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From: Michael L. Goad on 07/27/99 05:42:03 PM

Record Type: Record

To: Mark A. Weatherly/OMB/EOP@EOP, Mary L. Smith/OPD/EOP@EOP

cc:

Subject: Comments on USDA's Country of Origin Report

The Departments of Commerce, Health and Human Services, State, and the Treasury had no comment on the USDA report. While Commerce had no comment on the report, they recommend Option 1.

USTR, however, had extensive comments, copies of which are being delivered to you both now.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

AGRICULTURAL AFFAIRS

600 17TH STREET N.W.
ROOM 415
WASHINGTON, DC 20508
PHONE: 202-395-6127
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	NAME & ORGANIZATION	PHONE	FAX
TO:	Michael L. Good	395-3857	395-5691
FROM:	Jim Murphy/Sharon Bomer	395-6127	395-4579

COMMENTS:

NO. OF PAGES (INCLUDING HEADER): 20

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

TO: Michael L. Goad
Office of Management and Budget

FROM: James M. Murphy, Jr.
Assistant U.S. Trade Representative for Agriculture

SUBJECT: USTR Comments on Legislative Referral Number 1999-0218, Agriculture Report on Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb

The following comments are provided by the Office of the U.S. Trade Representative (USTR) on the above subject report. If all of our comments related to international obligations are not incorporated into the report, we request the opportunity to review the report again prior to release.

Some of the discussion appears to be anecdotal with assumptions created to support a general direction for the report to conclude in recommending support for mandatory country of origin labeling. Generally, we think that the report should be rewritten to focus on objective and documented information. This approach would help to deflect potential criticism from groups that may oppose whatever recommendation is made. To further strengthen the report's integrity, academic peer review should be considered.

USTR does not support or oppose any of the recommendations. However, if options 2 or 3 are chosen, the recommendation should include language that any legislation be consistent with international obligations; and, that to be consistent with international obligations, domestic meat also may need to be labeled with the country of origin. USTR supports language that the Administration will work with Congress to develop such legislation, and USTR requests to be a part of that consultative process. Since a discussion of country of origin labeling of live animals imported for direct slaughter is not covered by the report, option 3 does not appear to be supported by the report.

Following are additional comments on the report. Attached is a copy of the report with additional specific edits, questions, and remarks. If you have any questions on our comments, please contact Sharon Bomer Lauritsen, Director of Agricultural Affairs and Technical Barriers to Trade, 395-3167.

Executive Summary

Implications for International Trade:

This section fails to describe most of the U.S. international obligations as a part of the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). Care must be taken to not specifically say whether country of origin labeling meets international obligations in case at some future time the United States would need to defend legal action. Attached is alternative language that can be used in the Executive Summary and the body of the report.

Delete the last sentence of the first paragraph: Since to meet international obligations (Article III of the General Agreement on Tariffs and Trade (GATT)) domestic cuts may also have to be labeled, this argument is invalid.

Second paragraph: Throughout the report USDA/ERS or FAS data is used. Official U.S. trade data as reported by the U.S. Census Bureau should be used. If Census data is not used, why is it not used? At a minimum the source of trade data should be consistent to the extent possible.

Stakeholders Views

First sentence: What is meant by segments of the food production chain affiliated with "the economic well-being of production agriculture?" Makes it sound like there are segments of the food production chain that are not to the economic well-being of production agriculture.

Second paragraph: Since livestock producers probably are not focused on the safety of imported produce, the paragraph needs to be reconstructed to remove that cross-over.

Introduction

Acknowledgments

Fourth paragraph: The Agricultural Marketing Service (AMS) no longer uses "Divisions" to denote its organizational structure, but rather "Programs." Further the PACA and Federal Seed Act have no relation to meat or the purpose of the report and should be deleted. AMS has authority for over 50 statutes, not just the Agricultural Marketing Act of 1946.

Status of Imports Today

Throughout the report, references are made to different numbers of countries that ship beef and lamb to the United States. The different numbers are confusing, and it is difficult to determine if

they are consistent.

Michael L. Goad

Current Status of Exporting Countries

First paragraph: Numbers are too dated. We should use information more current than 1996.

Projected Costs

Types of Costs

Fourth Bullet: Delete. Since domestic product probably would need to be labeled with the country of origin to meet international obligations, this bullet is not valid.

Costs of Preserving the Identity

Fourth Paragraph: Is it possible to provide an example of how complex the segregation would become, i.e., how many additional slaughter/packing lines would need to be added with country of origin labeling segregation.

Verification Visits

When examining the potential impact on compliance costs for country of origin labeling for produce, AMS' PACA Branch did a reasonably solid analysis of what paper work would be required to track compliance. Suggest that this approach be looked at as a possibility to provide estimates for compliance plan.

Shifted Costs

Delete paragraph since domestic meat also would probably need to be labeled to meet international obligations.

Projected Benefits

This entire section is difficult to follow, based on questionable assumptions, and at times convoluted reasoning. This section should be rewritten.

Examining Potential Benefits

First paragraph: The argument is difficult to follow as to how mandatory country of origin labeling will provide monetary benefit to consumers. Labeling could increase costs to consumers.

Second paragraph: Fails to consider price as a valued characteristic, which in consumer purchase surveys is one of the most important factors for consumer purchase decisions.

Fourth paragraph: A number of states promote their food products with a State name when they see a marketing need.

Will Consumers Pay

Third paragraph: Delete first sentence since the paragraph does not support that sentence. It is questionable whether a 25 year old study focusing on imports from developing countries is a valid reference for this report. The other referenced studies also appear to have little to do with the subject of the report and are of questionable use.

Ninth paragraph: What is the data to support the supposition that consumers would support domestic industry? Since New Zealand and Australia label the country of origin for their lamb products for marketing purposes, one actually could assume that consumers demand imported product.

Estimating Short-Run Benefits

Second paragraph: Do not understand paragraph. Ordinary consumers do not know the proportion of imports.

Third paragraph: Do not understand paragraph. Prices of domestic product could fall if more is produced. If prices rise, why would consumers benefit if they are paying more for their food?

Fourth paragraph and tables: Tables and discussion do not add up and need to be redone. The tables should reflect the discussion; readers should not have to do additional math to come up with the amount of imported muscle cuts per consumption. Further the table states that beef imports are one-tenth of one percent of consumption, but the actual poundage shows that imports are 10 percent of consumption. The number for 1998 beef, for example, should be 10.00, not 0.10.

Estimating Long-Run Benefits

Fourth paragraph: This is a very significant point and should be reflected in executive summary and option 1 of the recommendations.

Other Benefits

First paragraph: How would labeling restore producers' confidence in international trade? Since this point is used repeatedly in the report, it needs to be substantially enhanced and supported or

otherwise deleted.

Impact of Mandatory Country of Origin Labeling

Legal Implications

First paragraph: GATT Article IX only applies to labeling at the time of import. Discussion fails to consider other U.S. international obligations. See attached for rewrite of section. Also, the Government of Canada has already threatened to file a WTO or NAFTA case against the U.S. should country of origin meat labeling be required.

Implications for International Trade

First paragraph: Question whether labeling would really undermine our efforts to challenge certain labeling initiatives in the EU. The United States has proposed to label shipments of meat as product of the United States as part of negotiations on the hormone dispute.

Third paragraph: Question whether there are really growing negative foreign perceptions. We have not seen evidence of that except in the EU.

Affected Parties Views

Livestock Producers

NCBA: Has USDA seen the NCBA surveys? If surveys or reports are going to be referenced in any study, the authors of the USDA report should be able to review them. Otherwise, it is difficult to know definitively the actual content of the survey, rather than how an interest group has portrayed the results.

Options:

Option 2

First paragraph: To reflect the lack of objective information on consumer preferences, the last sentence should be changed to: Similarly, anecdotal information indicates that consumers may have an increased desire for additional information about the products they purchase. Country of origin labeling would enable those consumers to choose the source of the product they purchase.

Option 3:

First paragraph: Make same changes as indicated in option 2.

Second paragraph: Option is introducing an entirely new concept on labeling of live animals imported directly for slaughter without discussion of this in the paper. Paper should be revised to support this recommendation, if it is to be kept.

World Trade Organization (WTO)

Under the Uruguay Round Agreement, there are several sections that are relevant to labeling - Article IX, Marks of Origin and Article III, National Treatment, of the General Agreement on Tariffs and Trade (GATT), the Agreement on Rules of Origin, and the Agreement on Technical Barriers to Trade (TBT).

Article IX of the GATT addresses Marks of Origin by setting out guidelines for rules and their application on imports into a country at the time of import. Regulations on marks of origin are allowed, but difficulties and inconveniences to commerce or industry should be minimized, while protecting consumers against fraudulent or misleading indications. Marks of origin are to be permitted provided they do not seriously damage products, reduce the product's value, or unreasonably increase costs. Based on a Working Party Report from 1956, Article IX acknowledges that marks of origin can be applied only to imports. Article IX does not invoke national treatment, but only most favored nation status for application of labeling regulations.

Article III of the GATT requires that imported goods be treated like domestic product (national treatment) in respect to laws and regulations affecting their internal sale, offering for sale, purchase, transportation, distribution or use. If country of origin labeling is required at the retail level then national treatment requirements could presumably apply.

The **Agreement on Rules of Origin** focuses primarily on how countries determine origin, rather than the specifics of labeling the country of origin. However, in general terms regulations affecting rules of origin are to be developed in a transparent manner, without disrupting or distorting trade.

The disciplines of the **WTO Agreement on Technical Barriers to Trade** (TBT Agreement) apply to a broad range of industrial and agricultural products. The Agreement establishes fundamental rules and procedures regarding the development, adoption, and application of voluntary standards, mandatory standards ("technical regulations"), and the procedures (" conformity assessment procedures") used to determine whether a particular product meets such standards. These requirements are intended to ensure that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade.

Key obligations under the TBT Agreement include non-discrimination and national treatment; transparency; and a prohibition against unnecessary barriers to trade. There is also an encouragement to develop and use international standards as a means for preventing technical barriers to trade.

North American Free Trade Agreement

Article 311 (and Annex 311) of the NAFTA, Country of Origin Marking, allows countries to require country of origin marking at the time of import. Requirements shall minimize the difficulties, costs and inconveniences that the measure may cause commerce and industry. The

Article exempts from country of origin marking requirements goods that are incapable of being marked, cannot be marked prior to exportation without causing injury, materially impairing its function or appearance, or is in a container that is marked in a manner that will reasonably indicate the good's origin to the ultimate purchaser. Annex 311 of the NAFTA elaborates specific disciplines, which largely emulate U.S. law while also providing goods from Mexico and Canada some narrowly drawn but somewhat less stringent requirements (e.g., marking may be via a sticker, which is generally not allowed for goods of other countries.)

Chapter 9 of the NAFTA on Standards-Related Measures contains disciplines parallel to the WTO TBT Agreement on the development, adoption and application of standards-related measures for a broad range of products. It goes beyond the WTO to identify specific areas for cooperation in an effort to move toward greater compatibility of requirements for the North American market. Among other things, this includes labeling of textile and apparel goods. The NAFTA Committee on Standards Related Measures has also established an ad hoc Subcommittee on Labeling to deal with specific issues that arise.

LRM ID: MLG180 **SUBJECT:** AGRICULTURE Report on Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Michael L. Goad Phone: 395-3857 Fax: 395-5691
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-5194

FROM: 7-22-99 (Date)
Jim Murphy | Sharon Bond (Name)
USTR (Agency)
202 | 395-6127 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

X See proposed edits on pages many

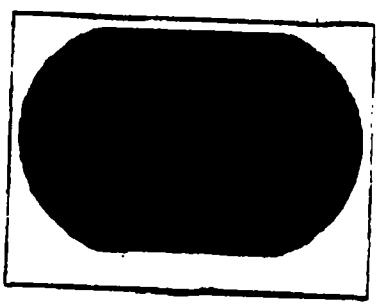
X Other: See attached memo

_____ FAX RETURN of _____ pages, attached to this response sheet

Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb

July 1999

Food Safety and Inspection Service
United States Department of Agriculture



Executive Summary

The Conference Report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (the 1999 Act) directed the Secretary of Agriculture to conduct a study on the potential effects of mandatory country of origin labeling of imported fresh muscle cuts of beef and lamb until such products reach the ultimate consumer. The Conference Report requested the study include the impact of new country of origin labeling requirements on segments of the food production, processing, and distribution chain, and the cost and benefits to each segment of the chain. This document reports the findings in response to the Conference Report request. The findings relate to costs, implications for international trade, benefits, and stakeholder views.

Current Labeling Requirements of Imported Meat

Pursuant to the Federal Meat Inspection Act (FMIA), imported meat and meat food products that are accepted for import are to be deemed and treated as "domestic" products subject to the FMIA and its implementing regulations. All meat products imported into the United States are required to bear the country of origin on the labeling of the container in which the products are shipped, as well as the establishment number assigned by the foreign meat inspection system and certified to USDA. If imported meat or meat products are intended to be sold intact to a processor, wholesaler, food service institution, grocer, or the household consumer, i.e., in the packaging and with the labeling on the package that enters the United States, the country of origin labeling (as well as the foreign establishment number) is conveyed to those market segments and recipients. For example, a bulk shipping container that is imported from Canada, which consists of pre-packaged and labeled meat cuts that are intended to be sold to institutional food service, grocers, or at retail to household consumers, as they are packaged, would each bear country of origin labeling (e.g., Product of Canada) to the point the cuts reach consumers. Another example is a canned ham imported from Denmark that is sold intact; the labeling of such product would have to bear the country of origin, e.g., Product of Denmark.

