import labeling, Canadian producers will increase shipments to the U.S. of feeder cattle which, after having been fed in the U.S., will qualify for the "United States" label. The proposed amendment stipulates that only cattle imported in sealed trucks would trigger the import label. Canadian, Australian and New Zealand beef and lamb diverted from the U.S. market would compete more aggressively with U.S. beef and lamb in export markets, thereby reducing U.S. beef and lamb exports. This requirement also could trigger similar labeling requirements among importers of U.S. beef. Canada, for example, receives 13 percent of U.S. beef exports.

3. U.S. beef market share of domestic protein consumption likely would drop. Forty percent of the beef consumed in the U.S. is ground beef. Twenty percent of the ground beef produced in the U.S. is made from imported lean beef blended with U.S. fed beef trimmings. These new labeling requirements would likely discourage the use of imported lean beef for use in ground beef production, leading to a reduced supply and increased cost of the product. As a result, consumers likely would choose other convenient, economical protein foods.

4. U.S. companies that produce fat-reduced meat products, such as frozen entrees, generally rely on imported lean meat to meet maximum fat requirements for such reduced fat products. If the availability of imported lean meat is restricted, consumers may not have available for purchase these nutritionally beneficial products.

5. Consumer-ready processed food products produced outside the U.S. already are required to display a country of origin marking, as mandated by the Tariff Act of 1930. The proposed amendment could place a new, and potentially conflicting, labeling requirement on certain processed products produced domestically that include an imported meat ingredient.

In addition to meeting the country of origin marking requirements of the Tariff Act, the amendment would require some U.S. and foreign companies to meet new marking requirements in the Federal Meat Inspection Act, thereby placing the processed food industry under two different, and in some instances conflicting, regulatory schemes for country of origin marking. For companies that include imported meat components in their U.S.-produced products, this amendment could represent a first foray into country of origin labeling for individual ingredients. In fact, consumers likely will be confused by a labeling requirement which would require a frozen lasagna with an imported meat component, for example, to be labeled, "Product of the U.S. Blended with Imported Meat."

6. The amendment would place a significant new statutory burden on the U.S. Department of Agriculture (USDA). To implement and enforce new imported meat labeling requirements, the Agency would be forced to devote scarce resources to manage and enforce a new retail-level labeling scheme. Consumers, USDA and the industry would receive a much greater benefit if the Agency used its limited resources to target other more critical food industry issues, such as ensuring every reasonable and science-based effort is made to ensure a continued safe food supply.

7. Under this amendment, fresh, ground or processed beef or lamb not correctly identified as "United States," "Imported," or "Blended with Imported," would be considered misbranded as defined under the Federal Meat Inspection Act, triggering criminal enforcement proceedings against all businesses that are responsible for the distribution and sale of such product. In order to ensure that labeling at the retail level is accurate, a complicated certification or labeling procedure would have to be established, beginning with the live animal and continuing throughout the production, distribution and sales chain.

8. The amendment would establish a new framework for labeling imported product under the Federal Meat Inspection Act that would duplicate, and in many cases conflict with, existing country of origin marking laws embodied in Section 304 of the Tariff Act of 1930. The amendment is inconsistent with the country of origin labeling practice established under this section.

Labeling of Imported Meat Offers No Useful Consumer Information

1. The amendment would offer consumers no useful information. Instead of providing consumers with useful information to assist in their purchasing decisions, the amendment would unfairly attempt to stigmatize imported beef and lamb as somehow inferior to or less safe than domestically-produced meats.

2. Numerous studies have shown that when shopping for food, consumers rank taste, nutrition, product safety and price as their top concerns. They do not make food purchasing decisions based on the origin of a particular product. The latest consumer research by the Food Marketing Institute, *Trends in the United States: Consumer Attitudes and the Supermarket -- 1998*, reaffirms the fact that consumers look for high quality products that are available for a reasonable price.

3. U.S. per capita consumption of beef has been declining for the past 20 years, while consumption of chicken, fish and other proteins has increased. Labeling of imported meat will not enhance consumer demand for beef or reverse the downward trend in U.S. per capita beef consumption.

4. This amendment, which would require retail labeling and placarding with six different messages, will do nothing except confuse consumers who shop in the meat section of the supermarket and will lead them to purchase products other than beef or lamb, which do not have cluttered packages and confusing signage.

Imported Meat Labeling Amendment will Create a Non-Tariff Barrier to Trade that Will Put U.S. Exports at Risk

1. The amendment violates the WTO Agreements on Rules of Origin and Technical Barriers to Trade. Enactment of this provision would breach commitments the United States made to its trading partners in the Uruguay Round. In Article 2 of the Uruguay Round Agreement on Rules of Origin, the U.S. pledged that its rules of origin, including those applied for marking purposes, would be administered in a consistent, uniform, impartial, and reasonable manner. Because it would apply origin and marking rules more stringent than those the United States applies generally for country of origin marking purposes, the amendment fails to achieve these objectives.

Article 2 further requires that nonpreferential origin rules not be used as instruments to pursue trade objectives and not create restrictive, distorting, or disruptive effects on international trade. Here also, the amendment does not conform to these disciplines. As a marking requirement, it has a trade objective in that it is directed against imports, and it would adversely affect international trade in beef and lamb products. In its failure to recognize as the country of origin the country in which the last substantial transformation is carried out, the amendment also conflicts with the disciplines member countries expressly have undertaken under Article 9.1 of the Agreement on Rules of Origin.

The amendment also would violate Article 2.2 of the Uruguay Round Agreement on Technical Barriers to Trade. As a party to that Agreement, the United States has pledged it would not adopt technical regulations, including marking and labeling regulations, that are more stringent than necessary to achieve a legitimate objective or that are applied with a view to or with the effect of creating unnecessary obstacles to international trade. As noted above, this provision is directed at imports and does constitute an unnecessary obstacle to trade in the affected goods.

2. The meat labeling amendment would invite foreign countries to adopt labeling provision adverse to the interests of U.S. exporters. If this provision were to become law, we should expect U.S. trading partners to retaliate through the adoption of similar labeling requirements adverse to U.S. exports, in particular U.S. agricultural exports. Because the United States in the past has exercised international leadership in removing and preventing product labeling standards that function as disguised barriers to international trade, this country has nothing to

gain, and much to lose, from resorting to the type of measure represented by this amendment.

3. In penetrating Asian markets, U.S. exports repeatedly have encountered quotas, import licensing requirements and protectionist sanitary and phyto-sanitary regulations. In the 1980's, the opening of key markets in Japan and Korea helped offset flat domestic demand. For example, beef exports to Japan reached a record $2.1 billion in 1995, before dipping to $1.6 billion in 1996. Beef exports to Japan in 1996-7 were hurt by unfounded consumer concern that U.S. beef was unsafe, and the market only now is recovering from the weakness that was associated with that concern.

4. Exports currently are responsible for 12 percent of all beef sales, and are growing in importance relative to a declining U.S. market. A U.S. restriction on imports that leads to a restriction on U.S. exports would be devastating to the U.S. meat industry.

5. Adoption of this amendment would put the U.S. industry at a significant disadvantage in its dealings with its trading partners. For example, if the U.S. were to require special labeling of meat imported from the European Union, the U.S. no longer would be able to unequivocally demand the EU repeal its beef hormone labeling scheme.

Labeling of Imported Meat is Not a Food Safety Issue

1. USDA confirms that labeling of imported meat will not enhance food safety. In a September 1997, document, USDA's Foreign Agriculture Service states, "Country of origin labeling does not address the issue of food safety. If a product is not safe, it should be prohibited from entering the United States. Country of origin labels will not help consumers determine if a product is safe."

2. There is no empirical evidence that foodborne illness associated with beef and lamb is detected at a higher rate among imported products.

3. Imported beef and lamb are subject to rigorous inspection procedures designed to ensure food safety. USDA must evaluate and approve the inspection system of the importing country to ensure it is at least equivalent to the U.S. system. Meat inspection authorities of the exporting country may then, subject to U.S. monitoring, permit shipments to the U.S. from approved plants. USDA's Food Safety and Inspection Service (FSIS) also conducts port-of-entry inspections. USDA's Animal and Plant Health Inspection Service (APHIS) takes appropriate actions to address issues related to the spread of animal disease from country to country. Finally, once a beef or lamb product is approved for import, any further processing within the U.S. must be conducted under continuous USDA inspection.

4. The use of labeling requirements to encourage discrimination against imported products does not enhance consumer confidence in the quality and safety of U.S. beef and lamb. In fact, some consumers may perceive imported meats to be superior to U.S. product. For example, New Zealand lamb sales have in the U.S. grown from seven percent to 30 percent by the importers' capitalizing on the favorable image U.S. consumers have of the New Zealand product. Import labeling could in fact lead consumers away from U.S. products.

Country of Origen Labeling

Name	Agency	Phone	FAX
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Ellen Daly	Comset-WCS	927-6900	927-6940
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Melinda Plaisier	FDA	(301) 443-3793	(301) 443-5897
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Toby Donenfeld	OVP	202 456-6222	202 456-6231
Lisa Grove	OMB	202 395 7342	202 395 ~~734~~ 7285
Wendy Taylor	OMB	202-395-7316	202-395-6974
[illegible]	Treasury	202-622-1733	622-1731
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Helena Stevens	DOC	202-482 3718	482-5865
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Andrae Erickson	USTR	(202) 395-9560	395-4579
Terry Miller	State	(202) 647-3090	647-2302

USTR - yes [illegible]

NSC - Malcolm Lee

OMB - Wendy Taylor

FDA - Hubbard - meats / consumer [illegible]

USDA - yes - [illegible]

205-4102

① not [illegible]
② [illegible] USTR ok
③ [illegible] ok

① [illegible] meat

beef [illegible]

Treasury

Malcolm Lee

[illegible]

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105th CONGRESS

1st Session

To ensure the continued viability of livestock producers and the livestock industry in the United States, to assure foreign countries do not deny market access to United States meat and meat products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

January 21, 1997

Mr. DASCHLE (for himself, Mr. HARKIN, Mr. JOHNSON, Mr. DORGAN, Mr. CONRAD, Mr. KERREY, Mr. BAUCUS, Mr. BINGAMAN, Mr. KOHL, Mr. FEINGOLD, Mr. LEAHY, and Mr. WELLSTONE) introduced the following bill; which was referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To ensure the continued viability of livestock producers and the livestock industry in the United States, to assure foreign countries do not deny market access to United States meat and meat products, and for other purposes.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the `Cattle Industry Improvement Act of 1997'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

TITLE I--CATTLE INDUSTRY IMPROVEMENT

SEC. 101. PROHIBITION ON NONCOMPETITIVE PRACTICES.

Section 202 of the Packers and Stockyards Act, 1921 (7 U.S.C. 192), is amended--

(1) in subsection (g), by striking the period at the end and inserting `; or'; and

(2) by adding at the end the following:

`(h) Engage in any practice or device that the Secretary by regulation, after consultation with producers of cattle, lamb, and hogs, and other persons in the cattle, lamb, and hog industries, determines is a detrimental noncompetitive practice or device relating to the price or a term of sale for the procurement of livestock or the sale of meat or other byproduct of slaughter.'.

SEC. 102. DOMESTIC MARKET REPORTING.

(a) PERSONS IN SLAUGHTER BUSINESS- Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)) is amended--

(1) by striking `(g) To' and inserting the following:

`(g) COLLECTION AND DISSEMINATION OF MARKETING INFORMATION-

`(1) IN GENERAL- To'; and

(2) by adding at the end the following:

`(2) DOMESTIC MARKET REPORTING-

`(A) MANDATORY REPORTING- Each person engaged in the business of slaughtering a quantity of livestock determined by the Secretary shall report to the Secretary in such manner as the Secretary shall require, as soon as practicable but not later than 24 hours after a transaction takes place, such information relating to prices and the terms of sale for the procurement of livestock and the sale of meat food products and livestock products as the Secretary determines is necessary to carry out this subsection.

`(B) NONCOMPLIANCE- Whoever knowingly fails or refuses to provide to the Secretary information required to be reported by subparagraph (A) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

`(C) VOLUNTARY REPORTING- The Secretary shall encourage voluntary reporting by any person engaged in the business of slaughtering livestock who is not subject to subparagraph (A).

`(D) AVAILABILITY OF INFORMATION- The Secretary shall make information received under this subsection available to the public only in the aggregate and shall ensure the confidentiality of persons providing the information.

`(E) TERMINATION OF AUTHORITY- The authority provided by this paragraph shall terminate on the date that is 1 year after the date of enactment of this paragraph, except that the Secretary may extend the authority beyond that date if the Secretary determines the extension is necessary or appropriate.'.

(b) ELIMINATION OF OUTMODED REPORTS- The Secretary of Agriculture, after consultation with producers and other affected parties, shall periodically--

(1) eliminate obsolete reports; and

(2) streamline the collection and reporting of data related to livestock and meat and livestock products, using modern data communications technology, to provide information to the public on as close to a real-time basis as practicable.

(c) DEFINITION OF `CAPTIVE SUPPLY'- For the purpose of regulations issued by the Secretary of Agriculture relating to reporting under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) and the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), the term `captive supply' means livestock obligated to a packer in any form of transaction in which more than 7 days elapses from the date of obligation to the date of delivery of the livestock.

SEC. 103. IMPORT REPORTING.

(a) IN GENERAL- The Secretary of Agriculture and the Secretary of Commerce shall, using modern data communications technology to provide the information to the public on as close to a real-time basis as practicable, jointly make available to the public aggregate price and quantity information on imported meat food products, livestock products, and livestock (as the terms are defined in section 2 of the Packers and Stockyards Act, 1921 (7 U.S.C. 182)).

(b) FIRST REPORT- The Secretaries shall release to the public the first report under subsection (a) not later than 60 days after the date of enactment of this Act.

SEC. 104. PROTECTION OF LIVESTOCK PRODUCERS AGAINST RETALIATION BY PACKERS.

(a) RETALIATION PROHIBITED- Section 202(b) of the Packers and Stockyards Act, 1921 (7 U.S.C. 192(b)), is amended--

(1) by striking `or subject' and inserting `subject'; and

(2) by inserting before the semicolon at the end the following: `, or retaliate against any livestock producer on account of any statement made by the producer (whether made to the Secretary or a law enforcement agency or in a public forum) regarding an action of any packer'.

(b) SPECIAL REQUIREMENTS REGARDING ALLEGATIONS OF RETALIATION- Section 203 of the Packers and Stockyards Act, 1921 (7 U.S.C. 193), is amended by adding at the end the following:

`(e) SPECIAL PROCEDURES REGARDING ALLEGATIONS OF RETALIATION-

`(1) CONSIDERATION BY SPECIAL PANEL- The President shall appoint a special panel consisting of 3 members to receive and initially consider a complaint submitted by any person that alleges prohibited packer retaliation under section 202(b) directed against a livestock producer.

`(2) COMPLAINT; HEARING- If the panel has reason to believe from the complaint or resulting investigation that a packer has violated or is violating the retaliation prohibition under section 202(b), the panel shall notify the Secretary who shall cause a complaint to be issued against the packer, and a hearing conducted, under subsection (a).

`(3) EVIDENTIARY STANDARD- In the case of a complaint regarding retaliation prohibited under section 202(b), the Secretary shall find that the packer involved has violated or is violating section 202(b) if the finding is supported by a preponderance of the evidence.'.

(c) DAMAGES FOR PRODUCERS SUFFERING RETALIATION- Section 203 of the Packers and Stockyards Act, 1921 (7 U.S.C. 193) (as amended by subsection (b)), is amended by adding at the end the following:

`(f) DAMAGES FOR PRODUCERS SUFFERING RETALIATION-

`(1) IN GENERAL- If a packer violates the retaliation prohibition under section 202(b), the packer shall be liable to the livestock producer injured by the retaliation for not more than 3 times the amount of damages sustained as a result of the violation.

`(2) ENFORCEMENT- The liability may be enforced either by complaint to the Secretary, as provided in subsection (e), or by suit in any court of competent jurisdiction.

`(3) OTHER REMEDIES- This subsection shall not abridge or alter a remedy existing at common law or by statute. The remedy provided by this subsection shall be in addition to any other remedy.'.

SEC. 105. REVIEW OF FEDERAL AGRICULTURE CREDIT POLICIES.

The Secretary of Agriculture, in consultation with the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Board of the Farm Credit Administration, shall establish an interagency working group to study--

(1) the extent to which Federal lending practices and policies have contributed, or are contributing, to market concentration in the livestock and dairy sectors of the national economy; and

(2) whether Federal policies regarding the financial system of the United States adequately take account of the weather and price volatility risks inherent in livestock and dairy enterprises.

SEC. 106. STREAMLINING AND CONSOLIDATING THE UNITED STATES FOOD INSPECTION SYSTEM.

(a) PREPARATION- In consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and all other interested parties, the President shall prepare a plan to consolidate the United States food inspection system that ensures the best use of available resources to improve the consistency, coordination, and effectiveness of the United States food inspection system, taking into account food safety risks.

(b) SUBMISSION- Not later than 1 year after the date of enactment of this Act, the President shall submit to Congress the plan prepared under subsection (a).

SEC. 107. LABELING SYSTEM FOR MEAT AND MEAT FOOD PRODUCTS PRODUCED IN THE UNITED STATES.

(a) LABELING- Section 7 of the Federal Meat Inspection Act (21 U.S.C. 607) is amended by adding at the end the following:

`(g) LABELING OF MEAT OF UNITED STATES ORIGIN-

`(1) IN GENERAL- The Secretary shall develop a system for the labeling of carcasses, parts of carcasses, and meat produced in the United States from livestock raised in the United States, and meat food products produced in the United States from the carcasses, parts of carcasses, and meat, to indicate the United States origin of the carcasses, parts of carcasses, meat, and meat food products.

`(2) ASSISTANCE- The Secretary shall provide technical and financial assistance to establishments subject to inspection under this title to implement the labeling system.

`(3) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as are necessary to carry out this subsection.'.

SEC. 108. SENSE OF SENATE ON INTERSTATE SHIPMENT OF STATE-INSPECTED MEAT, POULTRY, AND EGGS.

It is the sense of the Senate that--

(1) not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture should convene a public meeting of State inspection officials and all other interested parties to determine whether the interstate shipment of State-inspected meat, poultry, and egg products should be permitted; and

(2) the meeting should be structured to ensure that all parties are given an opportunity to present their views on the subject described in paragraph (1).

SEC. 109. EXCHANGE OF CATTLE PRODUCTION DATA WITH CANADA.

The Secretary of Agriculture shall seek immediate consultation with the Minister of Agriculture of Canada to provide for a regular monthly exchange of cattle production data, including cattle on feed, cattle slaughtered, and cattle and beef shipped to the United States.

TITLE II--MARKET ACCESS FOR UNITED STATES MEAT PRODUCTS

SEC. 201. SHORT TITLE.

This title may be cited as the `Meat Products Market Access Act of 1997'.

SUBTITLE A--IDENTIFICATION OF COUNTRIES

SEC. 211. FINDINGS; PURPOSES.

(a) FINDINGS- Congress makes the following findings:

(1) The export of meat and meat products is of vital importance to the economy of the United States.

(2) In 1995, agriculture was the largest positive contributor to the United States merchandise trade balance with a trade surplus of $25,800,000,000.

(3) The growth of exports of United States meat and meat products should continue to be an important factor in improving the United States merchandise trade balance.

(4) Increasing exports of meat and meat products will increase farm income in the United States, thereby protecting family farms and contributing to the economic well-being of rural communities in the United States.

(5) Although the United States efficiently produces high-quality meat and meat products, United States producers cannot realize their full export potential because many foreign countries deny fair and equitable market access to United States agricultural products.