If the imported meat or meat products are further processed in the United States, i.e., removed from their containers and packaging, and cut up or processed in any way, country of origin labeling is no longer required on the newly produced products or subsequent products made from them. For example, if canned hams from Denmark (labeled as "Product of Denmark" on entry to the United States) are shipped to a manufacturing establishment in the United States, and made into ham salad, the country of origin of the hams is not required on the labeling of the ham salad product.

Costs

The major costs associated with new country of origin labeling requirements are related to the cost of segregating and preserving imported product identity, the direct cost of labels, enforcement costs, shifted costs, and market disruption costs.

The cost of segregating and/or preserving the identity of imported beef and lamb cuts from the point of entry into the United States to the retail grocery counter is unknown, but could be significant. However, segregation currently occurs when products are graded, processed for the National School Lunch Program, carry labeling claims related to animal production and for other programs.

The direct cost of labels range from $500,000, if only imported muscle cuts for sale at grocery stores are labeled, to $8 million, if all United States (i.e., domestic) and imported muscle cuts are labeled. Additional one time-costs would be incurred in designing and gaining approval for labels.

The cost of verification visits and enforcement would vary with type and level of enforcement. It is estimated that the cost to taxpayers for a single verification visit to sites not now under Federal inspection would average $100. There would be additional costs for enforcement when noncompliance was found. Depending on the number of sites to be visited and the frequency of those visits, the total cost of verification visits may not exceed what is now being spent on Federal inspection or it could be millions of additional dollars.

It is estimated that there would be efficiency losses and lost business costs associated with segregating product by country of origin. Some firms may choose to avoid imported cuts in order to avoid incurring the costs of segregation and control systems for imported meat cuts, and the penalties of non-compliance.

A requirement for mandatory country of origin labeling of fresh muscle cuts of beef and lamb to the retail level would be disruptive, unless the mandatory country of origin labeling requirement was imposed with a delayed effective date coupled with advance notification to those countries that export meat cuts to the United States.

Benefits

Although some circumstantial evidence suggests the possibility that consumers in the United States distinguish domestic beef and lamb from imported beef and lamb, there is no direct or empirical evidence to suggest that a price premium engendered by country of origin labeling will be large or persist over the long term. Indeed, if consumers do distinguish goods depending on their country of origin, strong incentives exist for industries to act without government intervention, i.e., on a voluntary basis.

There is no evidence that the market for providing such information has failed. There is, therefore, no economic efficiency argument for mandatory country of origin labeling for products to the point of retail sale. However, some have argued that there is a "benefit" to consumers' right to know but, at this time, that benefit is not quantifiable.

Implications for International Trade

marks of origin

There are legal implications of mandatory country of origin labeling for beef and lamb cuts to the point of retail sale. Article IX of the General Agreement on Tariffs and Trade (GATT) (1994) allows imported products to be labeled with their specific country of origin so long as the marking requirement does not seriously damage the imported products, materially reduce their value, or unreasonably increase their costs. If mandatory labeling requires a label with the word "imported" rather than a specific country of origin, it could be challenged as not qualifying as a "mark of origin," and, therefore, constituting a prohibited restriction. Also, to the extent firms chose to avoid imported cuts as a result of such a requirement, the measure could result in nullification or impairment of the U.S. tariff concessions to exporting countries. Also if domestic cuts were not labeled as a product of the U.S. any country of origin labeling requirements could be challenged.

In reviewing the implications of adopting mandatory country of origin labeling for beef and lamb sold at the domestic retail level, it is important not to lose sight of the potential trade impact and legal ramifications in terms of the United States' international obligations. According to USDA/ERS 1998 data, a total of about 2.754 billion pounds (carcass weight) of beef/veal and lamb/mutton, and their products, were imported into the United States. In comparison, the United States exported about 2.177 billion pounds (carcass weight) of beef/veal and lamb/mutton products to over 60 countries in 1998. A requirement for mandatory country of origin labeling could have a potentially damaging effect on United States exports of beef if countries that import United States beef reciprocate with equal or even more stringent mandatory country of origin meat labeling.

and other commodities

Stakeholders Views

Many segments of the food production chain, e.g., those affiliated with livestock production and the economic well-being of production agriculture in the United States, support new mandatory country of origin labeling for imported fresh muscle cuts of beef and lamb. Generally, they believe that such labeling would support American agribusiness by providing the American consumer with the ability to distinguish domestic fresh beef and lamb cuts from imported fresh beef and lamb cuts. They believe that, if provided such information, Americans would purchase the domestic product. Thus, the justification for country of origin labeling was uniformly presented as a "consumer's right to know" issue.

Livestock producers and consumer groups also identified the possible benefits for tracing back (referred to as traceback) to the farm, the source of a commodity if it is implicated in a food safety incident. In that regard, they viewed country of origin labeling, somewhat, as a "safety issue." This secondary justification seemed to be directed more toward imported fresh fruits and vegetables than toward imported fresh cuts of meat, primarily because there is an understanding on the part of the producers that USDA/FSIS has strong equivalency requirements in place for foreign countries eligible to export meat and poultry products into the United States which mitigate safety concerns.

arguments

In general, packers, processors, wholesalers, distributors, and retailers strongly oppose new mandatory country of origin labeling requirements. These segments of the food distribution chain have indicated that their burdens of segregating imported meat cuts according to the country of origin for the purpose of further processing, labeling, distribution and sale would be onerous and costly. These groups see little benefit for new mandatory country of origin labeling requirements and do not believe that there are marketing principles or research data to support such requirements. These groups point out that country of origin labeling does nothing to enhance food safety or quality and are unnecessary. These stakeholders indicated that if the American consumer placed any importance in country of origin labeling, such information would be voluntarily provided to meet the market demand.

Packers, processors, and distributors are concerned about the implications that new country of origin labeling could have on emerging international markets and international trade agreements. Some livestock producers share this concern because international markets for exports are increasing. These stakeholders question whether new country of origin labeling requirements can accomplish the goal of enhancing American cattle and lamb prices without creating international discord in trading. They also point out that new country of origin labeling requirements could create a conflict with international trade agreements and be viewed as a technical trade barrier, depending on how they are implemented

In general, consumer interest groups favor increasing information on the labeling of food products. Such groups tended to favor country of origin labeling on all imported products. However, their focus seems to be directed toward country of origin labeling for imported foods partially on the basis that it is a "consumer right to know" issue and partially because they believe it could be a valuable "traceback" tool when dealing with food safety problems. It was not evident in the views provided by consumer interest groups that the systems USDA already has in place to ensure equivalency between imported and domestic meat products were considered.

Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb

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I. Introduction

Purpose of the Report

Over the past 40 years or so, interested parties in this country have expressed their views on extending country of origin labeling of meat and meat food products until such products reach the ultimate consumer. Generally, farmers and livestock producers (and their trade associations) have favored the concept, while meat importers, processors, packers, food service operators, grocers and other users of meat, and their trade associations, have opposed it. Until recently, consumers and consumer groups have generally been silent on the issue of country of origin labeling.

Proponents of the idea have cited the consumers' right to know the country of origin of the meat that they are purchasing. Opponents have indicated that such a requirement is unnecessary and likely to be costly. Furthermore, opponents have stated that rules to require such labeling on meat and poultry are not based on safety or wholesomeness measures because the safety and wholesomeness of imported meat and poultry is equivalent to that of domestic product as a result of United States Department of Agriculture (USDA) enforcement of Federal laws.

Recently, the issue of mandatory country of origin labeling emerged as the topic of legislative activities in the 105th Congress of the United States when various bills were presented which would require such labeling on various livestock products. These legislative efforts did not result in passage of legislation; however, the topic was addressed in the Conference Report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Conference Report).

The Conference Report (Appendix 1) directed the Secretary of Agriculture to conduct a study on the potential effects of mandatory country of origin labeling of imported fresh muscle cuts of beef and lamb. The Conference Report indicated that the Secretary's report (hereafter referred to as the Report) should include the impact of such requirements on imports, exports, livestock producers, consumers, processors, packers, distributors, and grocers. The Conference Report further stated that the Report should also include, but should not be limited to information regarding any additional costs to the Federal government which would be incurred as a result of mandatory country of origin labeling of fresh muscle cuts of beef and lamb; the projected costs to beef and lamb distributors, retailers or consumers; any projected gains that may result from country of origin labeling of imported fresh muscle cuts of beef and lamb; and any empirical evidence of benefit or harm to producers, processors, distributors, retailers or consumers produced by similar labeling programs in other countries. The Conference Report stated that the Report should contain a detailed statement of the findings and conclusions of the Secretary, together with his recommendations for such legislation and administrative actions as he considers appropriate. This document responds to the Conferees' request. Consistent with the charge, the Report addresses the effects of mandatory country of origin labeling for fresh muscle cuts of beef and lamb.

Acknowledgements

The USDA, Economic Research Service (ERS), Foreign Agricultural Service (FAS), and Agricultural Marketing Service (AMS) provided data and information to prepare this report. Additionally, various trade and consumer groups, as well as industry members, voluntarily provided views on the issue of country of origin labeling. The information was compiled and the Report was prepared by the Food Safety and Inspection Service (FSIS), USDA.

Jurisdiction of the United States Department of Agriculture: the Food Safety and Inspection Service and the Agricultural Marketing Service

The United States Department of Agriculture (USDA) is responsible for the assurance that meat, poultry, and egg products that are prepared at and shipped from Federally licensed establishments and distributed in commerce are safe, wholesome, and accurately labeled. These functions are among the responsibilities of the FSIS, within USDA, which administers the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Generally, food products with at least 2 percent cooked, or 3 percent or more raw, meat or poultry fall under the regulatory jurisdiction of FSIS. The Food and Drug Administration (FDA), within the Department of Health and Human Services (HHS), is responsible for regulating all other foods.

FSIS's regulations and programs also ensure that countries exporting meat and meat food products to the United States impose inspection requirements that are equivalent to United States requirements and, thus, meet United States requirements for safety, wholesomeness, and label accuracy.

While FSIS is the food safety agency within the food safety mission area of USDA, the Agricultural Marketing Service (AMS) is the USDA agency within the marketing and regulatory program mission area responsible for facilitating the marketing of agricultural products in domestic and international markets while insuring fair trading practices and promoting a competitive and efficient market-place to the benefit of producers and consumers. The AMS includes six commodity divisions – Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, and Tobacco. The Divisions provide standardization and grading services, e.g., USDA's voluntary meat grading program (USDA Choice, USDA Select), as well as market news services for commodities. In addition, the AMS oversees marketing agreements and orders, administers research and promotion programs, and purchases commodities for Federal food programs (the National School Lunch Program, the Child Care Food Program, among others). The AMS operates under the authority of the Agricultural Marketing Act of 1946 and enforces such Federal laws as the Perishable Agricultural Commodities Act and the Federal Seed Act. It also oversees a USA Beef program that certifies that livestock and/or meat and meat products originated from livestock born, raised, slaughtered, and processed in the United States.

II. Status of Imports and Exports Today

Amounts and Types of Meats Imported by the United States

According to USDA/ERS data, in 1998, a total of about 2.754 billion pounds (carcass weight) of beef/veal and lamb/mutton, and their products, were imported into the United States. Of this total, about 2.642 billion pounds (carcass weight) were beef/veal of all types from 27 countries. Of this amount, about 2.379 billion pounds were fresh/frozen beef/veal classified as manufacturing carcasses and cuts. In the same year, 112 million pounds (carcass weight) of lamb/mutton were imported, of which roughly 90 million pounds were classified as lamb manufacturing, carcasses and cuts.

Use U.S. official trade data or reconsistent + explain why ERS data is not used.

from how many countries?

Canada is the major source of imported beef products. In terms of imports of fresh/chilled, and frozen beef, the United States imported roughly 661 million pounds of fresh/chilled and frozen beef (valued at about $723 million) from Canada in 1998, according to USDA/FAS data.

In comparison to the figures for imports, the United States exported about 2.177 billion pounds (carcass weight) of beef/veal and lamb/mutton products to over 60 countries in 1998 (ERS). According to USDA/FAS data, in 1998, the United States exported to Canada about 167 million pounds of fresh/chilled and frozen beef (valued at about $243 million).

Why Meat and Meat Products are Imported

Imported meats are purchased and/or used by bankers, processors, packers, wholesalers, food service operators, and grocers. According to discussions with various food processor and importer trade groups (American Meat Institute, Meat Importers Council of America), imported meat is purchased because of its availability; functional qualities and compositional characteristics, which meet product quality specifications (such as leanness); low cost; and low bacterial count. Food processors have further indicated the reasons for importing meat are that domestic meat that meets their specifications for making certain products was not available on a consistent basis, and the quality of imported meat meets their established standards and formulas for use in producing and marketing their products.

III. Current Status of Exporting Countries and Federal Inspection Requirements

Countries Currently Exporting Beef and Lamb to the United States

bring up to date - 1998

Individual plants in certain foreign countries are permitted to export fresh beef and mutton/lamb to the United States. In 1998, the following countries were primary exporters of fresh beef or mutton/lamb to the United States: Australia, Canada, Costa Rica, Guatemala, Honduras, Iceland, Japan, Mexico, New Zealand, Nicaragua, and Uruguay. Of these countries, the top exporters of products to the United States were Canada, Australia, and New Zealand.

11 countries

Inspection Requirements for Imported Products

Federal meat inspection laws require countries exporting meat (and poultry) to the United States to impose inspection requirements that are equivalent to United States requirements. FSIS evaluates foreign meat (and poultry) inspection programs through system reviews.