(6) The Foreign Agricultural Service estimates that United States agricultural exports are reduced by $4,700,000,000 annually due to unjustifiable imposition of sanitary and phytosanitary measures that deny or limit market access to United States products.

(7) The denial of fair and equitable market access for United States meat and meat products impedes the ability of United States farmers to export their products, thereby harming the economic interests of the United States.

(b) PURPOSES- The purposes of this subtitle are--

(1) to reduce or eliminate foreign unfair trade practices and to remove constraints on fair and open trade in meat and meat products;

(2) to ensure fair and equitable market access for exports of United States meat and meat products; and

(3) to promote free and fair trade in meat and meat products.

SEC. 212. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS.

(a) IDENTIFICATION REQUIRED- Chapter 8 of title I of the Trade Act of 1974 is amended by adding at the end the following:

`SEC. 183. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS FOR MEAT AND MEAT PRODUCTS.

`(a) IN GENERAL- Not later than the date that is 30 days after the date on which the annual report is required to be submitted to Congressional committees under section 181(b), the United States Trade Representative (hereafter in this section referred to as the `Trade Representative') shall identify--

`(1) those foreign countries that--

`(A) deny fair and equitable market access to United States meat and meat products, or

`(B) apply standards for the importation of meat and meat products from the United States that are not related to public health concerns or cannot be substantiated by reliable analytical methods; and

`(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

`(b) SPECIAL RULES FOR IDENTIFICATIONS-

`(1) CRITERIA- In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries--

`(A) that engage in or have the most onerous or egregious acts, policies, or practices that deny fair and equitable market access to United States meat and meat products,

`(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

`(C) that are not--

`(i) entering into good faith negotiations, or

`(ii) making significant progress in bilateral or multilateral negotiations,

to provide fair and equitable market access to United States meat and meat products.

`(2) CONSULTATION AND CONSIDERATION REQUIREMENTS- In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall--

`(A) consult with the Secretary of Agriculture and other appropriate officers of the Federal Government, and

`(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b) and petitions submitted under section 302.

`(3) FACTUAL BASIS REQUIREMENT- The Trade Representative may identify a foreign country under subsection (a)(1) only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3).

`(4) CONSIDERATION OF HISTORICAL FACTORS- In identifying foreign countries under paragraphs (1) and (2) of subsection (a), the Trade Representative shall take into account--

`(A) the history of meat and meat products trade relations with the foreign country, including any previous identification under subsection (a)(2), and

`(B) the history of efforts of the United States, and the response of the foreign country, to achieve fair and equitable market access for United States meat and meat products.

`(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS-

`(1) AUTHORITY TO ACT AT ANY TIME- If information available to the Trade Representative indicates that such action is appropriate, the Trade Representative may at any time--

`(A) revoke the identification of any foreign country as a priority foreign country under this section, or

`(B) identify any foreign country as a priority foreign country under this section.

`(2) REVOCATION REPORTS- The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

`(d) FAIR AND EQUITABLE MARKET ACCESS- For purposes of this section, a foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product through the use of laws, procedures, practices, or regulations which--

`(1) violate provisions of international law or international agreements to which both the United States and the foreign

country are parties, or
`(2) constitute discriminatory nontariff trade barriers.
`(e) PUBLICATION- The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of the action under subsection (c).
`(f) ANNUAL REPORT- The Trade Representative shall, not later than the date by which countries are identified under subsection (a), transmit to the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on the actions taken under this section during the 12 months preceding such report, and the reasons for such actions, including a description of progress made in achieving fair and equitable market access for United States meat and meat products.'.
(b) CLERICAL AMENDMENT- The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 182 the following:
`Sec. 183. Identification of countries that deny market access for meat and meat products.'.

SEC. 213. INVESTIGATIONS.

(a) INVESTIGATION REQUIRED- Subparagraph (A) of section 302(b)(2) of the Trade Act of 1974 (19 U.S.C. 2412(b)(2)) is amended by inserting `or 183(a)(2)' after `section 182(a)(2)' in the matter preceding clause (i).
(b) CONFORMING AMENDMENT- Subparagraph (D) of section 302(b)(2) of such Act is amended by inserting `concerning intellectual property rights that is' after `any investigation'.

SEC. 214. AUTHORIZED ACTIONS BY UNITED STATES TRADE REPRESENTATIVE.

Section 301(c)(1) of the Trade Act of 1974 (19 U.S.C. 2411(c)(1)) is amended--
(1) by striking `or' at the end of subparagraph (C);
(2) by striking the period at the end of subparagraph (D)(iii)(II) and inserting `; or'; and
(3) by adding at the end the following:
`(E) with respect to an investigation of a country identified under section 183(a)(1), to request that the Secretary of Agriculture (who, upon receipt of such a request, shall) direct the Food Safety and Inspection Service of the Department of Agriculture to review certifications for the facilities of such country that export meat and other agricultural products to the United States.'.

SUBTITLE B--REVIEW OF THIRD COUNTRY MEAT DIRECTIVE

SEC. 221. FINDINGS.

Congress makes the following findings:
(1) The European Union's Third Country Meat Directive has been used to decertify more than 400 United States facilities exporting beef and pork products to the European Union even though United States health inspection procedures are equivalent to those provided for in the Third Country Meat Directive.
(2) An effect of the decertifications is to prohibit the importation of United States beef and pork products into the European Union.
(3) As a result of the decertifications, the highly competitive United States pork industry loses as much as $60,000,000 each year from trade with European Union countries.
(4) In July 1987 and November 1990, at the request of affected United States industries, the United States initiated

investigations under section 301 of the Trade Act of 1974 into the European Union's administration of the Third Country Meat Directive and sought resolution of the meat and pork trade problems through the dispute settlement process established under the General Agreement on Tariffs and Trade.

(5) The United States Trade Representative preliminarily concluded on October 10, 1992, that the European Union's administration of the Third Country Meat Directive created a burden on and restricted United States commerce.

(6) Bilateral talks, initiated as a result of that finding, resulted in an Exchange of Letters in which the United States and the European Union concluded that the meat inspection systems of the United States and the European Union provided `equivalent safeguards against public health risks' and agreed to take steps to resolve remaining differences regarding meat inspection.

(7) Even though the United States terminated the section 301 investigation as a result of the Exchange of Letters, the United States determined that the practices under investigation would have been actionable if an acceptable agreement had not been reached.

(8) United States meat and pork producers have displayed consistent interest in exporting products to the European Union and have undertaken substantial investment to take the steps specified by the Exchange of Letters.

(9) The European Union has failed to acknowledge changes in plant safety and inspection procedures undertaken in the United States specifically at the European Union's request and has not fulfilled its obligation to inspect and relist United States producers who have taken the steps specified by the Exchange of Letters.

(10) The actions of the European Union in conducting United States plant inspections places the European Union in violation of commitments made in the Exchange of Letters.

(11) The European Union, in addition to being a party to the Exchange of Letters, is a signatory to GATT 1994 and to the Agreement on the Application of Sanitary and Phytosanitary Measures, which requires that meat and pork inspection procedures under Department of Agriculture regulations be treated as equivalent to inspection procedures required by the European Union under the Third Country Meat Directive.

(12) Whenever a foreign country is not satisfactorily implementing an international trade measure or agreement, the United States Trade Representative is required under section 306(b)(1) of the Trade Act of 1974 (19 U.S.C. 2416(b)(1)) to determine the actions to be taken under section 301(a) of such Act.

SEC. 223. DEFINITIONS.

For purposes of this subtitle:

(1) EXCHANGE OF LETTERS- The term `Exchange of Letters' means the exchange of letters concerning the application of the Community Third Country Directive, signed in May 1991 and November 1992, which constitute the agreement between the United States and the European Economic Community regarding the Third Country Meat Directive.

(2) GATT 1994- The term `GATT 1994' means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(3) THIRD COUNTRY MEAT DIRECTIVE; COMMUNITY THIRD COUNTRY DIRECTIVE- The terms `Third Country Meat Directive' and `Community Third Country Directive' mean the European Union's Council Directive 72/462/EEC relating to inspection and

certification of slaughter and processing plants that export meat and pork products to the European Union.

(4) WTO AGREEMENT- The term `WTO Agreement' means the Agreement establishing the World Trade Organization entered into on April 15, 1994.

SEC. 224. REQUIREMENT FOR DETERMINATION BY UNITED STATES TRADE REPRESENTATIVE.

Not later than 30 days after the date of enactment of this Act, the United States Trade Representative shall determine, for purposes of section 306(b)(1) of the Trade Act of 1974, whether the European Union has failed to implement satisfactorily its obligations under the Exchange of Letters, the Agreement on the Application of Sanitary and Phytosanitary Measures, or any other Agreement.

SEC. 225. REQUEST FOR DISPUTE SETTLEMENT.

If the United States Trade Representative determines under section 224 that the European Union has failed to implement satisfactorily its obligations under the Exchange of Letters, the Agreement on the Application of Sanitary and Phytosanitary Measures, or any other agreement, the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures applicable to the agreement.

SEC. 226. REVIEW OF CERTAIN MEAT FACILITIES.

(a) REVIEW BY FOOD SAFETY AND INSPECTION SERVICE- If the United States Trade Representative determines pursuant to section 224 that the European Union has failed to implement satisfactorily its obligations under the Exchange of Letters, the Agreement on the Application of Sanitary and Phytosanitary Measures, or any other Agreement, the United States Trade Representative shall request the Secretary of Agriculture (who, upon receipt of the request, shall) direct the Food Safety and Inspection Service of the Department of Agriculture to review certifications for European Union facilities that import meat and other agricultural products into the United States.

(b) RELATIONSHIP TO USTR AUTHORITY- The review authorized under subsection (a) is in addition to the authority of the United States Trade Representative to take actions described in section 301(c)(1) of the Trade Act of 1974 (19 U.S.C. 2411(c)(1)).

Tom/Harry:

FYI – Building police support.

Jri

PHOTOCOPY
PRESERVATION

Hate Crimes

LEGISLATIVE UPDATE

PERF Announces Positions on Several Current Issues

Grassley Amendment

PERF has publicly announced its opposition to Senator Charles Grassley's (R-Iowa) amendment to Section 14501 of S. 10 (the Senate's juvenile justice bill). This amendment calls for loca educational agencies to expel from school "for a period of not more than 6 months : student who is determined to have, whil not having attained the age of 18 and on . regular basis (as determined by the State) used or possessed 1 or more tobacco products or alcoholic beverages on school property." PERF believes that it is imperative for students to have a safe, drug-free environment and that disruptive behavior in school must be addressed. However, PERF feels that expelling a student without the guarantee of alternative educational instruction will not only damage students' futures, but will place the whole community at risk as these juveniles become involved in gang or criminal activity, or are vulnerable to crime when they spend their days on the street instead of in school.

If you would like a copy of Commissioner Gil Kerlikowke's letter to Senator Jeff Bingamen (D-N.M.) to express PERF's opposition to Senator Grassley's amendment, please contact Neal Posdamer at (202) 466-7820, ext. 231.

Hate Crimes Prevention Act of 1998 (HCPA)

Several congressional leaders have asked PERF to endorse S. 1529, the Hate Crimes Prevention Act of 1998 (HCPA). This bill, introduced by Senators Ted Kennedy (D-Mass.), Arlen Specter (R-Pa.) and Ron Wyden (D-Ore.), is meant to enhance federal enforcement of hate crimes. A House version, H.R. 3081, was introduced by Representatives Charles Schumer (D-N.Y.) and Bill McCollum (R-Fla.).

Tom/Larry:

FYI – Building police support.

Fri

cials to investigate ... which violence has occurred due to the victim's sexual orientation, gender or disability.

Opponents of the HCPA feel that the bill unwisely expands federal authority and will interfere with local police efforts to enforce state hate crime laws. Supporters of the HCPA feel that the bill will allow the federal government to prosecute hate crimes when local authorities are unable to do so, give uniformity to the federal criminal hate crimes statutes and support the 1994 Hate Crimes Sentencing Enhancement Act. In a Dec. 1, 1997, *Washington Post* editorial titled "When Combating Hate Should Be a Federal Fight," Senators Specter and Kennedy wrote, "Hate crimes are often committed by individuals with ties to groups that operate across state lines."

PERF's legislative committee was given an outline and copy of the HCPA in late December for their comments and review. All the respondents stated that, while they generally oppose expanded federal authority, this particular legislation was needed. Some comments are as follows:

- "While I am always hesitant to support an expansion of federal authority, this is one situation where it is the right thing to do. Having policed in the South for more than 20 years, I know first hand w important it is to have federal over- ;ht of hate crimes. I would strongly pport the bill as written."

late crimes are serious acts that gen- ate fear and concern among victims id the public and tear at the fabric of e community. I support the proposed gislation, which will provide another iol to federal law enforcement in com- ating these serious crimes."

F Supports Bulletproof Vest Grant jram

Representative Peter Visclosky (D-Ind.) sponsoring legislation, titled the Bulletproof Vest Partnership Grant Act of 1997, that would authorize up to $25 million per year for a new Department of Justice grant program. The program would provide 50-50 matching grants to state and local law enforcement agencies to purchase bulletproof vests and other body armor for officers. The grants would be targeted to jurisdictions where most officers do not currently have access to vests, and the matching requirement could be waived for jurisdictions that demonstrate financial hardship. Unfortunately, the legislation does not specify what standards the vest must conform to or what minimum standards are acceptable. This is a major concern of the law enforcement community and will be addressed soon, according to Representative Visclosky's office.

PERF is one of several national police organizations supporting this legislation. Senator Ben Nighthorse Campbell (R-Colo.) introduced a companion bill in the Senate. S. 1591 was introduced on Jan. 30, 1998, and referred to the Senate Judiciary Committee. The differences between the House and Senate bills are minor and, according to Senate and House staffers, can be resolved very easily.

Hate Crimes

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Currently, Section 245 of Title 18 U.S.C. only prohibits intentional interference by force or threat of force while participating in a federally protected right or benefit, such as voting, on the basis of race, color, religion or national origin. In order to convict, the government must prove the crime occurred because of a person's membership in a protected group and that the person was engaging in a federally protected activity.

The HCPA would amend 18 U.S.C. 245 by not requiring federal prosecutors to prove that the victim was engaged in a federally protected activity. The HCPA would also provide new authority for federal officials to investigate and prosecute cases in which violence has occurred due to the victim's sexual orientation, gender or disability.

Opponents of the HCPA feel that the bill unwisely expands federal authority and will interfere with local police efforts to enforce state hate crime laws. Supporters of the HCPA feel that the bill will allow the federal government to prosecute hate crimes when local authorities are unable to do so, give uniformity to the federal criminal hate crimes statutes and support the 1994 Hate Crimes Sentencing Enhancement Act. In a Dec. 1, 1997, *Washington Post* editorial titled "When Combating Hate Should Be a Federal Fight," Senators Specter and Kennedy wrote, "Hate crimes are often committed by individuals with ties to groups that operate across state lines."

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- "Hate crimes are serious acts that generate fear and concern among victims and the public and tear at the fabric of the community. I support the proposed legislation, which will provide another tool to federal law enforcement in combating these serious crimes."

PERF Supports Bulletproof Vest Grant Program

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Country of Origen Labeleng

Name	agency	Phone	FAX
David Cohen	U.S. Customs	927-1725	927-1873
Ellen Daly	Comsel-WCS	927-6900	927-6940
Bob Lake	FDA	(202)205-4160	(202)401-7739
Melinda Plaisier	FDA	(301) 443-3793	(301) 443-589[illegible]
Thomas Gardine	FDA	(301) 443-6553	(301) 594-3787
Toby Donenfeld	OVP	202 456·6222	202 456·6231
Lisa Grove	OMB	202 395 7342	202 395 ~~734~~ 7285
Wendy Taylor	OMB	202-395-7316	202-395-6974
[illegible]	Treasury	202-622-1733	622-1731
Geri Word	DOC	202 482-1545	482-5865
Helena Stevens	DOC	202-482 3718	482-5865
Ana Maria Salazar	Office Special Envoy	(202) 456-7580	456-7586
Matt Rohde	USTR	(202)395-3063	395-5674
Audrae Erickson	USTR	(202) 395-9560	395-4579
Terry Miller	State	(202) 647-3090	647-2302

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Diane

224-5811

Kenneth C. Clayton
Associate Administrator
Agricultural Marketing Service
USDA
202/720-4276 (phone)
202/720-8477 (fax)

PAUL DRAZEK
720 - 6919

w/ 301 - 493 -
43.75 Eric 332 - 3570

Voluntary Domestic

Florida

Knee jerk

Include meat Dischile

- Not good on food safety

- Consumer rt. to know

Identifying products as USA

- Not food safety

- better to do American

Conway
Organic labeling
3/98

Clayton
Daschle — Fast track
— Bono — vote for fast track
Ways/Means

USTR Sue Esserman — Gen'l Counsel
Treasury John Simpson — Simpson

State -

Sean Darragh

Glickman
— require [illegible] labeling

— [illegible] whole beef — [illegible]

Simpson — language does nothing more
— from Customs — [illegible] list

Ways of Means
Cost
Grocery

1. political opposition
2. Cost
3. trade, retaliation
mirror
4. * food Safety
— link
5. label -

EW
P cu
of
OR

NATIONAL
FOOD
PROCESSORS
ASSOCIATION

1401 New York Ave., NW
Washington, DC 20005
202·639·5900

WASHINGTON, DC
DUBLIN, CA
SEATTLE, WA

July 24, 1998

Mr. Bruce Reed
Assistant to the President
Domestic Policy Council
Office of Policy Development
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. Reed:

I am writing on behalf of the members of the National Food Processors Association (NFPA) to share with you their serious concern with country of origin labeling provisions adopted by the Senate last week as part of the FY 1999 Agriculture Appropriations Bill. These provisions reflect protectionist trade policy and do not conform with the spirit and intent of U.S. trade obligations. **NFPA urges the Administration to express its strong opposition regarding these provisions to House and Senate conferees on the Bill.** While the Senate's adoption of the provisions may have been good "politics," their potential consequences are decidedly anti-free trade.

NFPA is the voice of the $430 billion food processing industry on scientific and public policy issues involving food safety, nutrition, technical and regulatory matters and consumer affairs. Like the U.S. and other economies, NFPA member companies have become increasingly dependent upon global trade and have a significant interest in the development of international trade policy.

The U.S. Senate last week approved two amendments to its version of the FY 1999 Agriculture Appropriations bill requiring country-of-origin labeling on food products containing imported beef and lamb, as well as on imported fresh produce. These provisions require that: 1) imported beef or lamb offered for retail sale must be labeled as imported, and products that combine sources of beef and lamb, such as ground or processed meats, must declare the percent of imported and domestic product they contain; and 2) imported fresh produce offered for retail sale must be labeled as imported.

The provisions are inconsistent with U.S. obligations under the WTO.
As a member of the WTO, the U.S. has committed to the Agreement on Technical Barriers to Trade (TBT). Under the TBT Agreement, "members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade." They must not be

more restrictive than necessary to fulfill legitimate objectives which are defined as: "national security, the prevention of deceptive practices or protection of human health and safety." NFPA has opposed similar requirements from other nations identifying them as TBTs and disruptive to trade.

The requirements would violate national treatment rules. The WTO Agreement requires equitable national treatment. Rules "should not be applied to imported or domestic products so as to afford protection to domestic production." These marking requirements, strongly supported by the National Cattleman's Association, are intended to protect a specific U.S. industry segment from foreign competition.

The requirements are inconsistent with the concept of substantial transformation. The WTO is currently engaged in an effort to harmonize international rules of origin, the goal of which is for all countries to apply the same non-preferential standards. The harmonization effort is now scheduled to be completed in 1999 and is expected to support the concept of substantial transformation in conferring product origin. The legislation under consideration would inappropriately mandate retaining markings of original origin even when the product has undergone substantial processing in the U.S. The U.S. must assume leadership in efforts to harmonize international standards to facilitate trade, and not undermine these WTO efforts.