FSIS first evaluates laws and policies, and the operation of the inspection system, in each country eligible to export products to the United States. The Agency evaluates each country's controls of risks in the areas of disease, contamination, processing, and economic fraud. On-site observation of exporting plants and system operations, including facilities, equipment, laboratories, and training programs, are also conducted. Foreign program officers and other technical experts of FSIS perform these reviews in eligible exporting countries.

An inspection certificate issued by the responsible official of the exporting country must accompany each shipment of meat (and poultry) products offered for entry into the United States. Certificates identify products by country and plant of origin, destination, shipping marks, and amounts of product. They certify that (1) the products received ante-mortem and post-mortem inspection; (2) the products are wholesome, not adulterated or misbranded; and (3) they otherwise comply with United States requirements.

Imports are re-inspected at "ports of entry" into the United States to check on the effectiveness of foreign inspection systems in ensuring safe, wholesome, and accurately labeled products that meet United States standards. FSIS uses data from import re-inspection to evaluate foreign inspection programs. About 75 staff years of inspection personnel time is required to carry out import re-inspection at the many ports of entry that are located throughout the United States.

Statistical sampling plans are applied to each lot of product to be re-inspected to ensure that representative samples are selected to determine compliance with United States requirements. The criteria for acceptance or rejection of imports are the same as those applied to United States meat (and poultry) products prepared under Federal inspection.

The USDA employs an Automated Import Information System (AIIS). A description of each lot arriving at United States ports is entered into the AIIS. This computerized system centralizes re-inspection and shipping information from all ports, allowing FSIS to determine re-inspection requirements based on the compliance history of each country and foreign establishment.

In addition to inspections for export to the United States, a foreign country must have a residue program with standards equivalent to United States standards. Statutes require that foreign residue programs include random sampling of animals at slaughter, the use of approved sampling and analytical methods, testing target tissues for specific compounds, and testing for the presence of compounds identified by USDA or the country of origin as potential contaminants.

Imported meat and poultry products are also sampled for food chemistry and microbiological contamination and chemical and drug residues. If a laboratory reports a residue or microbiological violation on a sample that has otherwise passed re-inspection, products recovered may not be used for human food. If product is in commerce or at the consumer level, product recall actions are taken. In addition, the foreign country is notified of the violation and further shipments from the producing establishment are held until laboratory analyses are received that show negative results. In 1996, roughly 5.7 million pounds of imported fresh beef for manufacturing and carcasses and cuts (less than 0.4 percent) were condemned or refused entry (Meat and Poultry Inspection Report to Congress 1996). In the same year, 536,000 pounds of imported fresh/lamb and mutton for manufacturing, carcasses and cuts (less than 0.8 percent) were condemned or refused entry. USDA, FSIS has maintained, since 1983, a database for recalls of meat and poultry. There are no records of recalls of domestic or imported fresh *table cuts* of beef or lamb.

Status of Equivalency When Health Issues Arise

Occasionally, animal and public health issues arise in other countries that necessitate the identification of the origin of meat products as a control mechanism to prevent the entry of contaminated product into the United States. Countries (or regions of countries) that have sporadic diseases of concern to animal and public health are prohibited by the United States from exporting products implicated in the health concern into the United States for the duration of the exigency. For example, BSE, a health concern for both cattle and humans, exists in Great Britain and other countries. Therefore, the USDA "de-listed" imports of cattle and beef products from countries where BSE has been found. Although a country (or region of a country) may be prohibited from exporting certain products to the United States, the status of USDA's determination that the foreign country's inspection systems are equivalent would not necessarily change.

Current Labeling Requirements of Imported Meat

Pursuant to the FMIA, imported meat and meat food products that are accepted for import are to be deemed and treated as "domestic" products subject to the FMIA and its implementing regulations. All meat products imported into the United States are required to bear the country of origin on the labeling of the container in which the products are shipped, as well as the establishment number assigned by the foreign meat inspection system and certified to USDA. If imported meat or meat products are intended to be sold intact to a processor, wholesaler, food service institution, grocer, or the household

consumer, i.e., in the packaging and with the labeling on the package that enters the United States, the country of origin labeling (as well as the foreign establishment number) is conveyed to those market segments and recipients. For example, a bulk shipping container that is imported from Canada, which consists of pre packaged and labeled meat cuts that are intended to be sold to institutional food service, grocers, or at retail to household consumers, as they are packaged, would each bear country of origin labeling (e.g., Product of Canada) to the point the cuts reach consumers. Another example is a canned ham imported from Denmark that is sold intact; the labeling of such product would have to bear the country of origin, e.g., Product of Denmark.

If the imported meat or meat products are further processed in the United States, i.e., removed from their containers and packaging, and cut up or processed in any way, country of origin labeling is no longer required on the newly produced products or subsequent products made from them. For example, if canned hams from Denmark (labeled as "Product of Denmark" on entry to the United States) are shipped to a manufacturing establishment in the United States, and made into ham salad, the country of origin of the ham is not required on the labeling of the ham salad product.

IV. Projected Costs of Beef and Lamb to Distributors, Retailers and Consumers

At various times, for over 40 years, different organizations have proposed country of origin labeling requirements for meat and meat products. Proposals have varied in coverage from all species to one or two species, from all types of meat to only hamburger or only muscle cuts, and from meat sold anywhere to meat sold only at retail for use at home. Some proposals have called for labeling as "imported" meat derived from animals that had spent time outside the United States and which were slaughtered within the United States. Labels have been proposed loosely requiring only some clear indication on the package that meat is imported, or strictly requiring an approved label that specifies the proportion of meat and the specific country from which it is imported. Labeling requirements have been proposed for application to products at retail and/or at restaurants. Cost estimates for labeling requirements are subject to wide variation depending on specific rules about what is labeled, where, and how. Costs for labeling fresh muscle cuts would be relatively low compared to costs for labeling all products with both country of origin and the proportion of cuts per country (for mixed cuts), and for sale at retail or in restaurants. Processed products can involve ingredients including imported meat from multiple countries.

Scope of the Analysis of Projected Costs

The Conference Report directs the Secretary "to conduct a comprehensive study on the potential effects of mandatory country of origin labeling of imported fresh muscle cuts of beef and lamb." This language defines the scope of an analysis for the potential costs as the following:

Species: The language limits species scope to fresh cuts of beef and lamb, omitting veal, pork, and poultry.

Live Animals: Country of origin labeling is not required on meat from live cattle or sheep imported for immediate slaughter.

Class of Beef and Lamb: The language refers to "imported fresh muscle cuts of beef and lamb." Muscle cuts is interpreted to include fresh and frozen steaks, roasts, and other cuts commonly called table cuts from skeletal beef and lamb. Significantly, it is interpreted to exclude fresh and frozen boneless beef for ground beef and other processing and to exclude ground meat, organ meats, and other processed beef and lamb products. Country of origin labeling of meat cuts derived in the United States is not mentioned.

Industries: The Conference Report language calls for the impact on "...livestock producers, consumers, processors, packers, distributors, and grocers and cost to the Federal Government." Country of origin labeling is apparently intended only for beef and lamb muscle cuts sold at retail grocery stores. This is interpreted to mean that country of origin labeling is not required for food consumed away from home. Supermarket Business Magazine (September 1998) reported that 60 percent of the value of fresh beef and 83 percent of the value of fresh lamb was accounted for by grocery stores in 1997.

Size of the Market

Beef

Census?

According to data obtained from the USDA/ERS, in 1998, the United States imported 2.642 billion pounds of fresh and frozen beef/veal (carcass weight basis) or about 10 percent of United States carcass weight consumption. Only about 10 to 15 percent of imports were in the form of muscle cuts. Most of the rest was destined for hamburger and manufacturing uses. USDA estimates that 60 percent of the muscle cuts are destined for retail sale/home use; roughly 200 to 235 million pounds (carcass weight basis) of imported muscle cuts of beef could be subject to country of origin labeling. Nearly all of the imported cuts were from Canada, with Australia, Uruguay, and New Zealand also contributing to the quantities imported.

Lamb

In 1998, the United States imported about 112 million pounds of lamb/mutton (carcass weight basis) or about 28 percent of carcass weight consumption. About 90 million pounds of imported fresh and frozen lamb was in the form of cuts. Much of the imported cuts are from New Zealand and Australia and already consumer-ready packaged and labeled with the country of origin by the exporters. Both countries have engaged in extensive and successful promotional activities for their lamb products and want their consumer-ready packages of fresh meat cuts labeled with the country of origin.

Types of Costs Associated with Country of Origin Labeling

There are four cost factors associated with a new country-of-origin labeling requirement on muscle cuts.

- The costs of preserving the identity of imported beef and lamb cuts from the point of entry into the United States to the retail grocery counter. Packers, processors, importers, wholesalers, distributors and retailers would incur costs of marking shipments and segregating imported product from domestic meat.
- The direct costs of new or revised labels and the additional labor costs to affix any additional labels in some establishments lacking automated labeling equipment.
- Government costs to ensure compliance.
- ~~Shifted costs if firms avoid using the cost affected commodity to avoid labeling related costs involved with handling the affected meat and meat products.~~

delete

add note at bottom

Costs of preserving the identity of imported beef and lamb.

As described previously, under the current inspection system, meat entering the United States is re-inspected at the point of entry. Documentation accompanying each shipment shows the country of origin. Once cleared by FSIS inspectors, the meat is treated as federally inspected product and can move anywhere domestically produced and federally inspected meat can move. If the product is intended to be sold intact to consumers in the packaging and with the labeling it bears upon entry, its labeling must bear the country of origin. However, if product is intended for further processing, the country of origin information is no longer required when further processing occurs (as explained in the section entitled "Current Labeling Requirements of Imported Meat" on page 5). Therefore, identification would need to be maintained throughout further processing and until final retail labeling is completed. This would cause some inefficiencies in the use of facilities and labor. Over a dozen countries exported beef to the United States in 1996, although most came from four or five, and almost all beef muscle cuts come from Canada. More than 10 countries exported lamb and mutton, but most came from Australia and New Zealand. Much of that reaches the retail market already labeled as to country of origin.

p. 3 – 27 countries

update to 1998

11 on p 3

Distributors and retailers would incur costs of marking shipments and segregating imported meat from domestic meat. Retailers or meat packaging firms would incur costs of maintaining segregation and identification of meats.

No quantitative estimates of segregation costs are available. Some of the costly steps processors, wholesalers, and retailers might have to take include separation in storage, placing tags on carcasses, labels on boxes, and the creation of records. When retail packages are prepared, labels would have to be applied.

- Note: There are also costs that would be associated with labeling domestic product with the county of origin to meet international obligations. However, the appropriations report language only directs covers imported muscle cuts, so this report is limited to that scope.

It should be noted that there are labeling practices now in use that could serve as full, or partial, models for country of origin labeling. For example, slaughter plants currently segregate beef carcasses once they have been graded. Grading programs result in some labeling claims that follow products through distribution to the retail level. Carcasses generally move through fabrication grouped according to grade, being packaged in boxes or bags that are appropriately labeled. Presumably, similar segregation of carcasses by country of origin would be possible, although segregation would need to start at an earlier point in the slaughter process. Were this to occur, it would likely increase the complexity of the segregation process, assuming that grading of carcasses continued. While slaughter plants may be aware of the costs they incur to facilitate the grading of carcasses, this information is not available for this Report.

Slaughter plants also operate segregation plans for various certification programs, (e.g., for breed claims, such as Angus beef) and to meet the domestic origin requirements of federal feeding programs (e.g., the National School Lunch Program). Similar to grading claims, most certification programs result in label claims that follow product through distribution to the retail level. Many of the breed identification and other certification programs require segregation beginning with the live animal. Systems have been put into place by slaughter plants to accommodate such certification programs. The costs incurred by slaughter plants to do so are not available. Similarly, some plants that produce meat for the National School Lunch Program and other federal feeding programs use both domestic and imported sources. Strict domestic origin requirements of the federal feeding programs have led to mandated segregation plans for those firms. The exact number of processors that handle both domestic and imported muscle cuts of beef and lamb is not available, but is probably very small. Such segregation plans do work; however, the costs to firms having such plans are not known.

Direct costs of labels and labeling

A consideration in this estimate is whether or not United States beef and lamb must also be labeled to reflect its origin. More than 30 countries exported beef or lamb to the United States in recent years, although most imports come from four or five countries. Identification would need to be maintained by each country. Much of the lamb cuts came from New Zealand and Australia and are country of origin labeled in consumer ready packages when they arrive. If existing labels suffice, costs would be lowered.

Depending upon final rules on country of origin labeling, changes in labeling could range from a simple revision in a computer program in an ongoing labeling system, to the need for the design, approval and production of commercial labels.

Wholesale labeling would be on larger units and probably smaller costs per pound than at retail. Most meat would be amenable to automated labeling systems with presumably relatively low cost to apply country-of-origin labels.

A previous impact analysis on mandatory safe handling statements on labeling of raw meat and poultry products is a potential source of cost estimates for labels, but it is only partly applicable to the current issue. That analysis determined that the average retail package of meat weighed about 3 pounds. It estimated that 80 percent of the retail packages were machine labeled at an average incremental cost for the labels of $0.00375 per package. The remaining 20 percent of retail packages were determined to require some labor to apply the labels and have an estimated average cost for the label of $0.01. The weighted average is about $0.005 per package. Applying these assumptions results in recurring retail labeling cost estimates ranging from about $500,000 for imported cuts at retail to about $8 million on imported and domestic muscle cuts at retail.

It must be noted that the safe handling statement labeling analysis concerned labels on all raw meat and poultry, while the current issue concerns only muscle cuts of beef and lamb. Thus, the average retail package weight and the percentage of packages amenable to machine automated labeling may be different.

Verification Visits and Enforcement Costs.

AMS, PACA has estimated this for produce. Is that at all parallel to meat?

It is not readily known what records or data would need to be verified or what enforcement system would need to be used by the Federal government. A framework for establishing the proper link between records and labeled products has not been designed. Records could establish that a grocery store was selling both domestic and imported muscle cuts of beef and lamb. These records also could establish the relative proportion of domestic to imported muscle cuts that were present at any given time. There are not, however, any readily obvious or available sensory attributes or laboratory methods to verify that the country of origin labeling claim on a given consumer-ready package of muscle cut is accurate.

Verification visits and enforcement costs may vary. Costs would depend on the potential penalty for violations, incentives for noncompliance, how verification visits and enforcement are conducted, who conducts verification and enforcement visits, and how strictly and frequently such visits are pursued.

Verification of Country of Origin Labeling by FSIS

Although USDA's, FSIS has personnel present at those slaughter and processing facilities under Federal inspection, who could verify that segregation of domestic and imported table cuts of meat occurs and that records and labels are maintained and made available to wholesalers, distributors, and retailers, this would be new work not now being performed. The same would be true at USDA- approved cold storage establishments and warehouses.

The cost of Federal oversight would depend on whether verification visits to the nearly 130,000 other sites (primarily grocery stores) where labels are applied were included as part of the Agency's current food safety compliance activities. There would be negligible costs incurred if compliance officers included country of origin labeling verification as

└FSIS (?)

part of their routine food safety visits. The frequency of these visits would have to be determined and there are many ways that this could be done. For example, in FY98, FSIS made approximately 15,000 visits to retail stores to conduct reviews and collect ground beef samples for laboratory analysis. (Approximately 10,000 different retail stores were involved in the 15,000 visits.) It is estimated that labor, travel, and overhead costs equaled $100 per visit.

However, a major additional cost of Federal oversight would occur if verification visits, specifically for country of origin labeling verification, were required at the nearly 130,000 other sites where labels are applied.

Some alternatives for ways visits could be arranged include: (1) visits to all sites could occur one or more times per year; (2) a set number of visits could be scheduled based on decisions as to how available personnel resources should best be deployed with sites selected either randomly or on a targeted basis; (3) visits could be statistically driven to determine the state of compliance nation-wide within a certain level of confidence; and/or (4) visits could be limited to those generated by complaints from competitors and whistleblowers. The cost of verification visits would be $100 multiplied by the number of sites, multiplied by the frequency of visits to each site. Depending on the number of sites to be visited and the frequency of those visits, the total cost of verification visits may not exceed what now is being spent on Federal inspection or it could be millions of additional dollars.

If violations were found, enforcement action would also lead to additional costs. It is difficult to estimate the number of instances of noncompliance without knowing the incentives for noncompliance. Moreover, unlike the alternatives that are possible for designing strategies for verification visits to retail establishments, e.g., based on statistically valid sampling schedules or linked to visits to retail establishments for food safety purposes (i.e., E. coli ground beef sampling procedures), enforcement costs would be driven primarily by the instances where violations are found.

State and local governments, that do have a presence at the retail level, may have a role to play in a system of enforcement with regard to country of origin labeling. However, it seems likely that if State and local governments were to carry out inspections required by a Federal country of origin labeling law, such a law would have to specify the states' enforcement role and provide funding for enforcement activities.

Verification of Country of Origin Labeling by AMS

FSIS is responsible for maintaining control of product identity throughout slaughter and meat processing operations. However, AMS's Meat Grading and Certification (MGC) Branch conducts two programs that, although very small in scope, may be used to compare the verification activities necessary for country of origin labeling. Additionally, the MGC Branch provides a variety of audit based services to verify marketing claims associated with meat products and accredit the quality management systems of individual meat companies (e.g., Premium Standard Farms is "USDA Process Verified").

Two verification programs currently being operated by the MGC Branch that may be used to compare the verification activities necessary for country of origin labeling are the Domestic Origin Verification Program and Public Law (PL) 272 Audit Program.

The Domestic Origin Verification Program's primary purpose is to ensure that all raw materials used to produce meat and meat products purchased by the USDA for Federally funded food assistance programs are derived from United States produced animals. The primary purpose of the PL 272 Audit Program, established under the authority of the Agricultural Marketing Act of 1946 (Act), is to conduct reviews of USDA graded meat sold at retail establishments to ensure the proper use of USDA grade nomenclature for beef, lamb, veal and calf meat products. If violations are noted, the MGC Branch takes appropriate remedial, administrative action and, if necessary, legal action to ensure compliance with the Act.

The costs of both programs are funded by user-fees charged to applicants who use the voluntary grading and certification services. No appropriated funds are received to perform either of these functions.

The Domestic Origin Verification Program requires slaughterers and processors to identify themselves as either "domestic only" or "segregation plan" facilities. "Domestic only" suppliers receive a yearly audit of procurement records to ensure compliance with the United States-produced provision. "Segregation plan" suppliers, after establishing identification and record quality control systems, receive quarterly audits including interviews with plant management and USDA, FSIS officials to ensure compliance with the United States-produced provisions.

Approximately 80 contractors and suppliers annually supply raw materials to the federally funded food assistance programs. AMS performs a total of approximately 250 audits each year. Audit costs vary by the type of facility ("domestic only" vs. "segregation plan") and by the geographic location of the facility. AMS charges an hourly rate of $42.20 plus associated travel costs averaging approximately $275 for each audit. On average, each audit is about 4 hours in duration to ensure compliance with United States-produced provisions, making the average cost per audit approximately $450 ($42.20 x 4 + $275). Therefore, the total annual audit costs to ensure that the 135 million pounds of beef products purchased each year is manufactured from domestic raw materials is approximately $112,500 ($450 per audit x 250 audits) or $0.00083 per pound ($112,500/135 million pounds) of beef purchased.

In the case of the PL 272 Audit Program, the MGC Branch conducts PL 272 reviews of approximately 800 retail establishments annually at an average cost of $150 per review or about $120,000 per year.

PL 272 Audit Program records indicate that there are about 130,000 retail establishments in the United States that handle meat and meat products that would be covered by any proposed country of labeling program. Additionally, there are approximately 800 (large capacity) federally inspected establishments that could potentially label or handle imported products on a daily basis. Any proposed system would have to include surveillance and review of these core groups to ensure compliance with any country of origin labeling requirements.

In any event, the costs of nation-wide verification and enforcement activities by AMS would vary by the type and level of enforcement. AMS has the expertise to perform country of origin verification activities. However, if verification activities could not be integrated into current programs (and it is unknown if they could), funding for additional staff and support would be required if the MGC Branch performed these activities.

Shifted costs.

delete - not valid argument if international obligations are to be met

If dealing with the cost of handling and labeling imported cuts is considered uneconomical, firms may elect to avoid them. For example, purchasing firms may replace imported product with domestic product. On the other hand, a firm may operate at a less efficient level of capacity, thereby increasing costs. No quantitative estimates are possible. There may be a benefit to others in the market who choose to use imported product if a decrease in demand for imported product results in a corresponding decrease in price of imported product.

Incidence of Costs

Initially, meat processors would bear the added capital, materials, and labor costs associated with labeling and new identity-preservation methods of meat handling. However, in a competitive market, increased marketing costs, or margins, likely will be passed backward to producers in the form of reduced prices or forward to consumers in the form of higher prices. The degree and direction of passthrough depends upon the relative price responses of supply (at the ranch) and demand (at retail). In the very short run, the passthrough of added costs falls mostly on producers in the form of price decreases. Over time, the majority of the passthrough is most likely to be passed along to consumers. However, these costs could be offset by a demand shift if country of origin labeling resulted in an increased demand for United States meat products.

assumption

The potential price change resulting from added costs associated with diminished competitiveness by labeling requirements could lead to a very small reduction in United States beef and lamb production and consumption. The reduction in consumption of beef and lamb would be accompanied by some switching to pork and poultry meat, though the price and quantity changes involved probably would be very small.

System Initiation Costs

If the requirement for mandatory country of origin labeling of fresh muscle cuts of beef and lamb were put in place, there would be a need for time to allow all segments of the meat distribution chain to develop and implement systems of monitoring and control to maintain the integrity of country of origin labeling. There also would need to be time for imported product either already in the system or in transit to the United States to clear the system. The disruption related to the transition to the new country of origin labeling requirements is not immediately quantifiable, but could be avoided if an adequate phase-in period is provided. During an adequate phase-in period, affected segments of the meat cuts distribution chain could coordinate, design, and implement the necessary control systems.

V. Projected Benefits That May Result from Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb Under Certain Conditions

(Text and Tables Supplied by USDA, ERS)

Examining the Potential Benefits of Mandatory Country of Origin Labeling

The monetary benefits of mandatory country of origin labeling to consumers and producers of lamb and beef depend on two essential conditions. First, consumers must be willing to pay a price premium for domestic products. Second, current beef and lamb markets must not provide sufficient information for consumers to differentiate between domestic and imported meat. For benefits to exist, consumers must value domestic production more highly than imports and cannot make that choice because there is insufficient market information. Mandatory country-of-origin labeling could offer monetary benefits to domestic producers and consumers if the absence of labels precludes filling some consumer demand and labels make it feasible only for domestic producers to fill the demand. Under these conditions, government action mandating country of origin labeling will allow consumer preferences to be better satisfied, with the effect of increasing demand for domestic beef and lamb at the expense of importers.

For mandatory country-of-origin labeling to offer monetary benefits to domestic beef and lamb producers, consumers must care whether they consume domestic or imported goods. Meat products embody a multitude of characteristics, including lean and fat colors, quantity of fat, and marbling, among others. If consumers have complete information about the characteristics of alternative products and choose domestic over imported products, this implies the domestic product embodies a more desirable set of characteristics than the import. The valued characteristics could be taste or simply a desire to support a domestic industry. When consumers believe the mix of product characteristics differs between domestic and imported products, there are two distinct demands for meat products: a demand for domestic meat products and a demand for imported products.

When consumers attach great importance to the differing mix of characteristics of meat, the price premium they are willing to pay for domestic products over imports will be relatively large. If consumers do not care whether meat products are of domestic or foreign origin, there is only one demand and labeling (mandatory or voluntary) will offer no possibility of a price premium.

To generate benefits, mandatory labeling must improve consumer information. Consumers must currently be unable to distinguish domestic from imported products without a label. In addition, there must be some reason (other than high cost of labeling) why the domestic meat industry is unable to voluntarily provide a label. If markets fail to create incentives to label, mandatory country of origin labels would allow markets for domestic and imported meat products to exist with different prices. Such systems of promoting domestic consumption of United States goods have operated in the garment and automobile industries for some time.

and also food which is more pertinent to this report.

Will Consumers Pay a Premium for Domestic Products?

In this section, we summarize and interpret results of research on consumer preferences for country of origin labels. Some research exhibits methodological problems. For other research, the applicability to domestic markets for meat products is speculative.

Jersey Nebraska beef Idaho potatoes etc

Research on consumers' preferences can generally be classified as following stated preference methods or revealed preference methods. Stated preference methods amount to polling consumers about the importance they attach to different product characteristics or about their willingness to pay for hypothetical products. The major problem with these methods is verification. It is impossible to know whether consumer responses to a survey match their marketplace behavior. Revealed preference methods tally prices paid in market transactions along with quantities of goods traded and their characteristics, to measure consumer demands for different goods and their characteristics. As United States consumers have little experience with country of origin labels on beef and only moderate experience with country of origin labeling on lamb, there is no behavioral trail for analysts to follow. That is, the responsiveness of demand to the labels based on actual consumer behavior has not yet been reliably estimated.

too old

These studies do not support that statement

~~Stated preference studies suggest that consumers do prefer domestic foods over imported foods.~~ A study by Gaedake (1973) found that United States consumers rank the quality of food products from the United States higher than those from developing countries, and that reporting of country of origin increased the variance of consumer response to questions about quality. Many other cited studies showed consumer stereotypes were influenced by country of origin information. Some studies showed an association of economic and political instability with food safety. Other studies indicated country of origin was important as a quality indicator for all goods, but was a much more important quality indicator for technically complex products. A study by Howard (1989) had United States consumers rank goods from eight countries by quality, and in the food category they ranked the United States as having the highest food quality.

influenced which way

limited - different parameter

what's that have to do with labeling

what's the point?

and relationship to labeling?

Aside from verifiability, there are well-documented methodological problems with such studies. When consumers are polled about country of origin and nothing else (often denoted as a single cue study), they overstate the importance of country of origin. Asking consumers to rank multiple characteristics reduces the overstatement (Skaggs et al., 1996; Chao, 1993). Chao notes that many single cue studies indicate country of origin to be important to consumers, while some multiple cue studies indicate that country of origin does not affect consumer perceptions. Some multiple cue studies find that country of origin does affect consumer perceptions, but usually such results depend on other information cues given to survey respondents. Okechuku (1994) used conjoint analysis to deal with the cue problem and found that country of origin is one of the two or three most important attributes that consumers use to evaluate television and car radios. Of the food studies, the Gaedeke study provided multiple cues, and thus probably exhibits less overstating of the importance of country of origin. A recent study of consumer preferences for country of origin labeling on meat products concluded that most consumers want labels (see Olson, 1999). However, with a focus only on meat labeling, the results are likely subject to single cue bias.