Country-of-origin labeling is not a food safety issue. Food safety related to imported products has become a very political issue in the U.S. Yet, evidence does not exist to justify that imported products pose a greater public health risk than domestic foods. Processed food products containing meat from either foreign or domestic sources are subject to the same processing requirements that ensure the food's safety.

These requirements will be viewed as protectionist and invite retaliation. These requirements are clearly a non-tariff trade barrier. They invite retaliation from our trading partners who are likely to demand reciprocal labeling on foods imported from the U.S. or call for WTO dispute settlement action. The U.S. has been a leader in seeking to eliminate trade barriers and should not, now, be perceived as reverting to protectionist policies.

NFPA strongly urges the Administration to make known to the Congress its views opposing the Senate-adopted country of origin labeling provisions found in the FY 1999 Agriculture Appropriations Bill.

Sincerely,

Kelly D. Johnston

Kelly D. Johnston
Executive Vice President
Government Affairs and Communication

Food Labeling

82/10% support/oppose requiring all fruits and vegetable to be labeled to tell you if they come from within the United States or if they are imported.

82% support (24 somewhat + 58 strongly)
10% oppose (6 somewhat + 4 strongly)

Privacy

This is an issue for the introduction of new legislation/executive orders.

Technology is decreasing the amount of privacy individuals have in their daily lives.

81/16 agree/disagree.

75% think the federal government should do more to protect individual's privacy **(22% no).**

The following are some proposals people have suggested to increase people's privacy in the new information age. For each one please tell me if you strongly support...	**Strongly Support**	**Support /Oppose**
Requiring your prior permission before anyone can release your personal medical records.	87	96/4
Requiring your prior permission before anyone can release your personal financial records.	86	92/7
Prohibit internet services from disclosing an individual's Social Security Number without the individual's prior, written consent	83	90/9
Prohibit commercial acquisition of an individual's Social Security number and prohibit the use of Social Security numbers by marketing companies	77	85/14
Increase penalties for illegally intercepting cellular telephone conversations	75	87/11
Ask all internet companies to establish guidelines for the distribution of personal information such as health and medical information.	71	87/11
Require the Federal Trade Commission to determine all methods by which consumers can learn what information about them is being collected, used and sold.	69	83/14

- **Equal Pay for Women**

How important is it for the federal government to address the wage gap between men and women?

74% Important (18 somewhat + 56 very)
23% unimportant (11 not very important + 12 not at all important)

Democrats: 78/19, Republicans: 59/37, Independents: 83/16
Men: 67/29, Women: 81/16

45% believe the laws in the United States requiring equal pay for women are adequate (**50%** inadequate).

Democrats: 37/57, Republicans: 58/35, Independents: 41/56
Men: 57/39, Women: 35/60

60% say it is more important to strengthen and enforce existing laws **30%** to create new laws that would help close the wage gap.

82/13% support/oppose legislation that would ensure more rigorous enforcement of equal pay laws
82% support (23somewhat + 59 strongly)
13% oppose (5 somewhat + 8 strongly)

Democrats: 89/7, Republicans: 73/24, Independents: 85/9
Men: 77/18, Women: 88/8

- **Adequacy of Current Laws**

33% say we have adequate laws and any further legislation or mandates on enforcement will just hurt small businesses and employers, stifling economic growth.
60% say that while the wage gap become smaller over the past 15 years, great disparities still existing between the pay of men and the pay or women, and we must take steps necessary to ensure that anti-discrimination laws are enforced.

Democrats: 28/66, Republicans: 44/50, Independents: 29/63
Men: 44/53, Women: 23/68

Tobacco

The polling on tobacco over the last few weeks has all suggested:

1. That we stick to our position of $1.50 increase in prices, possibly even raising it or phasing it in earlier to produce more revenue.

2. Drop immunity from private suits as a political hot potato while settling all federal and state claims and settling strict goals on teenage smoking

3. Force a bi-partisan agreement process or summit process similar to the balanced budget process – this is really the balanced budget agreement of this year.

4. Incorporate Republican plan to spend more on Medicare into the tobacco agreement along with Medical research, child care and whatever we can get of education.

5. This means increasing our rhetoric about the need for a tobacco settlement and possibly we could do what they have done on the Surplus to Social Security – just accept it. We could probably get the publicity hit that they have failed to get on using the tobacco money to help pay for Medicare and simply take away a position that no one believes would ever be a Republican proposal anyway. After all, it is heavily the elderly who have suffered through the worst years of tobacco marketing and so shouldn't they get some of the money back in the form of cheaper and better Medicare?

Recent Poll

If no legislation is passed, **24%** would hold President Clinton responsible, **43%** the Republicans in Congress.

Democrats: 24/44, Republicans: 31/25, Independents: 19/52

Tom/Mary--

As indicated on the PulseNet paper, we are working on a trip for the Secretary to Athens, GA for next Friday, March 13. Don't think you're interested in trip events on food safety, but this would be a good one. Here's the details.

We have major Agricultural Research Service (ARS) and Food Safety and Inspection Service (FSIS) labs there.

The FSIS lab does the DNA fingerprinting and will be part of Pulsenet. It also has a "robotic arm" that conducts salmonella tests, including working with plants in the area on the salmonella testing requirements under the new HACCP regulation.

ARS does microbiological food safety, processing, and meat quality research at the main research center, which houses the FSIS lab.

In addition, there is another ARS lab that is very near the research center that conducts "on-farm" research with live birds. This includes campylobacter research, vaccines, as well as cutting edge research on Hong Kong avian influenza. CDC is involved in this effort.

I am getting details on other food safety research done with or at the University of Georgia as well.

The plan is to:

(1) visit a poultry plant, including demonstrating the salmonella testing. The plant will likely not allow media in;

(2) tour at least the research center and FSIS lab and demonstrate the technologies, and probably also go visit the lab with the avian influenza research; and

(3) probably give a speech on food safety, either at the research center, which has an auditorium that holds 300, or at the University and invite various classes.

It may be difficult for us to get TV given the distance from Atlanta (60 miles), and we just had a meeting where I learned that CBS may not now cover this trip.

Eric

Penn, Schoen & Berland Associates, Inc.

805 15th Street tenth floor NW Washington, DC 20005
Telephone (202) 842-0500 Fax (202) 289-0916

To: Tom Freedman

From:

Date:

Fax Number: 456 7431

Number of Pages, including cover: 4

Comments:

If you have not received all the pages that are indicated, or are having problems with the reception of the materials, please contact our office. (202) 842-0500

Tom/Mary --

Here's a longer paper outlining a Food Safety Conference. We are likely to do one even if the WH does not want to do it. I think it would take a couple of months to pull together.

If you are looking for something quicker, I am including a draft press release on a new product that USDA created. FDA is currently reviewing it and must approve it before it could be used.

I have asked FDA to try and have it ready for the Secretary's speech on food safety to the National Press Club on March 19. This may or may not be possible.

If people like the conference idea, one option would be to announce the approval of this new technology as the immediate announcement, coupled with an announcement of the conference as the long term commitment.

This would also be a good opportunity to plug the 99 budget request, which contains significant new funds on food safety research.

While this might seem kind of esoteric, you need to be aware that the Center for Science in the Public Interest has asked USDA to hold a conference on these issues.

I am also sending a separate paper on PulseNet, which would be a GREAT event on the longer term, or a visit to a lab that has DNA fingerprinting technology, in the shorter term.

In addition, I am working on a paper on a Food Code event, which would focus on challenging states to adopt the food code, which deals with food safety regulation and standards at retail, where there is little Federal presence.

Please let me know if you have questions or need more information.

Eric

Possible Event on DNA Fingerprinting or PulseNet

The Administration could announce implementation of PulseNet, which CDC will implement in the next 6-8 weeks. Pulsenet will electronically link CDC, USDA, and FDA labs with state public health labs in several states (with more states to be added by years end). The labs are all equipped with DNA fingerprinting technology, with the CDC laboratory serving as a hub and database for PulseNet. It works like this--a laboratory isolates E. coli O157:H7 from food--fingerprints it and enters the information into PulseNet. The laboratory then receives information on any similar fingerprints submitted on human pathogens by CDC or the States. In this way, PulseNet can identify a potential outbreak or a potential food source of an outbreak. This approach resembles the FBI national network and database for fingerprinting individuals throughout the United States and centrally generating a "rap" sheet where there is a match.

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NOTE TO EDITORS: Contact for details Larry Stanker, Food Animal Protection Research Laboratory, Agricultural Research Service, USDA, College Station, Texas 77845. Telephone: (409) 260-9484.

White House Conference on Food Safety

A White House Conference on Food Safety could be held on a number of subjects, ranging from consumer education, partnerships with state and local government, international food safety issues, or research and technology. The recommendation is to hold a conference on new food safety technology and research.

Such a conference would be well-received by consumer groups, industry, producers, and academia and would receive strong bi-partisan support in Congress. In fact, one of the leading consumer groups recently requested that USDA host a conference on research and technology. USDA held a similar conference several years ago, which was widely attended.

The Administration's food safety initiative includes substantial increases for food safety research and technology. In addition, the Administration's new regulatory systems also depend on new technologies and research i.e. microbiological testing, interventions to reduce or remove pathogens. As a result, the conference could be viewed as building on Administration initiatives, including in preparation for the FY 2000 budget proposal.

The private sector and academia are also investing substantial resources in new research and technologies. A couple of examples include: a laboratory that has done extensive work for the Department of Energy and for the military is working on converting Gulf War technology that identifies nerve gas to the identification of pathogens; and a number of researchers are working on vaccines against E. Coli O157:H7 in animals.

While a number of options are possible, the conference could include a series of scientific panels that would present the latest research on new technologies. One panel could discuss efforts focused toward on-farm and pre-slaughter research. This could include research on vaccines as well as research to identify where and/or why pathogens appear on farm. There is on-going research in Federal agencies as well as various academic instititions e.g. Washington, Colorado, and Georgia, on this issue for various animal species.

Another panel could focus on research aimed at improving the ability to rapidly detect pathogens as well as on intervention technologies that are under development in research labs. This could also include work on sensor technology to be used on retail packages. It also might be possible to bring NASA research and technology into the food safety arena. In addition to these panels on research, there could be a panel on new food safety technologies and technological developments that are in use in slaughter and processing operations.

A final panel could be on future trends and challenges of the future, such as continued globabization of the food supply, population demographics, new products, packaging, and production technologies, and the effect those trends may have on our food safety research and technologies. This would complement the long-term strategic planning underway by the Federal food safety agencies.

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The conference itself would be likely to generate media interest. However, several additional announcements could be considered.

First, the President could issue a directive or an executive order on food safety research and technology. This would include several components:

--**Interagency Food Safety Research Council**--As part of the President's Food Safety Initiative, the Administration has recently formed an interagency food safety research group. There are xx agencies represented on this group, which is charged with developing a comprehensive food safety research agenda. The Executive Order would institutionalize this working group.

--The Executive Order could require the council to hold annual or biannual national public meetings/conference to discuss advances in research and technology.

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Second, the Centers for Disease Control is in the process of completing its analysis of the latest data on the extent of foodborne illness. Depending on the timing of the conference, this could possibly be released at the conference.

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Tom/Mary --

Here's a longer paper outlining a Food Safety Conference. We are likely to do one even if the WH does not want to do it. I think it would take a couple of months to pull together.

If you are looking for something quicker, I am including a draft press release on a new product that USDA created. FDA is currently reviewing it and must approve it before it could be used.

I have asked FDA to try and have it ready for the Secretary's speech on food safety to the National Press Club on March 19. This may or may not be possible.

If people like the conference idea, one option would be to announce the approval of this new technology as the immediate announcement, coupled with an announcement of the conference as the long term commitment.

This would also be a good opportunity to plug the 99 budget request, which contains significant new funds on food safety research.

While this might seem kind of esoteric, you need to be aware that the Center for Science in the Public Interest has asked USDA to hold a conference on these issues.

I am also sending a separate paper on PulseNet, which would be a GREAT event on the longer term, or a visit to a lab that has DNA fingerprinting technology, in the shorter term.

In addition, I am working on a paper on a Food Code event, which would focus on challenging states to adopt the food code, which deals with food safety regulation and standards at retail, where there is little Federal presence.

Please let me know if you have questions or need more information.

Eric

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THE SECRETARY OF AGRICULTURE
WASHINGTON, D.C.
20250-0100

OCT 23 1997

MEMORANDUM TO THE CHIEF OF STAFF

FROM: **SECRETARY DAN GLICKMAN** Dan Glickman

Subject: **Country of Origin Labeling**

Senator Bob Graham recently wrote you a letter regarding S. 1042, which would require country of origin labeling of imported perishable agricultural commodities. You may be aware that Congressman Sonny Bono has introduced identical legislation in the House (H.R. 1232).

The bill would apply only to fresh fruits and vegetables that are imported and sold as fresh. Fresh produce that is imported and then processed into canned goods, for example, would not be covered. While flexible in how its labeling requirements are met, the bill does require that domestic retailers inform consumers at the final point of sale of the country of origin of perishable agriculture products and subjects them to fines for failing to do so.

I want to make several points. First, country of origin labeling is not a food safety issue. Food safety experts throughout the Administration believe that country of origin labeling would not improve our ability to detect and control outbreaks of foodborne illness. It is possible that a sophisticated system of bar coding would help from a food safety perspective, but mere country of origin labeling would not.

If the Administration were to support country of origin labeling, it should not do so on the basis of food safety. One potential justification could be that consumers have the right to know a product's country of origin. However, some groups have expressed skepticism that consumers do in fact believe that country of origin is important information. Other groups have raised concerns that such labeling will be used to stigmatize imported food products through negative advertising campaigns. Finally, a consumer right to know argument could have implications for other labeling disputes, such as our current disagreement with the European Union over the labeling of products of biotechnology.

Second, at the request of Senator Daschle, the Administration has recently agreed to develop guidelines to assist the domestic meat and poultry industry in voluntarily labeling their products as being of U.S. origin. We would prefer that a similar voluntary approach be developed for perishable agricultural commodities. If the Administration were to support Senator Graham's legislation, it would be difficult not to support similar mandatory labeling requirements for imported meat and poultry products.

Third, industry and the retail sector are strongly opposed to country of origin legislation because of the costs it would impose. While many agricultural producers support such legislation, others do not, in part because of concern that country of origin labeling would be used unfairly against U.S. exports. As you know, the U.S. exports nearly 60 percent more agricultural products than it imports.

Fourth, the Administration has generally objected to country of origin labeling when it has been considered by our trading partners. If the Administration were to support country of origin labeling, it could be seen as protectionist by our trading partners and would obviously limit our ability to object to such requirements in the future.

Fifth, it is possible to require country of origin labeling of imported products under our GATT and WTO obligations, provided that all imports are treated similarly, the difficulties are reduced to a minimum, and the labeling does not seriously damage the product or unduly increase its costs or decrease its value.

In general, Senator Graham's legislation appears to be consistent with U.S. rights under Article 9 of the WTO agreement. However, it is possible that an exporting country could challenge these labeling requirements as unduly increasing the costs of their product, for example, because the labeling requirements imposed on domestic retailers will (1) either be passed on to the exporting countries, making their product less competitive, or (2) make domestic retailers less likely to market imported products.

Sixth, the Department of Agriculture would be required to enforce Senator Graham's legislation, as well as any similar legislation on meat and poultry, without any additional personnel or funding. At a time of limited budgets, we question whether this would be the most effective use of our resources, particularly given the need to more effectively address food safety.

I appreciate the concerns that have given rise to this legislation, but I am concerned about its potential adverse effects in terms of costs on domestic industry, possible export problems, and resource implications with respect to food safety. I have directed USDA officials to develop alternative legislation that would minimize these potential problems should the Administration decide to support country of origin labeling. I expect this draft legislation to be ready for interagency clearance by the end of next week.

Please let me know your thoughts. I would like to discuss this issue with you further.

Amendments to H.R. 2621, as Reported
Offered by Mr. Archer

Amend section 101 to read as follows:

SEC. 101. SHORT TITLE AND FINDINGS.

(a) Short Title.—The Act may be cited as the "Reciprocal Trade Agreement Authorities Act of 1997".

(b) Findings.—The Congress makes the following findings:

(1) The expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity. Trade agreements today serve the same purposes that security pacts played during the Cold War, binding nations together through a series of mutual rights and obligations. Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.

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(2) The national security of the United States depends on its economic security, which in turn is founded upon a vibrant and growing industrial base. Trade expansion has been the engine of economic growth. Trade agreements maximize opportunities

for the critical sectors and building blocks of the economy of the United States, such as information technology, telecommunications and other leading technologies, basic industries, capital equipment, medical equipment, services, agriculture, environmental technology, and intellectual property. Trade will create new opportunities for the United States and preserve the unparalleled strength of the United States in economic, political, and military affairs. The United States, secured by expanding trade and economic opportunities, will meet the challenges of the twenty-first century.

In section 102(b)(6)—

(1) in the matter preceding subparagraph (A), insert "of agricultural commodities" after "United States exports";

(2) insert "(A)" before "The principal negotiating objective of the United States with respect to agriculture";

(3) in subparagraph (A), redesignate clauses (i) and (ii) as subclauses (I) and (II), and redesignate subparagraph (A) as clause (i);

(4) redesignate subparagraph (B) as clause (ii);

(5) in subparagraph (C), redesignate clauses (i) through (v) as subclauses (I) through (V), respec-

tively, and redesignate subparagraph (C) as clause (iii);

(6) redesignate subparagraphs (D) through (G) as clauses (iv) through (vii), respectively;

(7) strike "and" at the end of clause (vi), as so redesignated, strike the period at the end of clause (vii), as so redesignated, and insert "; and"; and

(8) add at the end the following:

(viii) taking into account the impact that agreements covering agriculture to which the United States is a party, including the North American Free Trade Agreement, have on the United States agricultural industry.

(B)(i) Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.

(ii) The negotiating objective provided in subparagraph (A) applies with respect to agricultural matters to be addressed in any trade agreement entered into under section 103(a) or (b), including any trade agreement entered into under section 103(a) or (b) that provides for accession to a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade Agreement.

In section 102(b)(7)(B), add the following at the end of the subparagraph: "Nothing in this subparagraph shall be construed to authorize inclusion in an implementing bill under this Act or in an agreement subject to an implementing bill under this Act provisions that would restrict the autonomy of the United States in these areas.".

In section 103(a)(1), move the indentation of the text that reads "The President shall notify the Congress of the President's intention to enter into an agreement under this subsection." 2 ems to the left.

In section 103(c), amend paragraph (5)(A) to read as follows:

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—(A) For purposes of paragraph (1), the term "extension disapproval resolution" means a resolution of

either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ____ disapproves the request of the President for the extension, under section 103(c)(1)(B)(i) of the Reciprocal Trade Agreement Authorities Act of 1997, of the trade authorities procedures under that Act to any implementing bill submitted with respect to any trade agreement entered into under section 103(b) of that Act after September 30, 2001.", with the blank space being filled with the name of the resolving House of the Congress.

In section 103(b)(3), in the last sentence strike "subparagraph" and insert "paragraph".

In section 103, add the following at the end:

(d) COMMENCEMENT OF NEGOTIATIONS.—In order to contribute to the continued economic expansion of the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and to expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products.

In section 104(a)(3)—

(1) insert "(A)" after "AGRICULTURE.—";

(2) strike "102(b)(6)(A)" and insert "102(b)(6)(A)(i)"; and

(3) add the end the following:

(B) Before initiating negotiations to reduce United States tariffs on agricultural products which the President determines to be import sensitive, the President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning such tariff reductions. The consultations shall include an assessment of the impact of any tariff reduction on the United States industry producing the product and whether adjustment periods should be provided to the industry. The President, with the advice of the International Trade Commission, shall determine which agricultural products are import sensitive.