It is possible to carry out an empirical study that would reveal consumer preferences. At wholesale markets, it is possible to distinguish imported from domestic meat or carcasses. A researcher could examine prices paid in wholesale markets, and could see if domestic prices are higher than prices for imported products, correcting for quality differences. If there is a price difference that persists, one could conclude that some portion of the difference is sustained in retail markets. No study of United States consumer preferences over domestic and imported meat products has been reported.

However, two studies have examined wholesale markets in other countries. In France, domestic lamb has sold for a 14 percent premium (O'Connell, 1986). In Japan, domestic beef has sold for approximately 30 percent premium over equivalent quality imports (Mori and Lin, 1994). The differences found in France and in Japan are relevant to the United States only to the extent that United States consumers' preferences are like preferences of French and Japanese consumers.

Japanese are known for their strong preferences for quality products. In a typical supermarket, beef is labeled by cut, animal type, and origin of production. Beef from steers is often so labeled to be differentiated from cow beef. Wagyu beef enjoys a substantial price premium, so it is clearly identified in the supermarket shelf. Furthermore, beef is often labeled as from domestic Holstein cattle, United States, or Australia. Even among Wagyu beef, the label often indicates the producing agricultural cooperative or prefectures, that are known for producing extremely high quality beef (Mori and Lin, 1994).

The Mori and Lin analysis of beef carcasses auctioned at the Tokyo Market during February 1990 showed that prices are explained by carcass characteristics (marbling, meat fineness and texture, meat color and gloss, fat color and gloss, carcass weight, size of ribeye area, thickness of rib, thickness of cover fat), breed, sex, and origin. Their statistical results predicted that United States steers would be priced higher than Holstein steers but lower than Holstein females, given the same characteristics for yield and quality. Given the same yield and quality characteristics, Wagyu steers were priced about 30 percent higher than Holstein and United States steers. A question raised by studies of French and Japanese wholesale markets is whether United States consumers make the same types of distinctions. Labels in the United States are far less prevalent and less detailed than supermarket information in Japan. So consumers appear not to demand as much information.

what is data to support assumption

Even if consumers cannot taste any difference between domestic and imported products, it is possible they would pay a premium for the domestic beef and lamb. Consumers might support domestic beef and lamb producers just because they are domestic producers. That is, the country of origin could influence demand if consumers act on nationalistic impulses or are altruistic, willing to pay a premium to maintain domestic jobs. The extent to which United States consumers would be willing to pay a premium for domestic product is unknown at this time.

Estimating Short-Run Benefits

The size of potential benefits of mandatory country of origin labeling of meat to the point of retail sale depends on how much consumers value domestic production and the size of the market. A key point is that the magnitude of imported beef and lamb consumption sets an upper bound on benefits because any benefits to domestic beef and lamb producers would result largely from domestic production substituting for imports. To perform the analysis, it must be understood that imported beef and lamb meet the same safety standards as domestic products. Any price premium for domestic products, therefore, must reflect consumers' preferences for 'domestic' beef and lamb. The analysis is limited to labels for muscle cuts of meat and explicitly excludes ground beef.

confusing don't understand assumption

Consider a situation in which consumers value domestic beef and lamb more than imports, but there is no country of origin labeling. Consumers are likely to assume that they purchase domestic products in the same proportion that domestic products are of the total product supply. For example, if domestic and imported products equally shared the market, consumers would purchase products with the desirable domestic characteristics about half the time. From the consumer's perspective, knowing that many, but not all purchases are of domestic origin should be preferred to a situation in which all products are known imports and inferior to the case in which all products are domestic. One possibility is market prices might reflect that consumers know they receive a mix of domestic and imported beef and lamb, falling somewhere above what consumers would pay for imports and below that for domestic products. Initial demand, in this case, is a weighted average of the domestic and imported demand, where the weights are proportions of sales.

assumption for what's basis? Do consumers have a clue as to what's imported?

Country of origin labeling allows consumers to distinguish between domestic and imported products. In the example above, separate demands emerge. Because the demand for domestic meat increases at the expense of imports, the price of the domestic product will rise and the imported price will fall. In the short run, domestic producers benefit from the higher price. The domestic price increase would induce quantity supplied to rise and imported quantity supplied to fall. Consumers would be better able to realize their demands and purchase products with the characteristic they want (e.g., domestic production). ~~In this case, they benefit. Only importers are worse off from labeling.~~

The magnitude of potential benefits depends on the price differential between domestic and imported products and the size of the market for imported beef and lamb. Table 1 shows total annual consumption of beef and lamb and imports of beef and lamb. The percentage of consumption of beef and lamb from imports is calculated from those statistics. Table 2 shows the value of imports and the value of muscle cuts imported, along with the associated percentage of import value from muscle cuts. Together, the two tables suggest that imported muscle cuts represent about 1 percent of domestic beef consumption and 24 percent of lamb consumption. If consumers chose only domestic beef, and completely rejected all imported beef, domestic producers would see quantity demanded rise about 1 percent. If consumers did not reject all imported beef, the difference in demand for domestic beef would be less than 1 percent. In percentage terms, imported muscle cuts of lamb represent a much larger proportion of domestic lamb consumption. If labels led to consumers rejecting imported lamb, domestic lamb producers would realize much larger gains (individually) than beef producers.

Estimating Long-Run Benefits

Livestock industries are characterized by production cycles lasting several years. It is likely full adjustment to any mandated country of origin labeling requirement for products to the point of retail sale would also take several years. Physical capital required for beef and lamb production and a stock of animals that is fixed in the short-run could eventually adjust to maximize profits under new market conditions. Full adjustment, when there is no further incentive to alter input and output decisions, would leave no benefits for producers. In the long run, only consumers who prefer domestic product would benefit.

The above-normal returns earned by domestic beef and lamb producers in the short run would attract new entrants. Absent any barriers to entry, domestic production could be expected to expand, bidding market price down. Under constant returns to scale, new entry of domestic meat producers would end when production is so large that price returns to its pre-labeling-requirement level. At that point, above-normal returns would end. Similarly, below-normal returns earned by importers would induce exit until the import price returned to its original level. The only sustained effect of country or origin labeling to the point of retail would be to offer consumers product characteristics (label information) they want.

However, once having mandated country of origin labels to the point of retail, ending the requirement would induce exactly the opposite short-run impacts (Tullock, 1975). Consumers would no longer be able to distinguish domestically-produced beef and lamb from imports, reducing the demand for domestic production. That is, domestic producers would have a strong interest in maintaining the mandate even though they would be operating at normal rates of return. Losing the mandate would be costly in the short run, from their perspective.

Even if the conditions were met, the benefits of mandatory country of origin labeling to the retail level are likely to be small. The share of imported beef in United States consumption is small. That implies the potential gains from reducing those shares are small. While the share of imported lamb in United States lamb consumption is large, the market itself is in long-term decline (Stillman et al., 1990). Increasingly, lamb is consumed on holiday occasions. This demand is therefore increasingly price inelastic and less likely to be influenced by country of origin questions.

very important point — should be reflected in executive summary + possibly even recommendations

⇒ Redo tables

1/10 of 1 percent

Table 1. Beef and Lamb Consumption and Imports, 1992-1998

Year	Beef Consumption	Beef Imports	Imports as a Percentage of Consumption	Lamb Consumption	Lamb Imports	Imports as a Percentage of Consumption
	Million Pounds			Million Pounds		
1998	26303	2642	0.10	359	112	0.312
1997	25609	2343	0.091	333	83	0.249
1996	25863	2073	0.080	334	73	0.219
1995	25533	2103	0.082	348	64	0.184
1994	25125	2369	0.094	345	49	0.142
1993	24006	2401	0.100	381	53	0.139
1992	24261	2440	0.101	388	50	0.129

imports are 10% of consumption 1/10 of 1 percent.

Table 2. Beef and Lamb Import Values and Values of Muscle Cuts, 1992-1998.

Year	Beef Import Value	Beef Muscle Cuts Import Value	Muscle Cuts as a Percentage of All Beef Imports	Lamb Import Value	Lamb Muscle Cuts Import Value	Muscle Cuts as a Percentage of All Lamb Imports
	Million Dollars			Million Dollars		
1998	1,460	216	0.148	126	100	0.792
1997	1,394	267	0.192	123	97	0.784
1996	1,112	252	0.226	100	80	0.805
1995	1,200	206	0.171	69	57	0.834
1994	1,550	194	0.125	49	40	0.820
1993	1,695	157	0.092	52	40	0.767
1992	1,652	118	0.071	33	26	0.792

Tables should reflect discussion. Readers should not have to do additional math.

Other Benefits

Country of origin labeling could generate other benefits that are not easily quantifiable. For example, domestic producers are increasingly concerned that the market is not operating fairly and many doubt the benefits of increased international trade. Country of origin labeling could help restore producers' confidence in the market and promote support for international trade. In addition, many consumers have an increasing desire for additional information about the products they purchase, and country of origin labeling would provide consumers who prefer to support the domestic industry an opportunity to do so.

how? - assumption to support recommendations
Where's data to support supposition?

Have Information Markets Failed?

If information markets for country of origin labeling have failed, then government regulation in the form of mandatory country of origin labeling to the retail level may be required to realize benefits. In many cases, labeling occurs without direction from the government. Acting in their self-interest (profit maximization), sellers disclose information about their products. It is usually advantageous to inform buyers about product characteristics when buyers will pay a premium for those characteristics. For example, the producer of a product low in fat will voluntarily advertise that fact, while failing to disclose a high sodium content. However, competitors might advertise that their products are low in both fat and sodium. In this environment, consumers would know that products that failed to make both claims are likely high in fat and sodium. This competitive disclosure results in explicit claims for all positive aspects of food and leads consumers to be suspicious of foods without claims (Grossman, 1991).

Empirical verification of this information disclosure process, typically referred to as the "unfolding process hypothesis," was first conducted on the ready-to-eat breakfast cereal market (Ippolito and Mathios, 1990). Research examined changes in the ready-to-eat cereal market engendered by consumers' fears of cancer and a growing body of scientific evidence on fiber's potential cancer prevention effect. In effect, the scientific studies raised consumers' interest in and demand for high-fiber products. To profit from the demand shift, manufacturers of high-fiber cereal had only to inform consumers of their product's high-fiber characteristic. Research suggested that when it was in the interest of ready-to-eat cereal manufacturers to make health claims about their products, they made such claims even though there were no regulations permitting them.

The unfolding hypothesis also operates to alert consumers to negative aspects of products. For example, the cigarette brand that advertises less tar is alerting consumers to a negative aspect of all cigarettes. Under the theory, disclosure of tar levels will be widespread among low-tar cigarettes and nondisclosure among high-tar cigarettes. The unfolding theory implies that the presence of advertising is a signal of quality and that lack of advertising on a specific dimension of quality alerts consumers to its probable absence.

Consideration must be given to reasons why the voluntary approach to country of origin labeling of muscle meat cuts has not been universally applied in the marketplace. There are at least four ways in which we can interpret the absence of labeling statements on particular products for specific characteristics, e.g., country of origin. First, American consumers may think the muscle cuts they buy are of domestic origin (and, statistically, they are nearly right). For many retailers, that means there is probably little to no perceived benefit to be gained by distinguishing United States meat cuts from other meat cuts. The second way is that the characteristic in question, i.e., country of origin, could be irrelevant to consumers. That is, domestic beef and lamb producers may not be able to acquire a competitive advantage over importers by alerting consumers to country of origin. If consumers do not care where their beef and lamb came from, there would be no incentive to label. Sellers that did bear such information on the label would incur labeling costs but receive no benefit. Third, the lack of domestic labels could mean that consumers do differentiate domestic from imported beef and lamb, but view the imported product as superior. Thus, there may be no advantage in labeling meat cuts as "domestic" product. Fourth, transaction costs for packers and processors to shift from the current system to country of origin labeling may not be offset by increased prices.

Lamb from New Zealand imported into the United States, which is further processed in the United States, is voluntarily labeled as being from New Zealand. The labels draw attention to the New Zealand origin of the product. The question these labels raise is whether consumers share the New Zealand sellers' belief that their product is superior. If consumers rely on the New Zealand label to select higher-quality products, then mandatory labeling will either have no effect on domestic demand or will reduce it. That is, following the unfolding hypothesis, consumers could view the unlabeled domestic product as inferior. Labeling the domestic product would then confirm that the domestic product is not from New Zealand, either confirming what they already believed or making sure that they could distinguish the superior import from the domestic product.

Can quality differences persist without sellers bringing the difference to consumers' attention? Consider that domestic products may taste better than imports and consumers' visual inspection of products in the grocery meat counter cannot reveal those taste differences. In that case, if grocers mixed domestic and imported products without informing consumers, sometimes consumers would purchase the more desirable domestic product and other times would purchase the inferior import.

This situation is unlikely to persist. In this case, grocers would have an incentive to inform consumers who would pay a premium for the domestic product. If one grocery store provided labels or announced it sold only domestic products, all others would have to label. That is, consumers who want the domestic characteristics would abandon stores that did not provide meat products with labels that disclose the country of origin.

FYI - NE. Beef is marketed as such [illegible]

Labeling is not new to the meat industry. Poultry products have been sold for years under company labels that are intended to infer some meaning to consumers. Some beef is also sold under brand labels, e.g., Coleman Natural Products, Inc. and Certified Angus Beef. The Nebraska Cattlemen's Association has also tried to develop a label for Nebraska beef (O'Hanlon, 1998).

Additionally, FSIS labeling policy allows fresh muscle cuts of beef and lamb (and other meat & poultry products) to be identified as "U.S. beef" or "U.S. lamb" so long as the statement is truthful. The Agency operates a labeling program that requires such terms in labeling to be evaluated for truthfulness prior to their use. USDA's Agricultural Marketing Service (AMS) offers a voluntary program to officially certify that livestock, meat, and meat products originate from the United States and are eligible to be labeled as "U.S. beef." The voluntary program certifies that livestock and meat products have been produced from livestock born, raised, slaughtered, and processed in the United States. To certify United States origin, AMS audits production and processing records. The program is designed to benefit everyone involved in the livestock and meat marketing chain, from producers to consumers. At the time of this report, there are no participants in the AMS voluntary program.

Potential Benefits Summary

Although some circumstantial evidence suggests the possibility that consumers in the United States distinguish domestic beef and lamb from imported beef and lamb, no direct or empirical evidence suggests that a price premium engendered by country of origin labeling will occur and, if it does, will likely be large or persist over the long term. Indeed, if consumers do distinguish goods depending on their country of origin, strong incentives exist for industries to act without government intervention, i.e., on a voluntary basis. There is no evidence that the market for providing such information has failed. There is, therefore, no economic efficiency argument for mandatory country of origin labeling for products to the point of retail sale.

VI. Impact of Mandatory Country of Origin Labeling Requirements On Imports/ Exports

Legal Implications

rewrite - see attached

Turning to the legal implications of mandatory country of origin labeling for beef cuts to the point of retail sale, Article IX of the GATT 1994 allows imported products to be labeled with their specific country of origin so long as the marking requirement does not seriously damage the imported products, materially reduce their value, or unreasonably increase their costs. However, if mandatory labeling requires a label with the word "imported" rather than a specific country, it could potentially be challenged as not qualifying as a "mark of origin," thereby violating the requirements of national treatment and constituting a prohibited restriction. It is also possible that if the legislation affected

imports more severely than expected, affected countries might try to bring a WTO non-violation nullification or impairment challenge against the new labeling requirement. has already threatened to do so. Canada

ERS, PAS? ANSUS?

Implications for International Trade

According to USDA 1998 data, 2.754 billion pounds (carcass weight) of beef/veal and lamb/mutton, and their products, were imported into the United States. The United States exported about 2.177 billion pounds (carcass weight) of beef/veal and lamb/mutton products to over 60 countries in 1998. It is conceivable that a requirement for mandatory country of origin labeling could have a potentially damaging effect by further suppressing United States exports of beef should countries that import United States beef reciprocate and begin requiring mandatory country of origin meat labeling. By setting such a precedent, the United States would be in an awkward position to try to challenge labeling requirements in other countries. For example, such legislation could undermine our efforts to challenge certain labeling initiatives being imposed in the European Union (EU) on beef sold at the retail level beginning in the year 2000, such as the Council Regulation (EC) No. 82/97.[1] It could also create significant tension between the United States and Canada, and between the United States and Mexico, that could affect market access for United States agricultural products.

except U.S. has offered to label its beef shipped to EU

its beef exports

any basis for this supposition?

Labeling regimes imposed by other countries in response to new United States requirements may define country of origin requirements in such a strict manner that the United States would not be able to validate labeling claims. The proposed EU requirements are a good example. At the present time, the United States is generally unprepared to identify and track these imports individually, or to administer a comprehensive system to label its beef according to the animal's place of birth, as well as locations for fattening and slaughter, given the large volume of cattle imported from Canada and Mexico (1.3 million and 720,000, respectively, in 1998). While the United States would be able to challenge any such labeling requirements if they are inconsistent with the ~~Uruguay~~, it is possible that our exports could suffer if our major cattle trading partners were to adopt requirements such as those of the EU.

WTO

require

as a marketing tool

The United States permits voluntary labeling that shows country of origin but does not ~~support~~ mandatory country of origin labeling. There are many occasions when United States beef is promoted heavily in foreign markets and carries a premium price. In such instances, it is to the United States' advantage to apply labels that show country of origin. In other instances, ~~given the growing negative foreign perceptions that there are risks associated with United States meat products, e.g., the use of hormone implants and genetically modified organisms,~~ country of origin labeling requirements imposed by foreign countries ~~would~~ may make United States meat products susceptible to unfounded consumer fears fueled by foreign advertising programs.

[1] This rule is also called the Bovine Identification and Beef Labeling Regulation and will require labeling of all fresh, frozen, and minced beef according to the country or countries in which the animal was born, raised, and slaughtered.

While United States representatives have worked informally and cooperatively to oppose certain foreign country of origin labeling requirements, the United States has not formally challenged any such requirements within the WTO. WTO officials said they were unaware of any formal challenges to any country's country of origin labeling requirement. However, USDA and WTO officials agreed that the absence of any formal challenge does not necessarily indicate that existing country of origin labeling requirements are consistent with WTO rules. Moreover, the absence of formal challenges to existing laws does not preclude these laws from being challenged in the future.

Foreign Countries Requiring Country of Origin Labeling

In response to a request from the Congressional Research Service, the FAS, USDA, conducted a country of origin labeling survey of key United States trading partners during January 1998.[2] The report entitled "1998 Foreign Country of Origin Labeling Survey" contains information covering 46 countries, including ten members of the EU, that was provided by FAS personnel stationed in United States embassies abroad.

The table on page 26 shows the status of country of origin labeling requirements of United States trading partners for meat carcasses and cuts. Foreign country of origin labeling requirements vary but most are similar to those of the United States and call for point of declaration on the product or label at customs entry only, e.g., Australia. Some require point of declaration at both customs entry and retail, e.g., Brazil. With regard to Canada, Canadian Meat Inspection Regulations require country of origin labeling on shipping containers of domestic and imported meat and meat products. Individually wrapped fresh meats at retail do not require a country of origin label, whereas processed, packaged meat products do. Meat product origin is determined on a fifty-one (51) percent rule (i.e., origin defined at 51 percent or more of the value of the product including packaging and labor). All food exports to Canada are required to carry country of origin labeling declaration at customs entry.

In some cases, countries may not be enforcing country of origin labeling laws, even though there is a legal requirement for country of origin labeling. In other cases, country of origin labeling may be satisfied by normal import documents or other means that do not impose an additional burden on United States exporters. In still other cases, the existence or nonexistence of a country of origin labeling requirement may be immaterial if imports are impeded or barred by other requirements, such as prohibitively high tariffs, import bans, or permit and inspection requirements that are difficult or impossible to meet. Finally, it is important to note that some countries are in the process of rewriting food laws, and requirements may change from those reported in the 1998 FAS report.

[2] *1998 Foreign Country of Origin Labeling Survey*, USDA, FAS, International Trade Policy, Food Safety and Technical Services Division, February 4, 1998.

FOREIGN COUNTRY OF ORIGIN LABELING
SURVEY (FAS, 1998)

MEAT CARCASSES AND CUTS
FRESH (BULK PACKED)

REQUIRE COUNTRY OF ORIGIN

ARGENTINA
BOSNIA
CANADA
CHILE
CZECH REPUBLIC
DOMINICAN REPUBLIC
EGYPT
EL SALVADOR
ESTONIA
GUATEMALA
HONDURAS
HUNGARY
INDONESIA
ISRAEL
KOREA
LATVIA
MALAYSIA
RUSSIA
SWITZERLAND
THAILAND
UNITED ARAB EMIRATES
VENEZUELA

DOES NOT REQUIRE COUNTRY OF ORIGIN

AUSTRALIA
BRAZIL
COLUMBIA
COSTA RICA
HONG KONG
INDIA (import restricted)[3]
JAPAN
MEXICO
NEW ZEALAND
NORWAY
PHILIPPINES
SOUTH AFRICA
TAIWAN
TURKEY (import restricted)[4]

VARIES

AUSTRIA
BELGIUM
FINLAND
FRANCE
GERMANY
ITALY
PORTUGAL
SPAIN
SWEDEN
UNITED KINGDOM

[3] Under the current trade policy, imports of fresh meat carcass, cuts, and processed meat entries are subject to a licensing requirement which effectively serves as a ban on imports. However, current legal provisions relating to labeling do not require country-of-origin labeling on imported fruits and vegetables or meat/meat products.

[4] Turkey currently bans the import of beef and poultry meats, allegedly because of sanitary concerns. Even if the import ban is lifted, Turkey as a matter of policy will only allow the import of carcass beef and poultry and processed beef and poultry products in which the meat is a secondary product. That is, Turkey will not allow imports of beef and poultry cuts even after the ban is lifted. When the ban is removed, country-of-origin labeling will be required at retail and at retail.

VII. Affected Parties Views on the Impact of Mandatory Country of Origin Labeling Requirements

The charge given in the Conference Report accompanying the 1999 Act included providing the effects of new mandatory country of origin labeling requirements on the segments of the food distribution chain. Sections IV, V, and VI report the USDA assessment of the impacts on the stakeholders in the fresh muscle meat cuts market. This section reports the view of the parties that may be affected by mandatory country of origin labeling requirements. These views are reported as additional background without critical comment or assessment by USDA.

Staff of the USDA/FSIS reviewed the world wide web for public statements available on the various websites of organizations associated with aspects of the production, processing, distribution, marketing, retail sale of beef and lamb products, as well as consumer interest groups. When necessary, clarifications of their positions on the issue were requested from the various organizations. Additionally, we received voluntary submissions of views and positions on the issue of new country of origin labeling requirements from individuals and members of organizations representing segments of the food distribution chain. The following text summarizes the views we received.

Livestock Producers

National Cattlemen's Beef Association (NCBA)

Has NCBA shared study with USDA if not, this discussion is not substantiated and should not be used.

NCBA has announced publicly some of the findings of a national consumer poll conducted in November 1998 by Wirthlin Worldwide which showed that consumers overwhelmingly support the concept of putting country of origin labels on fresh meat in the supermarket.

According to NCBA, a follow-up poll in March 1999 found statistically identical results for consumer support of putting country of origin labels on fresh meat in the supermarket. According to NCBA, in the March 1999 poll, 86 percent of consumers agreed with a statement that the United States should require labels on meat that show country of origin. According to NCBA, 24 percent agreed with the statement that country of origin labels were unnecessary.

Faced with a choice between beef with labels stating "Product of the United States" and "Imported Product," NCBA has said that the poll results show that 91 percent of consumers said they would choose the "Product of the United States," 1 percent would choose the "Imported Product," and 6 percent said it did not matter. Of those who would choose United States beef, 69 percent said they would do so because they prefer "to buy American," "loyalty to the United States," "to support United States businesses," and "to support our farmers." Another 13 percent thought United States beef would be safer and 9 percent felt it would be of higher quality.

The NCBA also tracks the economics of the cattle market. In part, the economics of the domestic cattle farming and ranching situation has created a climate where country of origin labeling is viewed as part of the solution for correcting low prices for cattle ranchers and for creating stronger markets for United States cattle. The NCBA is part of a larger coalition of stakeholders who view country of origin labeling as an important tool for building a stronger market for American farmers and ranchers.

American Sheep Industry Association (ASIA)

According to discussions with representatives of the ASIA, ASIA has joined with other producer organizations (i.e., the NCBA) who believe that country of origin labeling will benefit the lamb producers' bottom line. They have historically held this position. According to an ASIA official, 30 percent of all lamb consumption is from imported meat. They are concerned that much of the lamb sold in this country is not labeled at the consumer level. Organization officials also indicated that 98 percent of the imported lamb is fresh lamb from Australia and New Zealand, and that there is virtually no processed lamb market in the United States.

The basis of favoring country of origin labeling, according to ASIA officials, is that they believe that it is a "consumer right to know" issue; that consumers care about the origin, whether imported or domestic, of their lamb. ASIA has not supported their views on country of origin labeling as a safety issue because USDA/FSIS has equivalency requirements in place for foreign meat and poultry food regulatory systems. While ASIA supports explicit identification of the country of origin on labeling, e.g., "Lamb from Australia," or "American Lamb," an alternative that would distinguish imported from domestic lamb may have merit for further discussions according to that organization. The goal is to allow consumers to distinguish "imported lamb" from "domestic lamb," and to be able to make an informed choice at the market.

Livestock Producer-Related Associations

National Farmers Union (NFU)

NFU believes all imported meats, fruits, vegetables, foods, feeds, and fibers should be labeled to disclose country of origin, processor, actual contents, and additives. The NFU makes the following views in a public policy statement available on the Internet, through the NFU website. The following are the views regarding country of origin labeling presented on the NFU website.

What surveys

- Consumers have a right to know where their food is produced.
- Surveys show consumers care about country of origin.
- United States taxpayers have made a huge investment in food safety.
- United States growers and producers are subject to numerous laws, which regulate pesticides, pesticide application methods, worker wages, worker conditions, environmental practices, inspection, and numerous other practices. Co-mingling food produced under these rigorous standards with food from every other source makes a

mockery of domestic laws.

- Labeling is affordable. Stores spend an average of $10 per month to comply.
- Labeling is good trade policy. Many United States trading partners already require United States - produced meat and produce to be labeled.
- A very small percentage of imported foods are inspected.
- Labeling helps food safety and health officials trace the origin of food if needed.

American Farm Bureau (AFB)

The AFB supports labeling imported agricultural goods, including fresh fruits, vegetables, meats and processed products, with clear and readable designations of country of origin, which are available to the consumer at the retail level. They believe that the label should be on the main display panel of all packages. AFB officials emphasize the need to make sure that adequate steps are taken to require compliance.