In section 104, amend the section heading to read as follows:

(b) BUDGET SUBMISSION.—The President shall include a request for the resources necessary to support the plan described in subsection (a) in the first budget the President submits to Congress after the submission of the plan.

In section 102(d)(2), strike "the congressional advisers on trade policy and negotiations appointed under section 161 of the Trade Act of 1974" and insert "the Congressional Oversight Group appointed under section 107 with respect to the negotiations".

In section 109, as so redesignated (relating to Chief Agricultural Negotiator), insert before the peiod at the end ofthe first sentence the following: ", from among individuals with appropriate experience in agricultural matters".

In section 110(a), as so redesignated (realting to conforming amendments), amend paragraph (1) to read as follows:

(1) IMPLEMENTING BILL.—Section 151(b)(1) (19 U.S.C. 2191(b)(1)) is amended by striking ", section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988,".

Strike title III and insert the following:

SEC. 302. REDUCTION IN INFORMATION TECHNOLOGY EXPENDITURES BY COMMODITY CREDIT CORPORATION.

Section 4(g) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(g)) is amended by striking "and not more than $275,000,000 in the 6-fiscal year period beginning on October 1, 1996" and inserting ", $51,000,000 in fiscal year 1998, $24,000,000 in fiscal year 1999, $39,000,000 in fiscal year 2000, $20,000,000 in fiscal year 2001, and $30,000,000 in fiscal year 2002".

Add the following at the end:

TITLE IV-MISCELLANEOUS TRADE PROVISIONS

SEC. 401. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS FOR UNITED STATES AGRICULTURAL PRODUCTS.

(a) IDENTIFICATION REQUIRED.—

(1) IN GENERAL.—Chapter 8 of title I of the Trade Act of 1974 is amended by adding at the end the following:

"SEC. 183. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS FOR AGRICULTURAL PRODUCTS.

"(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the annual report is required to be submitted to Congressional committees under section 181(b), the United States Trade Representative (hereafter in this section referred to as the 'Trade Representative') shall identify—

"(1) those foreign countries that—

"(A) deny fair and equitable market access to United States agricultural products, or

"(B) apply unjustified sanitary or phytosanitary standards for imported agricultural products from the United States; and

"(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

"(b) SPECIAL RULES FOR IDENTIFICATIONS.—

"(1) CRITERIA.—In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

"(A) that engage in or have the most onerous or egregious acts, policies, or practices that deny fair and equitable market access to United States agricultural products,

"(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

"(C) that are not—

"(i) entering into good faith negotiations, or

"(ii) making significant progress in bilateral or multilateral negotiations,

to provide fair and equitable market access to United States agricultural products.

"(2) CONSULTATION AND CONSIDERATION REQUIREMENTS.—In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

"(A) consult with the Secretary of Agriculture and other appropriate officers of the Federal Government, and

"(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b) and petitions submitted under section 302.

"(3) FACTUAL BASIS REQUIREMENT.—The Trade Representative may identify a foreign country work diligently with the Minister of Finance of Japan to fully enforce the terms of the U.S.-Japan Insurance Agreement so that Japanese insurance markets will continue to be open to United States investment and that existing and future United States investments in the Japanese insurance markets are protected.

(c) DEFINITION.—As used in this section, the term "U.S.-Japan Insurance Agreement" means the Measures by the Government of the United States and the Government of Japan Regarding Insurance, signed on October 11, 1994, as amended by the Supplementary Measures by the Government of the United States and the Government of Japan Regarding Insurance, signed on December 24, 1996.

Tam

SEC. 404. MARKING OF CONTAINERS FOR PERISHABLE AGRICULTURAL COMMODITIES.

(a) IN GENERAL.—Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) is amended—

(1) by redesignating subsections (h), (i), (j), and (k) as subsections (i), (j), (k), and (l), respectively; and

(2) by inserting after subsection (g) the following new subsection:

"(h) MARKING OF CONTAINERS OF PERISHABLE AGRICULTURAL COMMODITIES.—

"(1) IN GENERAL.—The immediate container, as it ordinarily reaches the ultimate purchaser, of any perishable agricultural commodity excepted from the marking requirements of subsection (a) shall be marked in the manner required by subsection (a), and no exception to such marking requirements may be made pursuant to subsection (b) with respect to such container.

"(2) DEFINITION.—For purposes of this subsection, the term 'perishable agricultural commodity' has the meaning given that term in section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)).".

(b) CONFORMING AMENDMENT.—Section 304(j) of such Act, as redesignated by subsection (a)(1), is amended by striking "subsection (h)" and inserting "subsection (i)".

(c) EFFECTIVE DATE.—The amendments made by this section apply to goods entered, or withdrawn from warehouse for consumption, on or after the 120th day after the date of the enactment of this Act.

SEC. 405. MONITORING AND ENFORCEMENT OF SUSPENSION AGREEMENT.

The administering authority (as defined in section 771(1) of the Tariff Act of 1930) shall closely monitor

Food Safety

Food labeling / EW

Amendments to H.R. 2621, as Reported

Offered by Mr. Archer

Customs

State

Bob - FDA

FDA

OMB

Amend section 101 to read as follows:

SEC. 101. SHORT TITLE AND FINDINGS.

(a) Short Title.—The Act may be cited as the "Reciprocal Trade Agreement Authorities Act of 1997".

(b) Findings.—The Congress makes the following findings:

(1) The expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity. Trade agreements today serve the same purposes that security pacts played during the Cold War, binding nations together through a series of mutual rights and obligations. Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.

57822

(2) The national security of the United States depends on its economic security, which in turn is founded upon a vibrant and growing industrial base. Trade expansion has been the engine of economic growth. Trade agreements maximize opportunities

for the critical sectors and building blocks of the economy of the United States, such as information technology, telecommunications and other leading technologies, basic industries, capital equipment, medical equipment, services, agriculture, environmental technology, and intellectual property. Trade will create new opportunities for the United States and preserve the unparalleled strength of the United States in economic, political, and military affairs. The United States, secured by expanding trade and economic opportunities, will meet the challenges of the twenty-first century.

In section 102(b)(6)—

(1) in the matter preceding subparagraph (A), insert "of agricultural commodities" after "United States exports";

(2) insert "(A)" before "The principal negotiating objective of the United States with respect to agriculture";

(3) in subparagraph (A), redesignate clauses (i) and (ii) as subclauses (I) and (II), and redesignate subparagraph (A) as clause (i);

(4) redesignate subparagraph (B) as clause (ii);

(5) in subparagraph (C), redesignate clauses (i) through (v) as subclauses (I) through (V), respec-

tively, and redesignate subparagraph (C) as clause (iii);

(6) redesignate subparagraphs (D) through (G) as clauses (iv) through (vii), respectively;

(7) strike "and" at the end of clause (vi), as so redesignated, strike the period at the end of clause (vii), as so redesignated, and insert "; and"; and

(8) add at the end the following:

(viii) taking into account the impact that agreements covering agriculture to which the United States is a party, including the North American Free Trade Agreement, have on the United States agricultural industry.

(B)(i) Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.

(ii) The negotiating objective provided in subparagraph (A) applies with respect to agricultural matters to be addressed in any trade agreement entered into under section 103(a) or (b), including any trade agreement entered into under section 103(a) or (b) that provides for accession to a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade Agreement.

In section 102(b)(7)(B), add the following at the end of the subparagraph: "Nothing in this subparagraph shall be construed to authorize inclusion in an implementing bill under this Act or in an agreement subject to an implementing bill under this Act provisions that would restrict the autonomy of the United States in these areas.".

In section 103(a)(1), move the indentation of the text that reads "The President shall notify the Congress of the President's intention to enter into an agreement under this subsection." 2 ems to the left.

In section 103(c), amend paragraph (5)(A) to read as follows:

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—(A) For purposes of paragraph (1), the term "extension disapproval resolution" means a resolution of

either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ____ disapproves the request of the President for the extension, under section 103(c)(1)(B)(i) of the Reciprocal Trade Agreement Authorities Act of 1997, of the trade authorities procedures under that Act to any implementing bill submitted with respect to any trade agreement entered into under section 103(b) of that Act after September 30, 2001.", with the blank space being filled with the name of the resolving House of the Congress.

In section 103(b)(3), in the last sentence strike "subparagraph" and insert "paragraph".

In section 103, add the following at the end:

(d) COMMENCEMENT OF NEGOTIATIONS.—In order to contribute to the continued economic expansion of the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and to expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products.

In section 104(a)(3)—

(1) insert "(A)" after "AGRICULTURE.—";

(2) strike "102(b)(6)(A)" and insert "102(b)(6)(A)(i)"; and

(3) add the end the following:

(B) Before initiating negotiations to reduce United States tariffs on agricultural products which the President determines to be import sensitive, the President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning such tariff reductions. The consultations shall include an assessment of the impact of any tariff reduction on the United States industry producing the product and whether adjustment periods should be provided to the industry. The President, with the advice of the International Trade Commission, shall determine which agricultural products are import sensitive.

In section 104, amend the section heading to read as follows:

(b) BUDGET SUBMISSION.—The President shall include a request for the resources necessary to support the plan described in subsection (a) in the first budget the President submits to Congress after the submission of the plan.

In section 102(d)(2), strike "the congressional advisers on trade policy and negotiations appointed under section 161 of the Trade Act of 1974" and insert "the Congressional Oversight Group appointed under section 107 with respect to the negotiations".

In section 109, as so redesignated (relating to Chief Agricultural Negotiator), insert before the peiod at the end ofthe first sentence the following: ", from among individuals with appropriate experience in agricultural matters".

In section 110(a), as so redesignated (realting to conforming amendments), amend paragraph (1) to read as follows:

(1) IMPLEMENTING BILL.—Section 151(b)(1) (19 U.S.C. 2191(b)(1)) is amended by striking ", section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988,".

Strike title III and insert the following:

SEC. 302. REDUCTION IN INFORMATION TECHNOLOGY EXPENDITURES BY COMMODITY CREDIT CORPORATION.

Section 4(g) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(g)) is amended by striking "and not more than $275,000,000 in the 6-fiscal year period beginning on October 1, 1996" and inserting ", $51,000,000 in fiscal year 1998, $24,000,000 in fiscal year 1999, $39,000,000 in fiscal year 2000, $20,000,000 in fiscal year 2001, and $30,000,000 in fiscal year 2002".

Add the following at the end:

TITLE IV-MISCELLANEOUS TRADE PROVISIONS

SEC. 401. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS FOR UNITED STATES AGRICULTURAL PRODUCTS.

(a) IDENTIFICATION REQUIRED.—

(1) IN GENERAL.—Chapter 8 of title I of the Trade Act of 1974 is amended by adding at the end the following:

"SEC. 183. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS FOR AGRICULTURAL PRODUCTS.

"(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the annual report is required to be submitted to Congressional committees under section 181(b), the United States Trade Representative (hereafter in this section referred to as the 'Trade Representative') shall identify—

"(1) those foreign countries that—

"(A) deny fair and equitable market access to United States agricultural products, or

"(B) apply unjustified sanitary or phytosanitary standards for imported agricultural products from the United States; and

"(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

"(b) SPECIAL RULES FOR IDENTIFICATIONS.—

"(1) CRITERIA.—In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

"(A) that engage in or have the most onerous or egregious acts, policies, or practices that deny fair and equitable market access to United States agricultural products,

"(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

"(C) that are not—

"(i) entering into good faith negotiations, or

"(ii) making significant progress in bilateral or multilateral negotiations,

to provide fair and equitable market access to United States agricultural products.

"(2) CONSULTATION AND CONSIDERATION REQUIREMENTS.—In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

"(A) consult with the Secretary of Agriculture and other appropriate officers of the Federal Government, and

"(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b) and petitions submitted under section 302.

"(3) FACTUAL BASIS REQUIREMENT.—The Trade Representative may identify a foreign country work diligently with the Minister of Finance of Japan to fully enforce the terms of the U.S.-Japan Insurance Agreement so that Japanese insurance markets will continue to be open to United States investment and that existing and future United States investments in the Japanese insurance markets are protected.

(c) DEFINITION.—As used in this section, the term "U.S.-Japan Insurance Agreement" means the Measures by the Government of the United States and the Government of Japan Regarding Insurance, signed on October 11, 1994, as amended by the Supplementary Measures by the Government of the United States and the Government of Japan Regarding Insurance, signed on December 24, 1996.

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(a) IN GENERAL.—Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) is amended—

(1) by redesignating subsections (h), (i), (j), and (k) as subsections (i), (j), (k), and (l), respectively; and

(2) by inserting after subsection (g) the following new subsection:

"(h) MARKING OF CONTAINERS OF PERISHABLE AGRICULTURAL COMMODITIES.—

1304

(1) [illegible]

"(1) IN GENERAL.—The immediate container, as it ordinarily reaches the ultimate purchaser, of any perishable agricultural commodity excepted from the marking requirements of subsection (a) shall be marked in the manner required by subsection (a), and no exception to such marking requirements may be made pursuant to subsection (b) with respect to such container.

"(2) DEFINITION.—For purposes of this subsection, the term 'perishable agricultural commodity' has the meaning given that term in section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)).".

(b) CONFORMING AMENDMENT.—Section 304(j) of such Act, as redesignated by subsection (a)(1), is amended by striking "subsection (h)" and inserting "subsection (i)".

(c) EFFECTIVE DATE.—The amendments made by this section apply to goods entered, or withdrawn from warehouse for consumption, on or after the 120th day after the date of the enactment of this Act.

SEC. 405. MONITORING AND ENFORCEMENT OF SUSPENSION AGREEMENT.

The administering authority (as defined in section 771(1) of the Tariff Act of 1930) shall closely monitor

~~OMB — testimony~~

Issues 3/2/98

~~Farmers~~ press conf.

Tobacco ~~Waxman Bill~~ — Opics

SC farmers mt. Tuesday

~~Minorities~~ 4 pm today

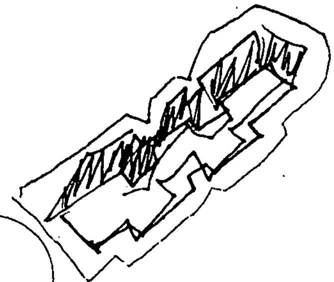
Int'l tobacco — today

Polling Monday/Tuesday — tobacco — 9/a's, talking pts

~~Consumer~~ Issues — Skimming, ATM fees — Treasury

Unphoned

Child nutrition — mt. OMB Tues.



Blitz & wat cs.ll

WRFA — Folton, conservatives union/religion

Courting of O.S.

~~Food Safety~~ Mtg — Jean Logan / UP

Reg. Reform

~~Food Safety~~ Mandatory recall

~~FDA USH~~ Contracts

~~mukerlcki~~

Wednesday

- 90 day progress
- domestic

→ Courting of organ.

Cell phones — UP

1/30/1998

Allen Greenberg

tobacco →

→ Peel/Bracket

Amazing

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(2) Lose on the Hill

(3) Doable ments

(4) ~~[illegible]~~

7 (4) 6 [illegible]
USTR/State
→ Booze / Ele[illegible]
Wade

← Come and bought

→ Issue on the Hill

3 Meat Fruits / Veggies

Tobacco Communications EW

THE WHITE HOUSE

WASHINGTON

March 2, 1998

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed

SUBJECT: Tobacco Communications Plan

Over the next few weeks, we plan to turn up the heat on Congress to pass tobacco legislation. We are organizing a series of events for the President, the Vice President, and others, including an intense week of message events to begin this Saturday. We are also putting in place a coordinated strategy with House and Senate Democrats who will start a daily drumbeat that Congress should not go home without passing comprehensive tobacco legislation.

The following plan represents the thinking of senior White House, HHS, and Treasury staff. Our message is simple: Every day Congress fails to pass tobacco legislation, 3,000 kids start smoking and 1,000 will die early as a result. We can dramatically reduce teen smoking and save a million lives over the next 5 years if we pass the President's proposal.

This Week

This week we plan to underscore our commitment to bipartisan, comprehensive legislation in several ways:

- Senators Chafee, Harkin, Lugar and Graham are expected to announce their bipartisan plan this week, and we are hoping to have the Vice President appear with them at their announcement.

- On Wednesday, Senator Jeffords will mark up his FDA bill, which will give us an opportunity to stress the importance of legislation affirmation of the FDA's authority to regulate tobacco.

- We had planned to have Secretary Shalala begin to meet with editorial boards, but due to her mother's death, we plan to postpone that effort.

Next Week

Starting with the radio address, we plan a high profile, high intensity week of tobacco message events, including:

- In his March 7th radio address, the President would challenge the Congress not to go home this year without passing comprehensive bipartisan tobacco legislation that will dramatically reduce teen smoking, and note that Congress has less than 70 work days left.

- On Sunday, March 8th, The Washington Post will begin a three day series chronicling the tobacco wars from the drafting of the FDA rule to present.

- On March 9th, in a speech to the AMA on health care quality, President will laud the doctors' support for comprehensive tobacco legislation.

- Starting March 11th, the Democratic leadership will announce a countdown calendar, starting a daily drumbeat of how every day that passes without enacting tobacco legislation, 3,000 kids start smoking, causing 1,000 to die a premature death.

- In a March 12th speech to the attorneys' general, the President will announce state-by-state numbers of how many lives will be saved by comprehensive tobacco legislation. This is the same day as the last Bliley hearing, when the industry is under subpoena to release more documents. It is also the first day of markup for the Senate Commerce Committee.

- On March 13th, we would like to leak a political memo by Geoff Garin and Mark Mellman on the popularity of tobacco legislation.

- On Saturday, March 14th, the Vice President will convene a regional tobacco roundtable in Boston, inviting key members of Congress (Kennedy, Chafee, Jeffords).

To Be Scheduled/Ideas Under Development

We are currently developing the following ideas for the rest of the month and the April recess:

- The Vice President will meet with network anchors.
- Treasury Deputy Secretary Summers will give a speech on the costs of smoking.
- Secretary Shalala will meet with women's magazines.
- We will coordinate new document releases with Waxman.
- Secretary Shalala will announce a Major League Baseball campaign to reduce smokeless. tobacco use by young people (Camden Yards, March 31st).
- The Cabinet will do events in 15 top markets on April 2nd, which is Kick Butts Day.
- For the April recess, we will plan a major blitz:
  - A multidistrict media tour by Secretary Shalala.
  - Editorials in key districts and states.
  - A press packet/how-to kit for local TV producers.
  - Support for members who want to conduct town halls or other events.

Office of Administration

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Fax: (202) 395-6125

Food labeling

FAX TRANSMITTAL COVER SHEET

DATE: 2/6/98 **FAX NUMBER:** 456-7431

TO: Tom Freedman

FROM: Amy Bilyeau

NUMBER OF PAGES: 9
(including cover page)

COMMENTS:

~~19 USC 1304~~

7 USC 499

This is in two parts, due to the memory limitations of my fax machine.

LIBRARIES HARNESS THE POWER OF INFORMATION FOR YOU gard to the invalid provision or application, see section 2519 of Pub.L. 101–624, set out as a note under section 1421 of this title.

Legislative History

For legislative history and purpose of Pub.L. 101–624, see 1990 U.S.Code Cong. and Adm. News, p. 4656.

§ 499c. Licenses

(a) License required; penalties for violations

After December 10, 1930, no person shall at any time carry on the business of a commission merchant, dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this subsection shall be liable to a penalty of not more than $1,000 for each such offense and not more than $250 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.

Any person violating this provision may, upon a showing satisfactory to the Secretary of Agriculture, or his authorized representative, that such violation was not willful but was due to inadvertence, be permitted by the Secretary, or such representative, to settle his liability in the matter by the payment of the fees due for the period covered by such violation and an additional sum, not in excess of $250, to be fixed by the Secretary of Agriculture or his authorized representative. Such payment shall be deposited in the Treasury of the United States in the same manner as regular license fees.

(b) Application and fees for licenses

(1) Application for license

Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application and to be furnished thereafter.

(2) License fees

Upon the filing of an application under paragraph (1), the applicant shall pay such license fees, both individually and in the aggregate, as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this chapter and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491–497). Thereafter, the licensee shall pay such license fees annually or at such longer interval as the Secretary may prescribe. The Secretary shall take due account of savings to the program when determining an appropriate interval for renewal of licenses. The Secretary shall establish and alter license fees only by rulemaking under section 553 of Title 5, except that the Secretary may not alter the fees required under paragraph (3) or (4) for retailers and grocery wholesalers that are dealers. Effective on November 15, 1995, and until such time as the Secretary alters such fees by rule, an individual license fee shall equal $550 per year, plus $200 for each branch or additional business facility operated by the applicant in excess of nine such facilities, as determined by the Secretary, subject to an annual aggregate limit of $4,000 per licensee. Any increase in license fees prescribed by the Secretary under this paragraph shall not take effect unless the Secretary determines that, without such increase, the funds on hand as of the end of the fiscal year in which the increase takes effect will be less than 25 percent of the projected budget to administer this chapter and such Act for the next fiscal year. In no case may a license fee increase by the Secretary take effect before the end of the three-year period beginning on November 15, 1995.

(3) One-time fee for retailers and grocery wholesalers that are dealers

During the three-year period beginning on November 15, 1995, a retailer or grocery wholesaler making an initial application for a license under this section shall pay the license fee required under subparagraph (A), (B), or (C) of paragraph (4) for license renewals in the year in which the initial application is made. After the end of such period, a retailer or grocery wholesaler making an initial application for a license under this section shall pay an administrative fee equal to $100. In either case, a retailer or grocery wholesaler paying a fee under this paragraph shall not be required to pay any fee for renewal of the license for subsequent years.

(4) Gradual elimination of annual fees for retailers and grocery wholesalers that are dealers

In the case of a retailer or grocery wholesaler that holds a license under this section as of November 15, 1995, payments for the renewal of the license shall be made pursuant to the following schedule:

(A) For anniversary dates occurring during the one-year period beginning on November 15, 1995, the licensee shall pay a renewal fee in an amount equal to 100 percent of the applicable renewal fee (subject to the $4,000 aggregate limit on such payments) in effect under this subsection on the day before November 15, 1995.

(B) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (A), the licensee shall pay a renewal fee in an amount equal to 75 percent of the amount paid by the licensee under subparagraph (A).

(C) For anniversary dates occurring during the one-year period beginning at the end of the period in subparagraph (B), the licensee shall pay a renewal fee in an amount equal to 50 percent of the amount paid by the licensee under subparagraph (A).

(D) After the end of the three-year period beginning on November 15, 1995, the licensee shall not be required to pay any fee if the licensee seeks renewal of the license.

(5) Perishable Agricultural Commodities Act Fund

Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the "Perishable Agricultural Commodities Act Fund", which shall be available for all expenses necessary to the administration of this chapter, and sections 491, 493 to 497 of this title, referred to above. Any reserve funds in the Perishable Agricultural Commodities Act Fund may be invested by the Secretary in insured or fully-collateralized interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any interest earned on such reserve funds shall be credited to the Perishable Agricultural Commodities Act Fund and shall be available for the same purposes as the fees deposited in such fund. Financial statements prescribed by the Director of the Office of Management and Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually.

(c) Use of trade names

[See main volume for text of subsection]

(As amended Dec. 22, 1981, Pub.L. 97–98, Title XI, § 1116(b), 95 Stat. 1269; Aug. 22, 1988, Pub.L. 100–414, § 1, 102 Stat. 1102; Nov. 28, 1990, Pub.L. 101–624, Title XIII, § 1361, 104 Stat. 3658; Nov. 15, 1995, Pub.L. 104–48, §§ 3, 4(a), (b), 5(a), 109 Stat. 425, 426, 427.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Act to prevent the destruction or dumping of farm produce, approved March 3, 1927, and such Act, referred to in subsec. (b)(2), is Act Mar. 3, 1927, c. 309, 44 Stat. 1355, as amended, which is classified generally to chapter 20 (section 491 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

1995 Amendments

Heading. Pub.L. 104–48, § 3(b)(1), reenacted section heading without change.

Subsec. (a). Pub.L. 104–48, § 3(b)(1), inserted heading.

Pub.L. 104–48, § 5(a), substituted "$1,000" for "$500" and "$250" for "$25" in two places.

Subsec. (b). Pub.L. 104–48, § 3(b)(2), inserted heading.

Subsec. (b)(1). Pub.L. 104–48, § 3(a)(1) to (3), designated existing provision as par. (1), inserted heading, struck out provisions relating to payment of an annual fee and the total aggregate amount of annual fees, now covered in par. (2), and designated provisions relating to the Perishable Agricultural Commodities Act Fund as par. (5).

Subsec. (b)(2). Pub.L. 104–48, § 4(a), added par. (2).

Subsec. (b)(3), (4). Pub.L. § 3(a)(5), added pars. (3) and (4).

Subsec. (b)(5). Pub.L. 104–48, § 3(a)(3), (4), designated provisions of former subsec. (b) relating to the Perishable Agricultural Commodities Act Fund as par. (5), inserted heading, and struck out provision requiring the Secretary to give public notice of any increase in the annual fee and to allow a reasonable time before the effective date of such increase for interested parties to file their views.

Pub.L. 104-48, § 4(b), struck out provision that the amount of money accumulated and on hand in the special fund at the end of any fiscal year not exceed 25 percent of the projected budget for the next following fiscal year.

Subsec. (c). Pub.L. 104-48, § 3(b)(3), inserted heading.

1990 Amendment

Subsec. (b). Pub.L. 101-624, § 1361(1), added provisions authorizing investment of reserve funds in interest-bearing accounts and U.S. Government debt instruments and directing that interest earned be credited to Fund and be available for same purposes as fees in Fund.

Pub.L. 101-624, § 1361(2), substituted ". Financial statements" for ": Provided further, That financial statements".

1988 Amendment

Subsec. (b). Pub.L. 100-414 substituted "$400, plus $200" for "$300, plus $150" and "$4,000" for "$3,000".

1981 Amendment

Subsec. (b). Pub.L. 97-98 substituted "$300", "$150", and "$3,000" for "$150", "$50", and "$1,000", respectively.

Effective Date of 1981 Amendment

Amendment by Pub.L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub.L. 97-98, set out as a note under section 4301 of this title.

Severability of Provisions

If any provision of Pub.L. 101-624 or the application thereof to any person or circumstance is held invalid, such invalidity not to affect other provisions or applications of Pub.L. 101-624 which can be given effect without regard to the invalid provision or application, see section 2519 of Pub.L. 101-624, set out as a note under section 1421 of this title.

Legislative History

For legislative history and purpose of Pub.L. 97-98, see 1981 U.S. Code Cong. and Adm. News, p. 1677. See, also, Pub.L. 100-414, 1988 U.S. Code Cong. and Adm. News, p. 1636; Pub.L. 101-624, 1990 U.S. Code Cong. and Adm. News, p. 4656; Pub.L. 104-48, 1995 U.S. Code Cong. and Adm. News, p. 453.

FEDERAL PRACTICE AND PROCEDURE

Applicability of Federal Rules of Civil Procedure to penalty provisions, see Wright & Miller: Civil § 1020.

NOTES OF DECISIONS

Persons unfit to obtain license 4a

4a. Persons unfit to obtain license

Company's application for Perishable Agricultural Commodities Act (PACA) license was properly denied on ground that sole officer, director and shareholder of company, in his capacity as executor of estate of company's recently deceased sole officer, director and shareholder, was unfit; executor had de facto control of company, and thus was officer whose multiple prior violations of Act could be considered in determining company's application. Williamsport Purveyors Inc. v. U.S. Dept. of Agriculture, C.A.3 1990, 916 F.2d 82.

§ 499d. Issuance of license

(a) Authority to do business; termination; renewal

Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this chapter, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this chapter, or is automatically suspended under section 499g(d) of this title, but said license shall automatically terminate on the anniversary date of the license at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required): *Provided*, That notice of the necessity of renewing the license and of paying the renewal fee (if such fee is required) shall be mailed at least thirty days before the anniversary date: *Provided, further*, That if the renewal fee (if required) is not paid by the anniversary date the licensee may obtain a renewal of that license at any time within thirty days by paying the fee provided in section 499c(b) of this title, plus $50, which shall be deposited in the Perishable Agricultural Commodities Act fund provided for by section 499c(b) of this title. *And provided further*, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt, unless the Secretary finds upon examination of the circumstances of such bankruptcy, which he shall examine if requested to do so by said licensee, that such circumstances do not warrant such termination.

(b) Refusal of license; grounds

The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is prohibited from employment with a licensee under section 499h(b) of this title or is a person who, or is or was responsibly connected with a person who—

[See main volume for text of (A) to (D)]

(c) Issuance of license upon furnishing bond; issuance after three years without bond; effect of termination of bond; increase or decrease in amount; payment of increase

Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this chapter and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 499g(c) of this title. In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided. The Secretary may not issue a license to an applicant under this subsection if the applicant or any person responsibly connected with the applicant is prohibited from employment with a licensee under section 499h(b) of this title.

[See main volume for text of (d) and (e)]

(As amended Dec. 13, 1991, Pub.L. 102-237, Title X, § 1011(2), 105 Stat. 1898; Nov. 15, 1995, Pub.L. 104-48, §§ 4(c), 5(b), 12(c), 109 Stat. 427, 431.)

HISTORICAL AND STATUTORY NOTES

1995 Amendments

Subsec. (a). Pub.L. 104-48, § 4(c), substituted "the anniversary date of the license at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required)" for "any anniversary date thereof unless the annual fee has been paid", "the necessity of renewing the license and of paying the renewal fee (if such fee is required)" for "the necessity of paying the annual fee", and "renewal fee (if required) is not paid" for "annual fee is not paid".

Pub.L. 104-48, § 5(b), substituted "plus $50" for "plus $5".

Subsec. (b). Pub.L. 104-48, § 12(c)(1), inserted "is prohibited from employment with a licensee under section 499h(b) of this title or" after "with the applicant,".

Subsec. (c). Pub.L. 104-48, § 12(c)(2), inserted provision that the Secretary not issue a license to an applicant if the applicant or any person responsibly connected with the applicant is prohibited from employment with a licensee under section 499h(b) of this title.

1991 Amendments

Subsec. (a). Pub.L. 102-237 substituted "unless the annual fee" for "unless the anual fee".

Effective Date of 1991 Amendment

Amendment by Pub.L. 102-237 effective Dec. 13, 1991, see section 1101(a) of Pub.L. 102-237, set out as a note under section 1421 of this title.

Legislative History

For legislative history and purpose of Pub.L. 102-237, see 1991 U.S. Code Cong. and Adm. News, p. 1481. See, also, Pub.L. 104-48, 1995 U.S. Code Cong. and Adm. News, p. 453.

§ 499e. Liability to persons injured

(a) Amount of damages

If any commission merchant, dealer, or broker violates any provision of section 499b of this title he shall be liable to the person or persons injured thereby for the full

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amount of damages (including any handling fee paid by the injured person or persons under section 499f(a)(2) of this title) sustained in consequence of such violation.

[See main volume for text of (b)]

(c) Trust on commodities and sales proceeds for benefit of unpaid suppliers, sellers, or agents; preservation of trust; jurisdiction of courts

(1) It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities, or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which is dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association, as defined in section 1141j(a) of Title 12, and its members.

(3) The unpaid supplier, seller, or agent shall lose the benefits of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. The written notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust. When the parties expressly agree to a payment time period different from that established by the Secretary, a copy of any such agreement shall be filed in the records of each party to the transaction and the terms of payment shall be disclosed on invoices, accountings, and other documents relating to the transaction.

(4) In addition to the method of preserving the benefits of the trust specified in paragraph (3), a licensee may use ordinary and usual billing or invoice statements to provide notice of the licensee's intent to preserve the trust. The bill or invoice statement must include the information required by the last sentence of paragraph (3) and contain on the face of the statement the following: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

(5) The several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust.

(As amended May 7, 1984, Pub.L. 98-273, § 1, 98 Stat. 165; Dec. 13, 1991, Pub.L. 102-237, Title X, § 1011(3), 105 Stat. 1898; Nov. 15, 1995, Pub.L. 104-48, §§ 6, 8(b), 109 Stat. 427, 429.)

HISTORICAL AND STATUTORY NOTES

1995 Amendments

Subsec. (a). Pub.L. 104-48, § 8(b) inserted "(including any handling fee paid by the injured person or persons under section 499f(a)(2) of this title)" after "damages".

Subsec. (c)(3). Pub.L. 104-48, § 6(a), (b), struck out "and has filed such notice with the Secretary" before "within thirty calendar days" and inserted provision that the written notice to the commission merchant, dealer, or broker set forth information in sufficient detail to identify the transaction subject to the trust.

Subsec. (c)(4). Pub.L. 104-48, § 6(c), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c)(5). Pub.L. 104-48, § 6(c)(1), redesignated former par. (4) as (5).

1991 Amendments

Subsec. (c)(2). Pub.L. 102-237 substituted ", as defined" for "(as defined".

1984 Amendment

Subsec. (c). Pub.L. 98-273 added subsec. (c).

Effective Date of 1991 Amendment

Amendment by Pub.L. 102-237 effective Dec. 13, 1991, see section 1101(a) of Pub.L. 102-237, set out as a note under section 1421 of this title.

Legislative History

For legislative history and purpose of Pub.L. 102-237, see 1991 U.S. Code Cong. and Adm. News, p. 1481. See, also, Pub.L. 104-48, 1995 U.S. Code Cong. and Adm. News, p. 453.

CROSS REFERENCES

Failure to maintain trust as required under subsec. (c) of this section as unlawful, see 7 USCA § 499b.

LAW REVIEW AND JOURNAL COMMENTARIES

Perils of the Perishable Agricultural Commodities Act: Ambushed by the turnip man! Thomas J. Cunningham, 27 UCC L.J. 139 (1994).

The use of setoff in bankruptcy to resolve conflicting claims to construction contract funds covered by Texas mechanic's and materialman's liens. Comment, 18 Tex.Tech L.Rev. 917 (1987).

NOTES OF DECISIONS

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1. Construction with other laws

Under Perishable Agricultural Commodities Act (PACA), producers of perishable agricultural commodities have preference to proceeds of sales of those commodities apart from priorities established in Bankruptcy Code, and such preference extends to secured creditors as well as general unsecured creditors. In re H.R. Hindle & Co., Inc., Bkrtcy.E.D.Pa.1993, 149 B.R. 775.

When trust is established over bankruptcy trustee's funds, specific statutory provision permit its use in particular situation at hand. In re Stotler and Co., N.D.Ill.1992, 144 B.R. 385.

Creditors who had complied with all Perishable Agricultural Commodities Act (PACA) requirements were entitled to share in PACA held by debtor's estate, notwithstanding failure of creditors to participate in bankruptcy case. Matter of United Fruit and Produce Co., Inc., Bkrtcy.D.Conn.1990, 119 B.R. 10.

Provision of Bankruptcy Code [Bankr.Code, 11 U.S.C.A. § 542] governing turnover of property and 28 U.S.C.A. § 157(b)(2)(E) which lists order to turn over property of estate as court proceeding are concerned only with turnover of property of estate by third parties, and contemplate turnover to, rather than from, debtor; thus, those sections did not apply to proceeding to determine amount of creditor's claim against assets held by Chapter 11 debtor in trust for creditor pursuant to terms of Perishable Agricultural Commodities Act [7 U.S.C.A. § 499e(c)]. In re Fresh Approach, Inc., Bkrtcy.N.D.Tex. 1985, 51 B.R. 412.

In enactment of the Perishable Agricultural Commodities Act of 1930, Congress intended to provide for sellers of produce the sort of protection against other creditors of a delinquent purchaser/dealer contemplated for livestock dealers in the Packers and Stockyards Act of 1921. In re Fresh Approach, Inc., Bkrtcy.N.D.Tex.1985, 48 B.R. 926.

Produce Corp. v. CIT Group/Factoring, Inc., S.D.N.Y.1993, 829 F.Supp. 651.

Perishable Agricultural Commodities Act (PACA) does not confer on any general unsecured creditor of commodities dealer the power to void any transfer, but, rather, created priority interest on behalf of duly perfected trust beneficiaries. In re N. Merberg & Sons, Inc., Bkrtcy. S.D.N.Y.1994, 166 B.R. 567.

§ 499f. Complaints, written notifications, and investigations

(a) Reparation complaints

(1) Petition; process

Any person complaining of any violation of any provision of section 499b of this title by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(2) Filing and handling fees

A person submitting a petition to the Secretary under paragraph (1) shall include a filing fee of $60 per petition. If the Secretary determines under paragraph (1) that the facts contained in the petition warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of $300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. The Secretary shall deposit fees submitted under this paragraph into the Perishable Agricultural Commodities Act Fund provided for by section 499c(b) of this title. The Secretary may alter the fees specified in this paragraph by rulemaking under section 553 of Title 5.

(b) Disciplinary violations

Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any other interested person (other than an employee of an agency of the Department of Agriculture administering this chapter) may file, in accordance with rules prescribed by the Secretary, a written notification of any alleged violation of this chapter by any commission merchant, dealer, or broker. In addition, any official certificates of the United States Government or States or Territories of the United States and trust notices filed pursuant to section 499e of this title shall constitute written notification for the purposes of conducting an investigation under subsection (c) of this section. The identity of any person filing a written notification under this subsection shall be considered to be confidential information. The identity of such person, and any portion of the notification to the extent that it would indicate the identity of such person, are specifically exempt from disclosure under section 552 of Title 5 (commonly known as the Freedom of Information Act), as provided in subsection (b)(3) of such section.

(c) Investigation of complaints and notifications

(1) Commencing or expanding an investigation

If there appears to be, in the opinion of the Secretary, reasonable grounds for investigating a complaint made under subsection (a) of this section or a written notification made under subsection (b) of this section, the Secretary shall investigate such complaint or notification. In the course of the investigation, if the Secretary determines that violations of this chapter are indicated other than the alleged violations specified in the complaint or notification that served as the basis for the investigation, the Secretary may expand the investigation to include such additional violations.

(2) Issuance of complaint by Secretary; process

In the opinion of the Secretary, if an investigation under this subsection substantiates the existence of violations of this chapter, the Secretary may cause a complaint to be issued. The Secretary shall have the complaint served by registered mail or certified mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the subject of the complaint is engaged in business. However, in complaints wherein the amount claimed as damages does not exceed $30,000, a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact.

(3) Special notification requirements for certain investigations

Whenever the Secretary initiates an investigation on the basis of a written notification made under subsection (b) of this section or expands such an investigation, the Secretary shall promptly notify the subject of the investigation of the existence of the investigation and the nature of the alleged violations of this chapter to be investigated. Not later than 180 days after providing the initial notification, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under paragraph (2), terminate the investigation, or continue or expand the investigation. The Secretary shall provide additional status reports at the request of the subject of the investigation and shall promptly notify the subject of the investigation whenever the Secretary terminates the investigation.

(d) Decisions on complaints

After opportunity for hearing on complaints where the damages claimed exceed the sum of $30,000 has been provided or waived and on complaints where damages claimed do not exceed the sum of $30,000 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 499b of this title.