Importers

Meat Importers Council of America (MICA)

MICA opposes requiring additional (new) country of origin labeling than is already required by the Department of Commerce. MICA has opposed expanding country of origin labeling of meat products for over thirty years and they are opposed to efforts to enact legislation that would require country of origin labeling of fresh meat cuts for beef and lamb. The organization has been successful in challenging state laws requiring country of origin labeling primarily on the basis of the fact that such laws create trade barriers, impose onerous burdens on processors and retailers, and restrict commerce with insufficient justification. MICA's view is that no matter what rationale has been presented in support of country of origin labeling, including health or safety reasons, such laws have always been viewed as protectionism.

Exporters

United States Meat Export Federation (USMEF)

USMEF has no stated official position on country of origin labeling. To the extent that new country of origin labeling requirements might have an adverse effect on an expanding export market, they are monitoring the issue. According to USMEF, United States meat products are valued in international commerce. USMEF emphasized that promoting United States meat exports and encouraging expanding foreign markets is where a bright future lies for United States meat products and U.S variety meats. For example, USMEF reported that a new program designed by the USMEF to foster continuous identification and promotions of United States beef in retail chains is helping propel United States beef exports to record heights in Mexico.

Packers/Processors

National Meat Association (NMA)

The NMA strongly opposes country of origin labeling. NMA stated its position in an April 5, 1999, issue of "Lean Trimmings," its trade newsletter. They said that "producers who want to communicate the source of their livestock, which reaches the consumer in the form of meat cuts, already have the opportunity to do so by developing a marketing alliance with the packer/processor and honestly labeling product with proud claims about the source. Some producers are already doing this with NMA."

NMA opposes mandatory country of origin labeling because it believes that:

- Mandatory country of origin labeling would impose additional costs on the meat processing industry and the government. Segregating and separately labeling imported products would add significantly to processing costs. Violations of the new labeling provisions would be subject to criminal penalties. In order to insulate themselves from liability, processors and retailers are likely to require assurances of domestic origin, and this could impose new costs on producers. Ultimately, the costs would be passed on to consumers.

- Mandatory country of origin labeling would not improve food safety. Meat products can be imported into the United States only if the FSIS has certified that the exporting nation has an inspection system that is equivalent to our system. Country of origin labeling would do nothing to increase food safety, and it is likely to give consumers a false sense of security.

- Mandatory country of origin labeling would violate United States international trade obligations. International trade agreements prohibit the use of country of origin labeling requirements as a means to protect domestic production. United States meat exports are increasing rapidly, and ultimately, this provision could backfire by encouraging retaliatory measures by other nations.

American Meat Institute (AMI)

The AMI has gone on the public record by estimating that mandatory country of origin labeling of beef and lamb would cost more than $1 billion per year, with no benefits to either consumers or industry. According to an April 1999 AMI position statement regarding mandatory country of origin labeling, they provide what they say are the most detailed estimates ever developed for country of origin labeling. (Details were not provided to USDA and are not included in this document.) Specifically, AMI stated that they have determined that, in order for country of origin labeling to the point of retail to work, an entirely new mandatory animal identification system would need to be designed. Such a system would likely use ear tags to separate domestic from imported livestock, and would cost livestock producers at least $268 million to implement.

Livestock and meat segregation at slaughter would require new record-keeping procedures, separate accommodation in chilling, fabrication and storage, and a host of new labels at the total cost of $324 million per year to packers. Product segregation at retail markets would also be required and would include separate storage, cutting and grinding requirements, as well as new labeling and signage, at a cost of nearly $73 million per year to retailers.

Potential lost meat trade with Canada as a result of retaliation is estimated at $350 million per year in costs to packers and producers. Oversight of new country of origin labeling requirements would cost the USDA $60 million a year, according to AMI estimates.

The position statement by AMI indicates that cattle and sheep producers have advocated country of origin labels in the wake of low livestock prices due to oversupply and financially troubled overseas markets. These advocates have said that product labeled "United States beef" would be more appealing to consumers and prompt increased purchases and greater profitability for the industry.

AMI further indicated that if ground beef (although not technically a fresh beef "cut") were to be included in new mandatory country of origin labeling, such labeling could be very disruptive because ground beef is often a blend of meat cuts and trimmings from more than one country of origin.

Country of origin labeling requirements, according to AMI statements, would invite retaliation from trading partners, who are likely to perceive such an effort as a trade barrier. According to AMI, Canada has laid the groundwork for a trade complaint, should the United States require country of origin labeling.

AMI has gone on record as stating that, while the proponents of new country of origin labeling are well-intentioned in trying to help livestock producers who find themselves at the low-end of the livestock price cycle, country of origin labeling will not address the real issues at hand, i.e., over-production, weak exports, and flat demand by consumers. AMI is encouraging strategic marketing solutions as an alternative.

National Food Processors Association (NFPA)

NFPA opposes new country of origin labeling requirements on many United States food products containing beef or lamb. NFPA presents three basic areas for opposition: (1) no food safety benefits, (2) increased costs to consumers, and (3) the likelihood of provoking new trade barriers.

Although the scope of this Report is to consider the impact of new country of origin labeling for fresh beef and fresh lamb muscle cuts, the NFPA is concerned about the further implications country of origin labeling, if fully implemented, might have for processed beef and lamb products. Specifically, NFPA has stated that the labeling requirements would fail to convey any unique health or safety benefit and would only

serve to confuse consumers about the quality or safety of meat products. Existing law already subjects imported meat and food products to inspections at United States ports of entry. Further, food products containing meat further processed in the United States, both domestic and foreign meats, are subjected to the same processing requirements and techniques, which ensure the product's safety.

Country of origin labeling would require the declaration of product origin without any consideration of the costs associated with segregating products containing domestic or foreign meat. Processors would be required to maintain an inventory of labels reflecting all possible combinations of countries from which meat may have originated. This would place an economic burden on processors in the United States that would be eventually passed on to the consumer. The consumer would bear the cost of the labeling requirement without deriving any real benefit.

According to NFPA, new country of origin labeling requirements make little sense in terms of United States trade policy interests. Our foreign trading partners should be expected to view United States new requirements for country of origin labeling of meat products as non-tariff trade barriers which demand reciprocal labeling requisites on food imported from the United States. Other countries may require that food products containing a small portion of meat of United States origin label the finished product as "Product of USA," at the very time the United States is attempting to overturn other countries' protectionist policies.

American Frozen Food Institute (AFFI)

Public policy statements available from AFFI indicate that they oppose new country of origin labeling requirements because they would place a new, and potentially conflicting, labeling requirement on frozen products produced domestically that include an imported meat ingredient or a meat ingredient derived from imported livestock. In addition to meeting the long-standing country of origin marking requirements of the Tariff Act of 1930, new country of origin labeling would require some AFFI members to meet new marking requirements of the Federal Meat Inspection Act, thereby placing the frozen food industry under two different regulatory schemes for country of origin marking.

AFFI has stated that, although touted as a "consumer right to know" issue, such labeling would not provide useful consumer information. Consumers could be confused by a labeling requirement that would require a frozen lasagna with an imported meat component, for example, to be labeled, "Product of the United States Imported meat ingredient."

Expanding markets abroad increase their ability to receive, store and transport frozen foods, thus becoming emerging markets for United States frozen food exports. These markets, coupled with existing export markets, represent the largest growth opportunity for the domestic industry. The United States should not adopt policies that could be detrimental to the growth of these import markets, such as new country of origin labeling.

S labeling would encourage other countries to impose similar, anti-competitive requirements on United States exports.

Although AFFI's statements expressed in this Report primarily represent views related to the further processed frozen food industry, AFFI has also expressed opposition to new mandatory country of origin labeling related to fresh muscle cuts of beef and lamb, as well.

Distributors/Grocers

Grocery Manufacturers of America (GMA)

Regarding international trade, GMA has stated that it will promote harmonization so that regulatory policies do not become non-tariff barriers to trade. Consistent with its view of international markets, according to a March 1999 position statement made public by GMA, any proposed legislation which calls for new country of origin labeling for meat will have the enormous potential to injure an entire industry, including the producer segment. Enacting this kind of new country of origin labeling could mean retaliation from other countries, who will very likely adopt similar measures to impede United States meats. Such action by the United States could provide a road map for other countries seeking mechanisms to limit growth in imports of United States meat products. Given that the value of our meat exports is much larger than the value of our imports and growing, new requirements would risk much for little apparent gain.

Proponents of new country of origin labeling restrictions, according to GMA's statement, contend that such information is necessary to satisfy "consumers' right to know." However, GMA believes that very little information has been presented which would indicate that stricter marking requirements would be of any value to consumers. They assert that labeling initiatives are being driven not by consumer interests but by protectionist producer interests, and should be dismissed as unjustifiable non-tariff trade barriers.

The position statement goes on to say that "United States food producers have benefited substantially from bipartisan efforts to eliminate barriers to United States food exports. It is critical to the United States agriculture and food industry that we continue to focus on opening new markets, not on closing our own." GMA further stated that country of origin labeling would increase costs to food manufacturers, retailers, and consumers while doing nothing to further ensure the safety of domestic food supply.

Food Marketing Institute (FMI)

According to FMI, the grocery retailer is the purchasing agent for the consumer. The grocer and the grocery wholesaler are the means by which the farmer and other suppliers make their products available to the public.

FMI is opposed to new mandatory country of origin labeling. According to FMI, this kind of mandatory labeling would impose additional burdens on United States firms with no meaningful consumer benefit. The cost of segregating, storing and labeling United States and imported meat products will impose over $1 billion in additional, unnecessary costs throughout the United States meat and retail industries. Producers who are seeking a marketing niche by promotion can already voluntarily label the origin of their products (i.e., the beef from Nebraska program).

Increased requirements for labeling country of origin would also bring increased costs for government enforcement, according to FMI. In a period of declining budgets and rationalization of government programs, FMI believes that it is difficult to justify increased enforcement costs that yield no benefit.

FMI supports its views, in part, through consumer surveys conducted each year. FMI conducts a consumer survey in January and February of each year that is designed to identify the changing needs and priorities of the American consumer. The report of the survey is entitled "Trends in the United States: Consumer Attitudes and the Supermarket." This survey tracks core issues from previous years, while exploring new areas that currently affect shoppers and are likely to do so in the future. These surveys, according to officials at FMI, do not indicate country of origin as an issue, and it was not one of the top issues on the minds of American consumers in recent years. Survey results consistently indicate that the top three criteria driving consumer purchases are freshness, quality/appearance, and price.

FMI believes that stating the country of origin of a food product on retail labeling will not enhance food safety. There is simply no evidence that existing requirements fail to protect food safety concerns in a manner which new country of origin labeling would fix.

FMI further stated that new country of origin labeling requirements make little sense in terms of United States trade policy. FMI indicated that the United States has been a leader in seeking elimination of trade barriers, especially those that discriminate against United States goods and services. FMI believes that new required country of origin labeling would set a precedent with broad ramifications. Currently, the European Union is considering new country of origin labeling regulations and attempting to justify this trade barrier on the basis of "consumers' right to know." If the United States were to establish mandatory country of labeling, these measures would undermine our nation's credibility in trade disputes, such as labeling for growth hormones, pesticides, and genetic modifications.

Consumers Advocacy Organizations

Public Voice for Food & Health Policy (Public Voice)

Public Voice's Internet website contained policy statements on a variety of issues of concern to some consumers, but revealed no official stated public policy position regarding new mandatory country of origin labeling requirements. However, when

contacted, a spokesperson for Public Voice stated that the organization supports full, clear, and informative labeling on food. In general, their view is the more information on the label, the better. Therefore, Public Voice has said that it does not oppose requiring country of origin labeling.

However, according to statements made by officials at Public Voice, country of origin labeling should not be viewed as a solution to possible problems with the safety of imported foods. Much more important for food safety purposes are "equivalency authority" for FDA and "traceback" authority. Equivalency authority would allow FDA to require countries to have food safety systems equal to our own before they can export food to the United States. Under the traceback concept, labeling on all foods - domestic and imported - would provide identification of the processor or farm of origin, if the food is implicated in an outbreak of food borne illness. Public Voice has said that it would be much more helpful for Congress to require traceback labeling than country of origin labeling.

Center for Science in the Public Interest (CSPI)

CSPI's Internet website revealed no official policy statement or position statement regarding new mandatory country of origin labeling requirements for food products. However, a spokesperson for CSPI stated that the organization is supporting specific legislative activities related to country of origin labeling for imported fresh produce. CSPI officials indicated that, because of similarities between imported fresh produce and imported fresh meat products, it would seem to be logical that CSPI would support country of origin labeling for those products as well, although it does not have an official stated position at this time.

National Consumers League (NCL)

An official public policy statement was not available on the Internet website made available by NCL. However, a spokesperson for NCL stated that, although there is not a public policy statement or position paper posted on its website, NCL supports country of origin labeling, especially as it relates to imported fresh fruits and vegetables. The concerns of the organization relate specifically to growing practices in less developed countries, e.g., pesticide use and water quality of irrigation water, that might not be equal to standards set for the United States. To the extent that labor practices and farm/migrant worker conditions are being considered in the growing practices of food commodities, the country of origin would be an important piece of information for consumers to have. Consumers might want to know the origin of food commodities as information that might be important in making purchasing decisions regarding products from certain countries.

The NCL spokesperson stated that NCL was aware of FSIS equivalency standards and that NCL does not believe that fresh beef and lamb muscle cuts pose the same kind of food safety issues as presented by fresh produce. Although such labeling would not necessarily make meat products safer, it would inform consumers about where the

product came from and might be useful as a tool as part of traceback in the event of food borne illness.