(e) Bond required for certain complaints

In case a complaint is made by a nonresident of the United States, or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary of Agriculture against the complainant on any counter claim by respondent: *Provided*, That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

(As amended Dec. 22, 1981, Pub.L. 97–98, Title XI, § 1115(e), 95 Stat. 1270; Oct. 15, 1982, Pub.L. 97–352, § 2, 96 Stat. 1667; Dec. 13, 1991, Pub.L. 102–237, Title X, § 1011(4), 105 Stat. 1898; Nov. 15, 1995, Pub.L. 104–48, §§ 7, 8(a), 109 Stat. 428, 429.)

HISTORICAL AND STATUTORY NOTES

1995 Amendments

Heading. Pub.L. 104–48, § 7(d)(1), substituted "Complaints, written notifications, and investigations" for "Complaint and investigation".

Subsec. (a). Pub.L. 104–48, § 8(a), inserted subsec. (a) heading, designated existing provision as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (b). Pub.L. 104–48, § 7(a), inserted subsec. (b) heading and provision that any official certificates and trust notices constitute written notification, the identity of any person filing a written notification be confidential information, and the identity, and any portion of the written notification that would indicate such identity, be exempt from the Freedom of Information Act.

Subsec. (c). Pub.L. 104–48, § 7(b), inserted subsec. (c) heading and pars. (1) to (3) headings, inserted provision permitting the Secretary to expand an investigation, substituted "$30,000" for "$15,000" as the amount of damages for determining whether a hearing need be held, and established special notification requirements for certain investigations.

Subsec. (d). Pub.L. 104–48, § 7(c), (d)(2), inserted subsec. (d) heading and substituted "$30,000" for "$15,000" in two places.

Subsec. (e). Pub.L. 104–48, § 7(d)(3), inserted subsec. (e) heading.

1991 Amendments

Subsec. (c). Pub.L. 102–237, § 1011(4)(A), inserted period at end of subsec. (c), requiring no change in text.

Subsec. (d). Pub.L. 102–237, § 1011(4)(B), substituted period for semicolon at end of subsec. (d), requiring no change in text.

1982 Amendment

Subsec. (e). Pub.L. 97–352 inserted "or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned," following "In case a complaint is made by a nonresident of the United States."

1981 Amendment

Subsecs. (c), (d). Pub.L. 97-98 substituted "$15,000" for "3,000".

Effective Date of 1991 Amendment

Amendments by Pub.L. 102-237 effective Dec. 13, 1991, see section 1101(a) of Pub.L. 102-237, set out as a note under section 1421 of this title.

Effective Date of 1982 Amendment

Section 3 of Pub.L. 97-352 provided that: "The amendment made by section 2 [amending subsec. (e) of this section] shall not apply with respect to complaints made under section 6(e) of the Perishable Agricultural Commodities Act, 1930 [section 499f(e) of this title], before the date of enactment of this Act [Oct. 15, 1982]."

Effective Date of 1981 Amendment

Amendment by Pub.L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub.L. 97-98, set out as a note under section 4301 of this title.

Filing and Handling Fees During Fiscal Years 1995 and 1996

Pub.L. 103-276, § 1, July 5, 1994, 108 Stat. 1406, which provided that, during fiscal years 1995 and 1996, the Secretary of Agriculture require a filing fee of $60 per petition for petitions alleging violation of section 499b of this title and during the same fiscal years a $300 handling fee for petitions that warrant further action, which handling fee was to be included in determining the amount of damages, with both fees to be deposited into the Perishable Agricultural Commodities Act Fund, was repealed by Pub.L. 104-48, § 8(c), Nov. 15, 1995, 109 Stat. 423. See subsec. (a)(2) of this section.

Legislative History

For legislative history and purpose of Pub.L. 97-98, see 1981 U.S. Code Cong. and Adm. News, p. 1677. See, also, Pub.L. 97-352, 1982 U.S. Code Cong. and Adm. News, p. 3247; Pub. L. 102-237, 1991 U.S. Code Cong. and Adm. News, p. 1481; Pub.L. 104-48, 1995 U.S. Code Cong. and Adm. News, p. 453.

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General Counsel, see § 5068.

NOTES OF DECISIONS

7. Necessity of informal complaint

Under this chapter, Secretary of Agriculture is not barred from issuing a formal disciplinary complaint against a licensee as a result of the fact that aggrieved party has not filed with Secretary an informal complaint seeking such action; the only situation in which this chapter may require the filing and service upon the licensee of such an informal complaint is when the aggrieved party has filed an informal reparations claim. Finer Foods Sales Co., Inc. v. Block, C.A.D.C.1983, 708 F.2d 774, 228 U.S.App.D.C. 205.

8. Limitations

Nine-month limit under this chapter applies only to reparations actions, and not to disciplinary actions brought by Secretary. Melvin Beene Produce Co. v. Agricultural Marketing Service, C.A.6 1984, 728 F.2d 347.

Nine-month statute of limitations on administrative reparation actions under the Perishable Agricultural Commodities Act (PACA) applies only to administrative actions, and not to separate civil proceedings filed in district court to enforce payment from statutory trust created pursuant to PACA. In re So Good Potato Chip Co., Bkrtcy.E.D.Mo.1991, 124 B.R. 298.

9. Waiver of bond

The Department of Agriculture had no discretion under its regulations to deny a foreign producer's petition for waiver of reparation proceeding bond requirements upon the foreign producer's showing that its nation did not require a United States complainant to file a bond in a proceeding against a citizen of that nation; regulation provided that bond requirement "shall be waived" if the foreign producer made the requisite showing of reciprocity. Exportal Ltda v. U.S., C.A.D.C.1990, 902 F.2d 45, 284 U.S.App.D.C. 80.

§ 499g. Reparation order

(a) Determination by Secretary of Agriculture of amount of damages; order for payment

If after a hearing on a complaint made by any person under section 499f of this title, or without hearing as provided in subsections (c) and (d) of section 499f of this title, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Secretary determines that the commission merchant, dealer, or broker has violated any provision of section 499b of this title, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. The Secretary shall order any commission merchant, dealer, or broker who is the losing

party to pay the prevailing party, as reparation or additional reparation, reasonable fees and expenses incurred in connection with any such hearing. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Secretary under such rules and regulations as he shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Secretary with respect to the undisputed sum.

(b) Failure to comply with order of Secretary; suit to enforce liability; order as evidence; costs and fees

If any commission merchant, dealer, or broker does not pay the reparation award within the time specified in the Secretary's order, the complainant, or any person for whose benefit such order was made, may within three years of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings and orders of the Secretary shall be prima-facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

(c) Appeal from reparation order; proceedings

Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which said hearing was held: *Provided*, That in cases handled without a hearing in accordance with subsections (c) and (d) of section 499f of this title or in which a hearing has been waived by agreement of the parties, appeal shall be to the district court of the United States for the district in which the party complained against is located. Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which the petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court and if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court.

[See main volume for text of (d)]

(As amended Dec. 13, 1991, Pub.L. 102-237, Title X, § 1011(5), 105 Stat. 1898.)

HISTORICAL AND STATUTORY NOTES

1991 Amendments

Subsec. (a). Pub.L. 102-237, § 1011(5), substituted period for semicolon following "undisputed sum".

Subsec. (b). Pub.L. 102-237, § 1011(5), substituted period for semicolon following "as a part of the costs of the suit".

Subsec. (c). Pub.L. 102-237, § 1011(5), substituted period for semicolon following "subject to any amendment allowed in that court".

Effective Date of 1991 Amendment

Amendment by Pub.L. 102-237 effective Dec. 13, 1991, see section 1101(a) of Pub.L. 102-237, set out as a note under section 1421 of this title.

Legislative History

For legislative history and purpose of Pub.L. 102-237, see 1991 U.S. Code Cong. and Adm. News, p. 1481.

FEDERAL PRACTICE AND PROCEDURE

Applicability of Federal Rules of Civil Procedure, see Wright & Miller: Civil § 3131 et seq.

Petition to review, see § 6020.

Taxation of costs, see §§ 4612 to 4632.

NOTES OF DECISIONS

5. Law governing

Joseph Denunzio Fruit Co. v. Crane, S.D.Cal. 1948, 79 F.Supp. 117, [main volume] vacated 89 F.Supp. 962, reversed 188 F.2d 569, certiorari denied 72 S.Ct. 37, 342 U.S. 820, 96 L.Ed. 620.

7. Bonds

Posting of bond was jurisdictional prerequisite for appeal of award of attorney fees against losing party by Secretary of Agriculture. Miloslavich v. Frutas Del Valle De Guadalupe, S.A., S.D.Cal.1986, 637 F.Supp. 434, affirmed 815 F.2d 714.

9. Hearing

Following Agriculture Department's presentation of invoices, bankruptcy petitions and affidavits by agency investigators strongly suggesting numerous violations of Perishable Agricultural Commodities Act requirement that merchant make full, prompt payment of agreed purchase price for fruits and vegetables in interstate commerce, merchant's request for issuance of subpoenas to compel appearance of nine individuals and exhibits suggesting that president had composed false invoices or had arranged to have merchant billed by other companies in his control were insufficient to show there was genuine material issue requiring evidentiary hearing, absent showing that president's alleged dishonesty cast doubt on accuracy of bills to merchant from independent firms. Veg-Mix, Inc. v. U.S. Dept. of Agriculture, C.A.D.C.1987, 832 F.2d 601, 266 U.S.App.D.C. 1.

16. De novo review

Although buyer of perishable agricultural commodities was entitled to trial de novo on petition for review of reparations order of Secretary of Department of Agriculture, Secretary's findings of fact would not be disturbed unless rebutted by specific evidence. Tom Lange Co., Inc. v. A. Gagliano Co., Inc., E.D.Wis.1994, 859 F.Supp. 356, reversed 61 F.3d 1305.

17. Actions and proceedings reviewable

Amended order, rather than original reparation order under Perishable Agricultural Commodities Act, was "final order" for purposes of review in District Court, where original order lacked material term, specifically, date from which interest was to be computed, and thus, left entirely ambiguous total amount of award. G. & T. Terminal Packaging Co., Inc. v. Hawman, C.A.2 (N.Y.) 1989, 870 F.2d 77.

23. Presumptions

Joseph Denunzio Fruit Co. v. Crane, S.D.Cal. 1948, 79 F.Supp. 117, [main volume] vacated 89 F.Supp. 962, reversed 188 F.2d 569, certiorari denied 72 S.Ct. 37, 342 U.S. 820, 96 L.Ed. 620.

24. Weight and conclusiveness of administrative findings

Where facts stated in reparation order issued by Secretary of Agriculture pertained only to one party and did not make mention of participation by other parties, order and findings of Secretary would not be prima facie evidence as to such other parties in action to enforce award, and such other parties would be dismissed from complaint count seeking to enforce award. Swanee Bee Acres, Inc. v. Fruit Hill, Inc., N.D.Ill.1984, 597 F.Supp. 322.

25. Admissibility of evidence

Joseph Denunzio Fruit Co. v. Crane, S.D.Cal. 1948, 79 F.Supp. 117, [main volume] vacated 89 F.Supp. 962, reversed 188 F.2d 569, certiorari denied 72 S.Ct. 37, 342 U.S. 820, 96 L.Ed. 620.

26. Weight and sufficiency of evidence

In USDA reparations proceedings, buyer of potatoes could recover damages based solely on USDA inspection certificate indicating that the potatoes were defective, in absence of evidence of resale value of potatoes; however, inspection certificate did not amount to conclusive evidence of potatoes' complete lack of value, so that further fact-finding on damage issue, including determination of what buyer was contractually entitled to receive and what value was of the

potatoes it did receive, was needed on remand. G & T Terminal Packaging Co., Inc. v. Joe Phillips, Inc., C.A.2 (N.Y.) 1986, 798 F.2d 679.

In suit to set aside reparations order by Secretary in favor of shipper of perishable vegetables under this chapter, evidence was sufficient to support finding that shipper granted permission, by means of request that produce wholesaler salvage as much of shipment as it could to sell it at best price available, for sales that were made outside wholesaler's market, so that shipper was not entitled to reparations order. Georgia Vegetable Co., Inc. v. Relan, C.A.11 (Ga.) 1984, 731 F.2d 798.

28. Attorney fees

Joseph Denunzio Fruit Co. v. Crane, S.D.Cal. 1948, 79 F.Supp. 117, [main volume] vacated 89 F.Supp. 962, reversed 188 F.2d 569, certiorari denied 72 S.Ct. 37, 342 U.S. 820, 96 L.Ed. 620.

While award of attorney fees to prevailing party under Perishable Agricultural Commodities Act is automatic, amount of fee is discretionary. Robinson Farms Co. v. D'Acquisto, C.A.7 (Wis.) 1992, 962 F.2d 680.

Appellant attorney fees and expenses were awarded in connection with successful effort to secure affirmance by Court of Appeals of district court judgment affirming two reparation awards entered by Secretary of Agriculture pursuant to Perishable Agricultural Commodities Act; though Act did not explicitly provide for such fees, its statutory objective would be impaired if they were not awarded. Tray-Wrap, Inc. v. Homestead Tomato Packing Co., Inc., C.A.2 1991, 933 F.2d 1130.

29. Costs

Cantaloupe seller which obtained from buyer portion of amount seller sought for sale was "prevailing party" under Perishable Agricultural Commodities Act and was thus entitled to reasonable costs and attorney fees, even though Secretary of Agriculture ordered buyer to pay full price of load, and, upon buyer's appeal to district court, magistrate judge held that seller was only entitled to less than one fourth of full price of load. Robinson Farms Co. v. D'Acquisto, C.A.7 (Wis.) 1992, 962 F.2d 680.

§ 499h. Grounds for suspension or revocation of license

(a) Authority of Secretary

Whenever (1) the Secretary determines, as provided in section 499f of this title, that any commission merchant, dealer, or broker has violated any of the provisions of section 499b of this title, or (2) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 499n(b) of this title, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

(b) Unlawful employment of certain persons; restrictions; bond assuring compliance; approval of employment without bond; change in amount of bond; payment of increased amount; penalties

Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

[See main volume for text of (1) to (3)]

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 499b of this title, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this chapter and that the licensee will pay all reparation awards, subject to its right of appeal under section 499g(c) of this title, which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section. The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.

[See main volume for text of (c) and (d)].

(e) Alternative civil penalties

In lieu of suspending or revoking a license under this section when the Secretary determines, as provided by section 499f of this title, that a commission merchant, dealer, or broker has violated section 499b of this title or subsection (b) of this section, the Secretary may assess a civil penalty not to exceed $2,000 for each violative transaction or each day the violation continues. In assessing the amount of a penalty under this subsection, the Secretary shall give due consideration to the size of the business, the number of employees, and the seriousness, nature, and amount of the violation. Amounts collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(As amended Dec. 13, 1991, Pub.L. 102-237, Title X, § 1011(6), 105 Stat. 1898; Nov. 15, 1995, Pub.L. 104-48, §§ 11, 12(b), 109 Stat. 430, 431.)

HISTORICAL AND STATUTORY NOTES

1995 Amendments

Subsec. (b). Pub.L. 104-48, § 12(b), inserted provision relating to extension of employment sanction.

Subsec. (e). Pub.L. 104-48, § 11, added subsec. (e).

1991 Amendments

Subsec. (a)(1). Pub.L. 102-237, § 1011(6)(A), redesignated par. (a) as par. (1).

Subsec. (a)(2). Pub.L. 102-237, § 1011(6)(A), redesignated par. (b) as par. (2).

Pub.L. 102-237, § 1011(6)(B), substituted period for semicolon following "of the offender".

Effective Date of 1991 Amendment

Amendment by Pub.L. 102-237 effective Dec. 13, 1991, see section 1101(a) of Pub.L. 102-237, set out as a note under section 1421 of this title.

Legislative History

For legislative history and purpose of Pub.L. 102-237, see 1991 U.S. Code Cong. and Adm. News, p. 1481. See, also, Pub.L. 104-48, 1995 U.S. Code Cong. and Adm. News, p. 453.

NOTES OF DECISIONS

1. Constitutionality

Revocation of license under this chapter by administrative law judge and judicial officer who were not judges under U.S.C.A. Const.Art. III was constitutional. Melvin Beene Produce Co. v. Agricultural Marketing Service, C.A.6 1984, 728 F.2d 347.

5. Flagrant or repeated violations

Judicial officer's findings that seller's conduct was intentional, deliberate, and knowing, that large volume of produce was involved, and that shipments spanned period of month and a half, supported finding that seller's conduct in relidding 7,554 cartons of New Zealand apples, at customer's request, to look like Washington apples, was "flagrant" violation of Perishable Agricultural Commodities Act (PACA), rather than "serious" or "very serious" violation, and thus warranted revocation of seller's PACA license. Potato Sales Co., Inc. v. Department of Agriculture, C.A.9 1996, 92 F.3d 800.

Fruit and vegetable brokerage's failure to pay promptly for 61 lots of fruit and vegetables was "repeated" within meaning of statute permitting revocation of license for repeated failure to pay promptly and in full for agricultural purchases. Farley and Calfee, Inc. v. U.S. Dept. of Agriculture, C.A.9 1991, 941 F.2d 964.

Secretary of Agriculture's 30-day suspension of company's license for shipping misbranded potatoes was not abuse of discretion where company, in open defiance of United States Department of Agriculture inspectors, knowingly misbranded and shipped nine lots of potatoes as U.S. No. 1 when they were clearly not so certifiable, and company also refused to recall those shipments or give information as to their destination. Magic Valley Potato Shippers, Inc. v. Secretary of Agr., C.A.9 1983, 702 F.2d 840.

In view of buyer's flagrant intentional violations of this chapter, its underlying regulations and previous order regarding written confirmation, judicial officer of the Department of Agriculture did not abuse his discretion in imposing suspension of 44 days for buyer's failure to make prompt payments for 20 lots of perishable agricultural commodities. American Fruit Purveyors, Inc. v. U. S., C.A.5 1980, 630 F.2d 370, certiorari denied 101 S.Ct. 1701, 450 U.S. 997, 68 L.Ed.2d 197.

6a. —— Employment restrictions

Sole shareholder responsibly connected to fruit and vegetable brokerage was not entitled to mitigation and leniency from statutory bar against employment in perishable agriculture industry. Farley and Calfee, Inc. v. U.S. Dept. of Agriculture, C.A.9 1991, 941 F.2d 964.

Person responsibly connected to disciplined Perishable Agricultural Commodities Act licensee could be barred from employment by another Act licensee, even in position unrelated to Act regulatory scheme. Siegel v. Lyng, C.A.D.C. 1988, 851 F.2d 412, 271 U.S.App.D.C. 167.

7. Knowledge or intent

Fact that corporate licensee participated in business transactions arranged by suspended licensee and reaped benefits from those transactions established affiliation in violation of PACA, even if president and majority shareholder of corporate licensee did not know of prohibited actions. ABL Produce, Inc. v. U.S. Dept. of Agriculture, C.A.8 1994, 25 F.3d 641.

Nominal director's mere presence at agricultural products marketing company's board meetings during which transactions violative of this chapter were never discussed could not be basis for imputing personal knowledge to her so as to warrant her two-year bar from employment with a Department of Agriculture licensee. Minotto v. U.S. Dept. of Agriculture, C.A.D.C.1983, 711 F.2d 406, 229 U.S.App.D.C. 128.

Under this chapter, action is willful if, prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements. American Fruit Purveyors, Inc. v. U. S., C.A.5 1980, 630 F.2d 370, certiorari denied 101 S.Ct. 1701, 450 U.S. 997, 68 L.Ed.2d 197.

11. Discharge in bankruptcy

Merchant's filing of petition in bankruptcy did not have any effect on power of Secretary of Agriculture to revoke merchant's license under this chapter, even though violations involved debts dischargeable in bankruptcy. Melvin Beene Produce Co. v. Agricultural Marketing Service, C.A.6 1984, 728 F.2d 347.

12. Length of suspension

Suspension for 45 days of produce company's license under Perishable Agricultural Commodities Act (PACA) for substituting uninspected produce for produce which had been officially inspected could not be justified, in absence of proof of willfulness of violation, on theory that sanction was "minor"; lengthy suspension might destroy or seriously hamper produce company's relationships with its customers, who depended on daily service. Capital Produce Co., Inc. v. U.S., C.A.4 1991, 930 F.2d 1077.

Since finding that petitioner was responsibly connected with wholesale produce business, which was in violation of the Perishable Agricultural Commodities Act, was supported by substantial evidence, he was properly barred from working for a licensee under the Act for at least a one-year period. Pupillo v. U.S., C.A.9 1985, 755 F.2d 638.

13. Notice

Any defect in the amount of or the procedures used to set the bond required of a dealer in perishable agricultural commodities when it employed an individual responsible for a dealer that had not paid reparations awards, or arising from nonpublication in the Federal Register of rules relating to the bonding requirement, would not enable dealer to avoid liability and revocation of its license based on its several months of noncompliance, before the bond was set, of the statutory requirement that it not employ such an individual. Tri-County Wholesale Produce Co., Inc. v. U.S. Dept. of Agriculture, C.A.D.C. 1987, 822 F.2d 162, 262 U.S.App.D.C. 31.

In light of previous order requiring any prompt payment beyond ten days to be confirmed by express written memorandum and requiring that buyer make prompt payment within that agreed time, buyer's subsequent failure to pay sellers promptly in violation of this chapter and the regulation was willful, and buyer's failure to obtain express written agreement in violation of both the regulations and previous order was willful, and thus, no notice to buyer of suspension proceeding was required. American Fruit Purveyors, Inc. v. U. S., C.A.5 1980, 630 F.2d 370, certiorari denied 101 S.Ct. 1701, 450 U.S. 997, 68 L.Ed.2d 197.

14. Hearing

Administrative law judge's denial of corporation's request for a continuance of hearing on revocation of corporation's license to sell and deal in perishable agricultural products was not an abuse of discretion, where corporation failed to show that any purpose would have been served by a continuance and corporation had access to books and records in FBI's possession and thus could have obtained information it claimed it needed. United Fruit and Vegetable Co., Inc. v. Director of Fruit & Vegetable Division, Marketing Service U. S. Dept. of Agriculture, C.A.8 1952, 668 F.2d 983, certiorari denied 102 S.Ct. 2299, 456 U.S. 1007, 73 L.Ed.2d 1302.

15a. Laches

Doctrine of laches applies to disciplinary actions by Secretary of Agriculture under this chapter. Melvin Beene Produce Co. v. Agricultural Marketing Service, C.A.6 1984, 728 F.2d 347.

17. Weight and sufficiency of evidence

Evidence supported Secretary of Agriculture's finding that seller's Perishable Agricultural Commodities Act (PACA) misbranding violations were "wilful," thus allowing initiation of PACA license revocation proceedings without prior notice or opportunity for compliance, where seller's vice president loaded nine containers in three separate shipments with more than 7,000 cartons of New Zealand apples relidded to look like Washington apples, charged almost a 20% premium for relidding, gave demonstration of effectiveness of relidding before payment, was asked to remove stickers only from last several pallets in each container, and expressed doubts about propriety of his conduct. Potato Sales Co., Inc. v. Department of Agriculture, C.A.9 1996, 92 F.3d 800.

Evidence sustained finding that wholesale produce dealer altered federal inspection certificates for fraudulent purpose, even if dealer was correcting information on certificate in order to compensate for a "flaw in the inspection process" and, thus, dealer's license to do business was properly suspended for 90 days for fraud; regardless of dealer's motive, dealer knowingly misrepresented information on inspection certificates and intended that others would rely upon his misrepresentations. Produce Place v. U.S. Dept. of Agriculture, C.A.D.C.1996, 91 F.3d 173, 319 U.S.App.D.C. 369.

Evidence that petitioner passed himself off as wholesale produce business' vice-president, secretary and director on numerous occasions, most significantly by signing documents filed with state, and being designated an officer and director on Perishable Agricultural Commodities Act license renewal applications was sufficient to support finding of petitioner's responsible connection to wholesale produce business, which itself was found to have violated the Act, for purposes of barring petitioner from working for a licensee under the Act for at least one year. Pupillo v. U.S., C.A.8 1985, 755 F.2d 638.

Substantial evidence supported decision of Department of Agriculture revoking corporation's license to sell and deal in perishable agricultural products, in view of evidence showing that corporation had failed to pay fully and promptly for 127 lots of produce involving total default of more than $760,000 to 30 individual sellers in four states. United Fruit and Vegetable Co., Inc. v. Director of Fruit & Vegetable Division, Marketing Service U. S. Dept. of Agriculture, C.A.8 1982, 668 F.2d 983, certiorari denied 102 S.Ct. 2299, 456 U.S. 1007, 73 L.Ed.2d 1302.

22. Remand

Department of Agriculture's decision, that former employee of corporation which had its license to market fresh fruit and vegetables revoked was "responsibly connected" with violator, so as to be subject to reemployment restrictions, was required to be remanded; Department had not considered whether corporation was really alter ego of its principal shareholder, and not a corporate employer for purposes of rehiring restrictions, and former employee had presented evidence that even though he was listed as an officer and director on corporate records he had asked to be stripped of titles and considered as just an ordinary employee, and in fact his functions involved sale of produce without any involvement in financial problems which caused license revocation to occur. Bell v. Department of Agriculture, C.A.D.C.1994, 39 F.3d 1199, 309 U.S.App.D.C. 107.

23. Scope of appellate court review

Secretary of Agriculture's choice of sanction for shipping misbranded goods is not to be overturned unless reviewing court determines it is unwarranted in law or without justification in fact and fashioning of appropriate remedy is for Secretary, not court. Magic Valley Potato Shippers, Inc. v. Secretary of Agr., C.A.9 1983, 702 F.2d 840.

Choice of sanctions imposed by Secretary of Agriculture, through his judicial officer, may not be overturned in absence of patent abuse of discretion. American Fruit Purveyors, Inc. v. U. S., C.A.5 1980, 630 F.2d 370, certiorari denied 101 S.Ct. 1701, 450 U.S. 997, 68 L.Ed.2d 197.

24. Penalties

Secretary of Labor could order revocation of seller's Perishable Agricultural Commodities Act (PACA) license, based on seller's conduct in relidding 7,554 cartons of New Zealand apples to look like Washington apples at customer's request, even though seller did not realize profit because customer ultimately did not pay for apples, since seller's vice president agreed to relid to get customer's business. Potato Sales Co., Inc. v. Department of Agriculture, C.A.9 1996, 92 F.3d 800.

Fact that Perishable Agricultural Commodities Act (PACA) makes forging certificate of produce inspection a crime did not preclude Secretary of Agriculture from revoking wholesale produce dealer's license for altering certificate of produce inspection pursuant to PACA provision prohibiting false or misleading statements in connection with any transaction; that Congress found threat of imprisonment necessary to deter false statements on inspection certificates did not suggest that Congress intended to remove Secretary's power to take administrative action against person who forges certificate. Produce Place v. U.S. Dept. of Agriculture, C.A.D.C.1996, 91 F.3d 173, 319 U.S.App.D.C. 369.

Department of Agriculture could publish its findings that licensed dealer had failed to pay suppliers within ten days, as required under Perishable Agricultural Commodities Act, so as to disqualify dealer from becoming relicensed for period of two years, even though dealer claimed it had been in existence for 40 years without being sanctioned by Department, and that warehouse fire caused it to miss payments; there was evidence that payments had been missed prior to fire and that dealer was in financial difficulties, and publication of findings served purpose of insuring that financially responsible dealers were engaging in commodities sales. Frank Tambone, Inc. v. U.S. Dept. of Agriculture, C.A.D.C.1995, 50 F.3d 52, 311 U.S.App.D.C. 81.

Revoking license as sanction for violating employment restrictions of PACA was an abuse of discretion given that licensee's bills were all paid, brunt of sanction would be felt by innocent president and shareholder of licensee, employee whose conduct led to sanction engaged in deceptive acts to hide wrongful activities, and licensee had no previous violations. ABL Produce, Inc. v. U.S. Dept. of Agriculture, C.A.8 1994, 25 F.3d 641.

§ 499k. Injunctions; application of injunction laws governing orders of Interstate Commerce Commission

HISTORICAL AND STATUTORY NOTES

Abolition of Interstate Commerce Commission and Transfer of Functions

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub.L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub.L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub.L. 104-88, set out as a note under section 701 of Title 49.

§ 499*l*. Violations; report to Attorney General; proceedings; costs

NOTES OF DECISIONS

Discontinuance of operations 1

1. Discontinuance of operations

Statutory employment restrictions on persons responsibly connected to disciplined Perishable Agricultural Commodities Act licensees do not infringe bill of attainder clause of Federal Constitution in that statutory presumption of responsibility both is rebuttable in adjudicatory proceeding and is nonpunitive in nature. Siegel v. Lyng, C.A.D.C.1988, 851 F.2d 412, 271 U.S.App.D.C. 167.

§ 499m. Complaints; procedure, penalties, etc.

WEST'S FEDERAL FORMS

Administrative subpoenas, enforcement of, see § 5901 et seq.

Depositions, matters pertaining to, see § 3253.15 et seq.

NOTES OF DECISIONS

Constitutionality 1

1. Constitutionality

This section did not violate U.S.C.A. Const. Amend. 4. Wayne Cusimano, Inc. v. Block, C.A.5 1982, 692 F.2d 1025.

§ 499n. Inspection of perishable agricultural commodities

(a) Employment of inspectors; fees and expenses; inspection certificate as evidence

The Secretary is authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this chapter, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this chapter: *And provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this chapter, and in all transactions upon contract markets under Commodities Exchange Act (7 U.S.C. 1 et seq.) as prima-facie evidence of the truth of the statements therein contained.

[See main volume for text of (b)]

(As amended Dec. 13, 1991, Pub.L. 102-237, Title X, § 1011(7), 105 Stat. 1898.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Commodities Exchange Act (7 U.S.C. 1 et seq.), referred to in subsec. (a), is Act Sept. 21, 1922, c. 369, 42 Stat. 998, which is classified generally to chapter 1 (section 1 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

1991 Amendments

Subsec. (a). Pub.L. 102–237, § 1011(7)(A), substituted "(7 U.S.C. 1 et seq.)" for "(7 U.S.C., Supp. 2, secs. 1 to 17(a))".

Pub.L. 102–237, § 1011(7)(B), substituted "statements therein contained." for "statements therein contained;".

Effective Date of 1991 Amendment

Amendment by Pub.L. 102–237 effective Dec. 13, 1991, see section 1101(a) of Pub.L. 102–237, set out as a note under section 1421 of this title.

Potato Inspection

Pub.L. 99–198, Title XVII, § 1704, Dec. 23, 1985, 99 Stat. 1635, as amended by Pub.L. 104–66, Title I, § 1011(g), Dec. 21, 1995, 109 Stat. 710, provided that: "The Secretary of Agriculture shall perform random spot checks of potatoes entering through ports of entry in the northeastern United States."

Legislative History

For legislative history and purpose of Pub.L. 102–237, see 1991 U.S.Code Cong. and Adm. News, p. 1481.

§ 499o. Rules, regulations, and orders; appointment, removal, and compensation of officers and employees; expenditures; authorization of appropriations; abrogation of inconsistent statutes

NOTES OF DECISIONS

1. Persons bound by regulations

Notices of intent to preserve Perishable Agricultural Commodities Act trust fund benefits did not have to comply with requirement set forth in regulations promulgated by Secretary of Agriculture, where notices were sent prior to promulgation of regulations. In re Prange Foods, Corp., Bkrtcy.W.D.Mich.1986, 63 B.R. 211.

§ 499r. Repealed. Pub.L. 102–237, Title X, § 1011(8), Dec. 13, 1991, 105 Stat. 1898

HISTORICAL AND STATUTORY NOTES

Section, June 10, 1930, c. 436, § 18, 46 Stat. 538, set forth short title of chapter.

Effective Date of Repeal

Repeal effective Dec. 13, 1991, see section 1101(a) of Pub.L. 102–237, set out as a note under section 1421 of this title.

§ 499t. Omitted

HISTORICAL AND STATUTORY NOTES

Codification

Section, Act June 10, 1930, c. 436, § 20, as added Aug. 22, 1988, Pub.L. 100–414, § 2, 102 Stat. 1102, established the Perishable Agricultural Commodities Act Industry Advisory Committee, provided for its membership, compensation, etc., directed the advisory committee to review the Perishable Agricultural Commodities Act program and to make findings and recommendations to the Congress and Secretary of Agriculture with respect to future operations of the program, with an interim report not later than Sept. 30, 1989, and a final report not later than May 1, 1990, containing the results of its review and recommendations, and provided that the advisory committee cease to exist on the date of its final report.

CHAPTER 21—TOBACCO STATISTICS

§ 509. Repealed. Pub.L. 104–127, Title II, § 262, Apr. 4, 1996, 110 Stat. 973

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 98–180, Title II, § 214, as added Pub.L. 101–624, Title XV, § 1557, Nov. 28, 1990, 104 Stat. 3699, and amended Pub.L. 102–237, Title III, § 337, Dec. 13, 1991, 105 Stat. 1859, related to reporting requirements relating to tobacco.

CHAPTER 21A—TOBACCO INSPECTION

§ 511a. Declaration of purpose

CODE OF FEDERAL REGULATIONS

Policies and procedures for inspection, see 7 CFR 29.1 et seq.

§ 511d. Designation of markets; manner; inspection and related services; fees and charges

The Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this chapter, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: *Provided*, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. The Secretary shall by regulation fix and collect fees and charges for inspection and certification, the establishment of standards, and other services under this section at designated auction markets. The fees and charges authorized by this section shall, as nearly as practicable, cover the costs of the services, including the administrative and supervisory costs customarily included by the Secretary in user fee calculations. The fees and charges, late payment penalties, and interest earned from the investment of such funds, when collected, shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year limitation to pay the expenses of the Secretary incident to providing services under this chapter. Any funds realized from the collection of fees or charges authorized under this section and section 511e of this title and credited to the current appropriation account incurring the cost of services provided under this section and section 511e of this title, late payment penalties, and interest earned from the investment of such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any income realized from this activity may be used to pay the expenses of the Secretary of Agriculture incident to providing services under this chapter or reinvested in the manner authorized in the preceding sentence. The fees and charges authorized in this section shall be assessed against the warehouse operator, irrespective of ownership or interest in the tobacco, and shall be collected by the

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U.S. DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

Telephone (202) 720-3631 Fax (202) 720-5437

FAX COVER SHEET

DATE:________

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PLEASE DELIVER TO: Tom / Mary

FAX NUMBER: ( ) **PHONE NUMBER:** ( )

FROM:

- ☐ DAN GLICKMAN, SECRETARY
  - ☐ JOHN GIBSON, SPECIAL ASSISTANT
- ☐ GREG FRAZIER, CHIEF OF STAFF
  - ☐ KOFI DEGRAFT-JOHNSON, EXECUTIVE ASSISTANT
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- ☐ ANNE KENNEDY, SPECIAL ASSISTANT FOR POLICY
- ☒ ERIC OLSEN, SPECIAL ASSISTANT FOR POLICY
- ☐ JANET POTTS, COUNSEL TO THE SECRETARY

MESSAGE:

Country of Origin

Meeting Participants

McClarty's office
Sally Katzen
OMB--OIRA
Terry Miller, State Department, 647-3090
Peter Scher, 395-5057
HHS/FDA--???
Meg Linzager (sp?), Treasury Department, 622-0168
Frank Vargo, Commerce Department
Paul Drazek, USDA, Secretary's Trade Advisor
Eric Olsen
USDA Agencies--Agricultural Marketing Service, Food Safety and Inspection Service, and Office of General Counsel

Let me know where to fax birthdays and ssn, and I will send USDA list. Thanks.

USDA says Stabenow introduced this bill as a placeholder -- she was politically unable to introduce the enforcement bill which was intro'd in the Senate. (USDA is adopting a Senate First strategy). USDA supports it but does not put a priority on it (Check to see if this is right?)

EW I think she wants to know a) what does it do? b) why aren't we doing it & c) what does USDA say.

MEMORANDUM

TO: ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: REP. STABENOW FOOD SAFETY BILL

DATE: FEBRUARY 2, 1998

Can we get a section by section & attach it.

SUMMARY

On January ~~29, 1998, Rep. Debbie Stabenow (D-MI) and Sen.~~ Carl Levin (D-MI) introduced the ~~Safe Food Act of 1998~~ (H.R. 3132). According to Stabenow's ~~office, this~~ bill "allows the creation of a ~~pro-active strategy implemented by the~~ Department of Agriculture to pre~~vent contamination of the domestic food suppl~~y." The plan would be self-financed, as the measure would redirect existing funds already appropriated to USDA to provide new funds and new technology directed at food safety. The bill is based on the following four elements: prevention, government efficiency, technological partnerships, and a "rapid response" plan.

HOW STABENOW'S BILL DIFFERS FROM ADMINISTRATION PROPOSALS

is this more than we do, does it do spec things?

Rep. Stabenow's bill addresses primarily education, research, and consumer protection. Her bill is not directed toward enforcement. Furthermore, her bill does not provide for giving FDA authority to prevent the importation of produce from countries without safety precautions equivalent to our own -- which our legislation provides for. (The Administration's legislation was introduced by Rep. Anna Eshoo (D-CA)).

USDA's main enforcement bill, which provides for civil penalties and mandatory recall, has been introduced by Sen. Harkin (D-IA), along with Sens. Daschle (D-SD), Leahy (D-VT), and Sen. Johnson (D-SD).

R you sure?

~~Secretary Glickman is focusing on the Harkin bill because one of USDA's main priorities is the enforcement of food safe~~ty. While Secretary Glickman generally expressed his support for the Stabenow bill, he did not explicitly endorse it. Secretary Glickman's statements in favor of the Stabenow bill were more in the nature of cooperation. ~~Currently, the House is not very~~ receptive to the enforcement aspects in the Senate bill, ~~so~~ USDA will work with the Senate on these ~~issues.~~

but has been helpful
Since Rep. S. they wanted to help us

KEY ASPECTS OF STABENOW BILL

1. **A clear ~~USDA research priority on food~~ safety issues, technology and consumer educa~~tion.~~** ~~The Secretary of Agriculture is~~ to establish the National Food Safety

Research

The bill es

Research, Education, and Extension Program to study food pathogens and improve prevention efforts. The Secretary of Agriculture is encouraged to use the authority under the Smith-Lever Act (7 U.S.C. 343 (g)) to enter into cooperative agreements to carry out food safety consumer education programs.

What does this currently? How much money?

Rapid Response Team

The bill requires USDA establish

2. **The ~~Secretary of Agriculture to designate~~ a ~~Food Safety Rapid Response Team~~** to respond to food safety emergencies and facilitate communication among Federal, State and local agencies, research institutions, and the private sector. The Food Safety Rapid Response Team is to evaluate the emergency response of the Department of Agriculture and make recommendations to the Secretary of Agriculture. Recommendations should address the rapid dissemination of accurate information to the public during a food safety emergency, as well as the more effective involvement of Federal, State, and local agencies, educational institutions and the private sector.

a Food Safety Rapid Response Team

3. **Adds an emphasis on food safety research in the Fund for Rural America** by amending the Federal Agriculture Improvement and Reform Act of 1996.

what does this mean

4. **Adds a National Food** Safety **Research, Education, and Extension Program.**

what does this do?

Bruce
Tom
How are we doing on this?
Elena

American Frozen Food Institute • 2000 Corporate Ridge, Suite 1000 • McLean, Virginia 22102

Telephone (703) 821-0770 • Fax (703) 821-1350 • E-Mail AFFI@POP.DN.NET

Food

July 24, 1998

Cong 8-5-98

Ms. Elena Kagan
Deputy Asst. to the President for Domestic Policy
Executive Office of the President
Second Floor, West Wing
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Ms. Kagan:

I would like to call your attention to a provision included in the Senate-passed version of H.R. 4101, a bill making Fiscal Year 1999 appropriations for Agriculture and Related Agencies, which would impose a new labeling scheme on imported beef, lamb, and products including imported beef and lamb. On behalf of the members of the American Frozen Food Institute (AFFI), I strongly urge you to object to the inclusion of this provision, Title X, "Meat Labeling," in the final FY 1999 agriculture appropriations bill.

As you know, AFFI is the national organization representing processors of frozen foods, their marketers and suppliers. AFFI's nearly 600 member companies are responsible for approximately 90 percent of the frozen food processed annually, valued at more than $60 billion.

Title X would amend the Federal Meat Inspection Act to impose new origin labeling requirements on muscle cuts of beef and lamb, ground beef and lamb, and processed beef and lamb products. This unprecedented and ill-conceived provision should be stricken from the final conference report because it would: (1) conflict with long-standing country of origin marking practice established under the tariff laws, (2) impose an unnecessary new product labeling scheme, (3) violate the commitments the United States made to its trading partners in the Uruguay Round, and (4) invite retaliation against U.S. exports to foreign markets. Because Title X is a tariff provision addressing the same subject matter as that addressed by Section 304 of the Tariff Act of 1930 and falling within the jurisdiction of the Committee on Ways and Means, the inclusion of the measure in an appropriations bill is inappropriate.

1. Title X Is Unnecessary and Conflicts with Long-Standing Country of Origin Marking Practice

The purported intent of Title X is to inform consumers whether a subject product is "imported," and, with respect to ground or processed beef and lamb, the percentage content of United States and imported beef or imported lamb contained in the product. In effect, Title X is a tariff measure because it is specifically directed to the origin of the good and as such is unnecessary and duplicative. Country of origin labeling is already provided for under Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), for which regulatory authority is delegated by statute to the Secretary of the Treasury.

Moreover, Title X is inconsistent with the country of origin labeling practice established under 19 U.S.C. § 1304. Title X would treat as "imported" some meat products which, because of processing within the U.S., recognized as conferring origin under principles established by the courts with respect to food products, are considered to be domestic products for purposes of 19 U.S.C. § 1304. For products treated as foreign products under 19 U.S.C. § 1304, Title X would result in duplicative and inconsistent labeling requirements: A product required by Title X to be accompanied by labeling identifying the product as "imported" (or, in other cases, identifying the percentage of imported content) in some instances would be required by 19 U.S.C. § 1304 to bear a label identifying the name of the country of origin. Title X's imposition of a second product labeling scheme related to country of origin is prejudicial to affected U.S. industries and contrary to public policy.

2. Title X Violates the WTO Agreements on Rules of Origin and Technical Barriers to Trade

Enactment of Title X would breach commitments the United States made to its trading partners in the Uruguay Round. In Article 2 of the Uruguay Round Agreement on Rules of Origin, the U.S. pledged that its rules of origin, including those applied for marking purposes, would be administered in a consistent, uniform, impartial, and reasonable manner. Because it would apply origin and marking rules more stringent than those the United States applies generally for country of origin marking purposes, Title X fails to achieve these objectives. Article 2 further requires that nonpreferential origin rules not be used as instruments to pursue trade objectives and that they not create restrictive, distorting, or disruptive effects on international trade. Here also, Title X does not conform to these disciplines. As a marking requirement, it has a trade objective in that it is directed against imports, and it would adversely affect international trade in beef and lamb products. In its failure to recognize as the country of origin the country in which the last substantial transformation is carried out, Title X also conflicts with the disciplines member countries expressly have undertaken under Article 9.1 of the Agreement on Rules of Origin.

AFFI believes Title X also would violate Article 2.2 of the Uruguay Round Agreement on Technical Barriers to Trade. As a party to that Agreement, the United States has pledged it would not adopt technical regulations, including marking and labeling regulations, that are more stringent than necessary to achieve a legitimate objective or that are applied with a view to or with the effect of creating unnecessary obstacles to international trade. As noted above, Title X is directed at imports and does constitute an unnecessary obstacle to trade in the affected goods.

3. Title X Would Invite Foreign Countries to Adopt Labeling Provisions Adverse to the Interests of U.S. Exporters

If Title X were to become law, we should expect U.S. trading partners to retaliate through the adoption of similar labeling requirements adverse to U.S. exports, in particular U.S. agricultural exports. Because the United States in the past has exercised international leadership in removing and preventing product labeling standards that function as disguised barriers to international trade, this country has nothing to gain, and much to lose, from resorting to the type of measure represented by Title X.

Because of the demonstrable flaws in Title X, AFFI urges you to assist in obtaining the deletion of this misguided provision from the final conference report for H.R. 4101.

Sincerely,

Steven C. Anderson
President and Chief Executive Officer

SCA:jeh

USDA

U.S. DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

Telephone (202) 720-3631 Fax (202) 720-5437

Country of origin labeling

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- ☐ JANET POTTS, COUNSEL TO THE SECRETARY
- ☐ JOHN SPARKS, SPECIAL ASSISTANT FOR CIVIL RIGHTS

MESSAGE: Also sending to Jerry Marler

(3) estimates the impact of programs carried out under that section on the agricultural sector and on consumers and other sectors of the economy in the United States;

(4) considers costs and benefits of operations relating to alternative uses of the budget for the programs under that section;

(5)(A) analyzes the relation between the priorities and spending levels of programs carried out under that section and the privately funded market promotion activities undertaken by participants in the programs; and

(B) evaluates the spending additionality for participants resulting from the program.

(6) conducts an analysis of the amount of export additionality for activities financed under programs carried out under that section in sponsored countries, controlling for relevant variables, including—

(A) information on the levels of private expenditures for promotion;

(B) government promotion by competitor nations;

(C) changes in foreign and domestic supply conditions;

(D) changes in exchange rates; and

(E) the effect of ongoing trade liberalization;

(7) provides an evaluation of the sustainability of promotional effort in sponsored results for recipients in the absence of government subsidies.

(b) EVALUATION BY COMPTROLLER GENERAL.—The Comptroller General of the United States submit an evaluation of the report to the committees specified in subsection (c).

(c) COMMITTEES OF CONGRESS.—The committees of Congress referred to in subsection (a) are—

(1) the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate; and

(2) the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate.

AMENDMENT NO. 3169

(Purpose: To provide additional funding for fruit fly exclusion and detection, with an offset)

On page 19, line 10, before the period, insert the following: ": *Provided further*, That of the amounts made available under this heading, not less than $22,970,000 shall be used for fruit fly exclusion and detection".

On page 19, line 23, strike "$95,000,000" and insert "$93,000,000".

Mr. GRAHAM. Mr. President, this amendment will increase by $2 million the funds available to the Animal and Plant Health Inspection Service in their battle against the Mediterranean Fruit Fly, or medfly. I am, unfortunately, all too familiar with the devastation caused by these tiny pests, and I am particularly concerned this year, because Florida has experienced an unusual number of medfly infestations.

In the past, medflies have caused significant damage to Florida fruit and vegetable crops. This year's infestation is particularly troubling, because it has occurred in the heart of Florida's citrus and tomato growing country. In Lake County, over 1,300 medflies have been detected since the end of April. In Manatee County, over 550 medflies have been detected since the first find in mid-May. In fact, just last week, a medfly was discovered in Highlands County, and as of today, over 100 new flies have been detected in this area.

Unless fully eradicated, the medfly has the potential to cause hundreds of millions of dollars in damage to Florida fruit and vegetable crops. In addition, medfly infestation provides our trading partners with a convenient reason to deny the entry of Florida fresh fruits and vegetables into their country. Florida's growers have spent a considerable amount of time and money in their efforts to gain access to important markets, like Mexico. Each time medflies are discovered in Florida, growers are forced to take a giant step backwards in their markets access efforts.

The eradication efforts themselves, through ground or aerial spraying and the release of sterile medflies, are also expensive, costing the State of Florida and the federal government over $20 million last year.

The funds provided by this amendment will enhance APHIS's efforts to exclude and detect the medfly. Funds will be utilized to increase trapping and detection activities, particularly in urban areas and near ports-of-entry, where the introduction of this pest is most likely. Increasing funds for this program will also help to reassure our trading partners that the U.S. is committed to medfly control, and will deter them from restricting the entry of citrus products and other important agricultural exports.

In conclusion, I would like to make it very clear that this is only the first step in a more comprensive strategy to address this critical problem. Because medflies commonly enter the United States via larval-infested fruit carried through ports-of-entry by travelers or by commercial fruit smugglers, I have asked the Department of Agriculture to undertake an immediate review of their inspection procedures at Florida ports-of-entry, in order to evaluate the effectiveness of the inspection process. The Department of Agriculture has indicated that this review will be completed within the next three to four months. The results of the review will provide us with a roadmap for future actions, including the appropriate funding levels for a fully effective inspection program. I look forward to working closely with the Chairman and Ranking member to find a more permanent solution to this critical problem.

On page 67, after line 23 add the following:

TITLE VIII—MEAT LABELING

SEC. 801. DEFINITIONS.

Section 1 of the Federal Meat Inspection Act (21 U.S.C. 601) is amended by adding at the end the following:

"(w) BEEF.—The term 'beef' means meat produced from cattle (including veal).

"(x) LAMB.—The term 'lamb' means meat, other than mutton, produced from sheep.

"(y) BEEF BLENDED WITH IMPORTED MEAT.—The term 'beef blended with imported meat' means ground beef, or beef in another meat food product that contains United States beef and any imported meat.

"(z) LAMB BLENDED WITH IMPORTED MEAT.—The term 'lamb blended with imported meat' means ground meat, or lamb in another meat food product, that contains United States lamb and any imported meat.

"(aa) IMPORTED BEEF.—The term 'imported beef' means any beef, including any fresh muscle cuts, ground meat, trimmings, and beef in another meat food product, that is not United States beef, whether or not the beef is graded with a quality grade issued by the Secretary.

"(bb) IMPORTED LAMB.—The term 'imported lamb' means any lamb, including any fresh muscle cuts, ground meat, trimmings, and lamb in another meat food product, that is not United States lamb, whether or not the lamb is graded with a quality grade issued by the Secretary.

"(cc) UNITED STATES BEEF.—

"(1) IN GENERAL.—The term 'United States beef' means beef produced from cattle slaughtered in the United States.

"(2) EXCLUSIONS.—The term 'United States beef' does not include—

"(A) beef produced from cattle imported into the United States in sealed trucks for slaughter;

"(B) beef produced from imported carcasses;

"(C) imported beef trimmings; or

"(D) imported boxed beef.

"(dd) UNITED STATES LAMB.—

"(1) IN GENERAL.—The term 'United States lamb' means lamb, except mutton, produced from sheep slaughtered in the United States.

"(2) EXCLUSIONS.—The term 'United States lamb' does not include—

"(A) lamb produced from sheep imported into the United States in sealed trucks for slaughter;

"(B) lamb produced from an imported carcass;

"(C) imported lamb trimmings; or

"(D) imported boxed lamb.".

SEC. 802. LABELING OF IMPORTED MEAT AND MEAT FOOD PRODUCTS.

(a) LABELING REQUIREMENT.—

(1) IN GENERAL.—Section 1(n) of the Federal Meat Inspection Act (21 U.S.C. 601(n)) is amended by adding at the end the following:

"(13)(A) If it is imported beef or imported lamb offered for retail sale as fresh muscle cuts of beef or lamb and is not accompanied by labeling that identifies it as imported beef or imported lamb.

"(B) If it is United States beef or United States lamb offered for retail sale, or offered and intended for export as fresh muscle cuts of beef or lamb, and is not accompanied by labeling that identifies it as United States beef or United States lamb.

"(C) If it is United States or imported ground beef or other processed beef or lamb product and is not accompanied by labeling that identifies it as United States beef or United States lamb, imported beef or imported lamb, beef blended with imported meat or lamb blended with imported meat, or other designation that identifies the percentage content of United States beef and imported beef United States lamb and imported lamb or contained in the product, as determined by the Secretary under section 7(g).".

(2) CONFORMING AMENDMENT.—Section 20(a) of the Federal Meat Inspection Act (21 U.S.C. 620(a)) is amended by adding at the end the following: "All imported beef or imported lamb offered for retail sale as fresh muscle cuts of beef or lamb shall be plainly and conspicuously marked, labeled, or otherwise identified as imported beef or imported lamb.".

(b) GROUND OR PROCESSED BEEF AND LAMB.—Section 7 of the Federal Meat Inspection Act (21 U.S.C. 607) is amended by adding at the end the following:

"(g) GROUND OR PROCESSED BEEF AND LAMB.—

"(1) VOLUNTARY LABELING.—Subject to paragraph (2), the Secretary shall provide by regulation for the voluntary labeling or identification of ground beef or lamb, other processed beef or lamb products as United States beef or United States lamb, imported beef or imported lamb, beef blended with imported meat or lamb blended with imported meat, or other designation that identifies the percentage content of United States and imported beef or imported lamb contained in the product, as determined by the Secretary.

"(2) MANDATORY LABELING.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 18 months after the date of enactment of this subsection, the Secretary shall provide by regulation for the mandatory labeling or identification of ground beef or lamb, other processed beef or lamb products as United States beef or United States lamb, imported beef or imported lamb, beef blended with imported meat or lamb blended with imported meat, or other designation that identifies the percentage content of United States and imported beef or imported lamb contained in the product, as determined by the Secretary.

"(B) APPLICATION.—Subparagraph (A) shall not apply to the extent the Secretary determines that the costs associated with labeling under subparagraph (A) would result in an unreasonable burden on producers, processors, retailers, or consumers.".

(c) GROUND BEEF AND GROUND LAMB LABELING STUDY.—

(1) IN GENERAL.—The Secretary of Agriculture shall conduct a study of the effects of the mandatory use of imported, blended, or percentage content labeling on ground beef, ground lamb, and other processed beef or lamb products made from imported beef or imported lamb.

(2) COSTS AND RESPONSES.—The study shall be designed to evaluate the costs associated with and consumer response toward the mandatory use of labeling described in paragraph (1).

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall report the findings of the study conducted under paragraph (1) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 803. REGULATIONS.

Not later than 120 days after the date of enactment of this Act, the Secretary of Agriculture shall promulgate final regulations to carry out the amendments made by this title.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, as I am sure my distinguished colleague, the Chairman of the Subcommittee, is aware, the Food and Drug Administration Modernization Act (FDAMA) included a significant provision related to FDA's review and approval of indirect food additives. For the benefit of my colleagues, these are products that are used for containers, wrappings and packaging of food products.

To ensure the safety of indirect food additives, these materials that touch or contain food, the Food and Drug Administration (FDA) must receive safety data submitted by the manufacturer. Often, FDA's process of evaluating these data has been extremely lengthy and has worked to delay the market availability of new and improved products. As a result, many companies have chosen simply not to bring new products to market, thus depriving the public of improvements in products and technology.

In order to address this concern, a provision was included in FDAMA which requires the FDA to establish a new and expedited new product notification and review process that will substantially improve the situation for manufacturers of indirect food additives and thus the consumers of packaged food products. However, under section 309 of FDAMA, the provision will only become effective if the FDA receives an appropriation of $1.5 million for FY 1999. Subject to this new appropriation, FDA would be required to set the program in motion by April 1, 1999.

I am aware that the House mark does include funding for the indirect food additive pre-market notification program, but at a level of $500,000. While this certainly indicates the intention and willingness of the House to fund the program, unfortunately the amount is not sufficient to meet the specific requirements of FDAMA.

I am extremely mindful of the tight allocation under which S. 2159 was crafted, and I recognize that it was not an easy task to bring this bill forward today. I am very grateful for the Subcommittee's efforts under the leadership of Chairman COCHRAN. At the same time, I hope the Chairman will agree with me that funding of this important FDA reform is critically important and that the conferees will try to work this out so that the new program can be implemented next year.

Mr. COCHRAN: The Committee was mindful of this problem, and, in fact, included report language indicating its awareness of the need to implement the premarket notification provisions in order to spur innovation of new and improved food packaging materials. As you said, we are operating under a very tight allocation, but we will do our best to try to work this out.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEWINE). Without objection, it is so ordered.

The Senator from Mississippi.

MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRESS NEEDS TO ACT ON ENCRYPTION LEGISLATION

Mr. LOTT. Mr. President, I rise to commend the continuing efforts of America's computer industry to find a technical solution to the encryption issue. On Monday, July 13, a consortium of thirteen high-tech companies announced an alternative to the Administration's proposed key escrow/third party access system. As you will recall, many computer and security experts have stated that key escrow would be an invasion of privacy, technically unworkable, and cost prohibitive.

Unlike the key recovery system advocated by the Administration, industry's "private doorbells" approach would not require sensitive encryption keys to be escrowed with third parties in order for law enforcement to gain access to computer messages. Instead, the FBI and other federal, state, and local agencies would be able to combat crime by being provided with court approved, real-time access to communiques at the point where they are sent or at the point where the message is received. Clearly, high-tech executives have not been sitting on the sidelines as the encryption debate continues. As this announcement indicates, the computer industry is working hard to find a balanced solution that ensures the needs of our law enforcement and national security communities while maintaining privacy protections for all U.S. citizens. We owe it to them, and to all Americans, to find a balanced legislative solution to encryption.

Mr. LEAHY. Mr. President, I would also like to applaud the computer industry's efforts to find alternative technical solutions to help law enforcement with the challenge of encrypted data and communications without the need to establish a government-mandated key escrow or key recovery scheme. With the appropriate privacy safeguards in place, as outlined in the E-PRIVACY bill, S.2067, the solution that the companies are proposing appears encouraging. American companies are desperate for a common sense approach to our export policy on encryption. As you are well aware, the Administration, starting with Clipper Chip, has been wedded to key escrow schemes to ensure that the FBI can get access to plaintext, or unscrambled electronic data. This path has been pursued despite the serious questions that experts have raised about the costs, privacy risks and lack of consumer interest in such schemes. As

Country of origin

Mary L. Smith
03/23/98 07:09:35 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Thomas L. Freedman/OPD/EOP, Laura Emmett/WHO/EOP, Essence P. Washington/OPD/EOP
Subject: List of Attendees for Country of Origin Labelling Meeting

Tom mentioned that you would like a list of senior agency representives appropriate for a Deputies meeting on country of origin. Here is a list.

Here is a list of attendees:

David Lane	Chief of Staff, Commerce	482-4127
Geri Word	Commerce	482-1545
Helena Stevens	Commerce	482-3718
Jim Johnson	Treasury, Asst. Secretary	622-0200
Dennis O'Connell	Treasury, Office of Trade and Tariff	622-0220
Sandra Bell	head of marketing, U.S. Customs	
David Cohen	U.S. Customs	927-1725
Jim O'Hara	HHS	690-7694
Janice Oliver	FDA	301-827-4830
~~Melinda Plaisier~~	FDA, Dept. Comm'r, Legis Affairs	301--443-3793
Paul Drazek	USDA, Secretary's trade advisor	720-3631
Richard Rominger	USDA, Deputy Secretary	720-6158
Linda Delgado	USDA, Deputy's exec. asst.	720-6158
Caren Wilcox	USDA, Deputy Undersecret. for food safety	720-7025
Enrique Figeroa	USDA, Agric. Marketing Service	720-4208
Don Arbuckle	OMB	55897
T.J. Glauthier	OMB	54561
Wendy Taylor	OMB	54815
Lisa Grove	OMB	57342
Terry Miller	State	647-3090
Sean Darragh	USTR	56127
Audrae Erickson	USTR	59560

no

Kevin B