Other Views

Although the USDA/FSIS did not actively solicit comments from individuals during the course of preparing this Report, several individuals contacted USDA/FSIS to express concerns regarding new mandatory country of origin labeling. Three individuals provided written views. These individuals were (1) a veal processor/packer, (2) a "United States lamb" processor/packer and (3) a regional meat processor and sausage manufacturer. Because their comments provide some insight into various issues of concern to meat processors/packers that relate to the subject addressed in this report, albeit anecdotal in nature, summaries of each is included.

Veal Processor/Packer

Comments from the veal processor/packer stated that he feels the costs of implementing and monitoring the program are unjustified. Administration would be difficult because baby calves bought in the United States are shipped to Canada for feeding. Canadian baby calves are also shipped into the United States for feeding. Finished calves may be slaughtered in Canada or shipped to the United States for processing. It would be difficult to determine exactly what is and what is not "domestic product."

The comments noted that segregation systems would be required and would be expensive. Some ground products are blended making formulating and labeling difficult. There would be additional costs for new boxes, new labels, and other packaging materials that would increase prices for the consumer. Finally, mandatory country of origin labeling, in this packer's view, would be contrary to fair international trading, the "Free Trade Act" and GATT.

United States Lamb Processor/Packer

The lamb processor/packer, who processes exclusively "United States lamb," stated that he thought that the costs involved for new mandatory country of origin labeling would be a "wash." His competition is from imported products, especially products from Australia and New Zealand. He believes the problem would be a compliance problem because no one would be monitoring grocery stores where most of the country of origin labeling would need to be applied. Because, currently, further processed lamb does not have to carry country of origin labeling when it is cut in the store, consumers cannot tell which is and which is not imported. Only the consumer-labeled retail packages coming from other countries have to be labeled with country of origin. The processor/packer said that "he would support country of origin labeling if the consumer were to get accurate information about the country of origin and if USDA/FSIS were to provide strong compliance and enforcement to assure that the labeling was not a 'sham'." Otherwise, it would only be a work burden, paperwork burden, and the consumer would be misinformed.

Meat Processor/Sausage Manufacturer

A regional meat processor and sausage manufacturer expressed opposition to new country of origin meat labeling requirements. He stated that start-up compliance with nutrition labeling requirements cost his small company in excess of $50,000. He anticipated that compliance with new country of origin labeling requirements would cost his company much more.

He stated that the meat industry is focusing on food safety issues as a priority and the cost of country of origin labeling would fall on the shoulders of industry to bear. He stated that there is very little evidence that new rules will accomplish anything positive and the strong possibility that country of origin labeling will prompt retaliatory rules by potential trading partners.

He stated that there is no experience or research here or in any other country that has demonstrated any benefits for agricultural production as a result of country of origin labeling. He stated that animal production in the United States needs new world markets to purchase our country's agricultural production. Additional burdensome regulations will only raise costs with no effect on prices of farm commodities. The meat packing industry can much better serve our supplier-farmer and our customers by focusing on food safety and the development of world markets.

VIII. Statement of the Findings and Conclusions

Country of origin labeling for imported meat and meat food products, as they move through the food distribution chain, has been an area of interest for Federal legislative bodies, domestic livestock producers, and food manufacturers, distributors, and retailers for many years.

There are no data or information that support enhanced food safety or wholesomeness as a basis for mandatory country of origin labeling with regard to fresh muscle cuts of beef and lamb. In fact, systems and procedures exist in USDA's meat inspection program to assure that imported fresh meat cuts are as safe and wholesome as domestic product.

Those favoring the concept, primarily some domestic producers, have emphasized that consumers have a "right to know" if the meat and meat food products they may purchase contain imported meat and that such labeling would help consumers make informed choices when buying food.

Some limited survey data support this view. There are no data from United States studies, however, on whether consumers are willing to pay higher prices in support of country of origin labeling. To the contrary, if consumers do distinguish goods depending on their country of origin, strong incentive exists for industries to act without government intervention, i.e., on a voluntary basis. There is no evidence that the market for providing such information has failed.

The major private costs associated with country of origin labeling requirements are related to costs of segregating and preserving imported product identity, the cost of labels, shifted costs, and market disruption costs. The major public costs would involve federal, or federally subsidized state-enforced verification and enforcement costs. For the most part, these costs have not been quantified in the Report. There are many variables, and costs could vary considerably.

Benefits center around consumers' reactions to country of origin labeling and assume consumer preferences for domestic product, and consequent potential price increases for domestic producers, if product origin is identified. There is no direct or empirical evidence that suggests that a premium price engendered by country of origin labeling will occur or, that if it does, that it will be large or persist over the long term. There may be some benefit to domestic producers and consumers that are difficult to quantify.

In considering the international trade implications of adopting mandatory country of origin labeling for beef and lamb cuts sold at the domestic retail level, it is important not to lose sight of the potential trade impact and legal ramifications in terms of the United States' international obligations. Adopting such legislation could weaken the ability to effectively challenge similar regulations passed and enforced by countries that import United States beef. Country of origin labeling requirements imposed by foreign countries could also make United States meat products susceptible to unfounded foreign advertising programs.

→ To assure national treatment under the WTO, domestic product would also probably need to be labeled

Summary and Recommendations

In summary, country of origin labeling is certain to impose at least some costs on industry which will either be passed back to producers in the form of lower prices or forward to consumers via higher prices. There would also be compliance and enforcement costs to the government. The extent of these costs would vary depending on the nature of the regulatory scheme and the amount of enforcement and compliance action.

There would be some benefit to domestic producers if consumers responded to country of origin labeling by purchasing domestic products in lieu of imported products. The extent of these benefits would vary, depending on the labeling scheme adopted. The potential benefits would be smaller if only the products of imported carcasses were labeled, for example, than if the products of animals imported for slaughter were also required to be labeled. However, a more extensive labeling requirement could also increase the costs to industry.

- ***Note to Reviewers: The following options are exclusive, i.e., policy makers will need to select one of the options for inclusion on the report to Congress.***

Option 1: imports only make up 1/10th of 1 percent +

Because country of origin labeling is certain to impose costs and uncertain to produce benefits, it could make the United States livestock industry less competitive, and the Congress should therefore not adopt the country of origin labeling requirements discussed in this report. The Congress should encourage industry and producers to adopt voluntary labeling of products with their country of origin where the use of such a label will further expand the market for domestic products and to take other steps to improve the competitiveness of United States agriculture in domestic and world markets.

Option 2:

Given that country of origin labeling is certain to impose costs and uncertain to produce benefits, some might argue that Congress should not adopt such labeling requirements. While costs and benefits are certainly important considerations, there are also other legitimate policy reasons why Congress might choose to enact country of origin labeling requirements. Domestic producers, for example, are increasingly concerned that the market is not operating fairly and many doubt the benefits of increased international trade. Country of origin labeling could help restore producers' confidence in the market and promote support for international trade. Similarly, ~~many consumers have an~~ increasing desire for additional information about the products they purchase, and country of origin labeling would enable those consumers ~~who prefer to support domestic industry an opportunity to do so~~ to choose the source of the product they purchase.

how weak data to support?

anecdotal information indicates that consumers may have

If Congress decides to enact country of origin labeling, the Administration urges that it do so in a manner that is consistent with the United States international trade obligations and that minimizes costs to industry. The Administration would work closely with Congress to achieve these goals.

add in compliance + enforcement sentence from option 3

Option 3:

Given that country of origin labeling is certain to impose costs and uncertain to produce benefits, some might argue that Congress should not adopt such labeling requirements. However, the potential benefits of country of origin labeling are not easily quantified, which make a simple cost-benefit analysis somewhat misleading. For example, domestic producers are increasingly concerned that the market is not operating fairly and many doubt the benefits of increased international trade. Country of origin labeling could help restore producers' confidence in the market and promote support for international trade. In addition, many consumers have an increasing desire for additional information about the products they purchase, and country of origin labeling would enable those consumers

See option 2

Same change from option 2

who prefer to support domestic industry an opportunity to do so. Moreover, while significant costs and benefits are not the determinative criteria in evaluating whether Federal policy should be changed, but rather can help to inform the development of policies that minimize costs and maximize benefits of a particular policy option.

The Administration recommends that Congress should enact reasonable country of origin requirements that are consistent with international obligations and that minimize the cost on industry. While this report focuses on imported carcasses, the Administration also believes the Congress should carefully consider extending the requirement to include live animals imported directly for slaughter.

The Administration will work closely with the Congress to develop such legislation, including developing a reasonable enforcement and compliance scheme that does not

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

EW

To - Tom
Fr - Ed Z

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.

March 8, 1999

MEMORANDUM FOR TOM FREEDMAN

FROM: DOUG MATTIES
OFFICE OF POLICY DEVELOPMENT OPERATIONS

SUBJECT: Cellular Telephone Bill

Attached is the February telephone bill for the cellular telephone assigned to you. Please review the calls listed and certify these calls were made for official business purposes.

You are responsible for reimbursing the government for the cost of calls made for other than official business. Please review the list, highlight any calls that were not made for official business and return this memorandum to me by **March 15** with a check made payable to the *U.S. Treasury* for the cost of those calls.

* Please note that this bill cannot be paid until your certification of official calls and reimbursement check (if applicable) has been returned to me.

Please call me at x62018 with any questions. Thank you for your attention to this matter.

Attachment

_____ All calls listed are for official government business.

_____ Attached is my check for non-official calls. The remaining calls were for official government business.

_____ _____
Signature Date

Withdrawal/Redaction Marker
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. bill	Bell Atlantic Bill (2 pages)	02/16/1999	b(6)

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FOLDER TITLE:
Food Labeling

2015-0274-S
wr10804

RESTRICTION CODES

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

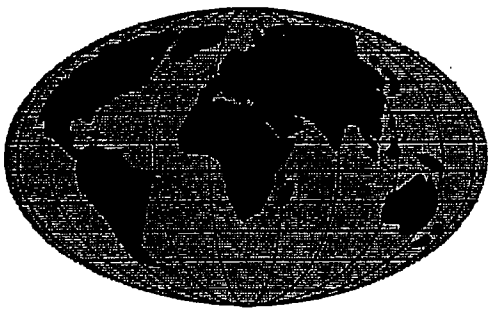
P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

FOOD LABELING FOR THE 21ST CENTURY:



A Global Agenda for Action

A Report by the
Center for Science in the Public Interest

May 1998

Center for Science in the Public Interest

The Center for Science in the Public Interest (CSPI), a non-profit consumer organization with offices in the United States and Canada, was formed in 1971. CSPI's twin missions are to conduct innovative research and advocacy programs in the areas of health and nutrition and to provide consumers with current, useful information about their own health and well-being. CSPI is supported by more than 1,000,000 subscribers to its **Nutrition Action Healthletter**.

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INTRODUCTION AND SUMMARY

Consumers need more complete and accurate information about the food they eat. This is particularly true in developed countries where food has often been processed and packaged before it is sold, making traditional assumptions about food quality and nutrition either difficult or impossible to make.[1] Many nations have long required that food labels disclose the name of the food, as well as the ingredients, the net quantity of contents, and the name and location of the manufacturer. More recently, some countries have instituted or are considering new requirements for the disclosure of additional information pertaining to ingredients, product quality, nutrient content, production methods, and more information about substances that may cause adverse health effects. No single nation, however, requires food labels to disclose complete information in all of these areas. The disclosure of such information would assist consumers in making fully informed purchasing decisions and maximizing marketplace competition.[2] In some cases, such information is also necessary for consumers who wish to improve or protect their health.

This report surveys recent developments in food labeling disclosure requirements around the world.

- Chapter I discusses quantitative ingredient declarations. These declarations go beyond the traditional list of ingredients by disclosing the percentage of key ingredients that foods contain so that consumers can make informed purchasing decisions.

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[1] Julie A. Caswell, *Uses of Food Labeling Regulations*, Organization for Economic Cooperation and Development (OECD) Working Papers, Volume V (1997) No. 100.

[2] *Id.*

- Chapter II discusses nutrition labeling requirements. These requirements disclose the amount of important nutrients in food products. Without information on the nutritional composition of foods, it is extremely difficult for consumers to select foods in accordance with dietary recommendations.

- Chapter III discusses requirements for dating of food products. Dating requirements inform consumers about the freshness of food products and the time beyond which a food begins to lose its nutrients and deteriorate.

- Chapter IV discusses labeling of ingredients or additives that may cause adverse health reactions in sensitive individuals. Food labels need to conspicuously disclose the presence, and in some cases the amount, of certain ingredients and additives, such as caffeine or monosodium glutamate, so that sensitive individuals can avoid or limit their intake of those substances.

- Chapter V discusses a variety of labeling requirements concerning how a food has been produced. Such requirements disclose whether a food was irradiated, contains genetically engineered ingredients, is organic, or was produced in accordance with religious laws. This information may be important to consumers for a variety of reasons.

These topics are not intended to represent a complete list of all possible food labeling reforms. They do represent, however, some of today's leading controversies in the area of food labeling regulation.

Each chapter discusses the need for a particular type of information to be disclosed on food labels. These discussions are followed by a brief survey of current regulatory policies of various developed countries, as well as an explanation of any applicable standards of the Codex Alimentarius Commission (Codex).[3] Each chapter concludes with recommendations for action by national regulatory authorities.

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[3] The Codex Alimentarius Commission, a subsidiary body of the Food and Agriculture Organization (FAO) of the United Nations and the World Health Organization (WHO), develops international food safety and quality standards.

As nations strive to harmonize food labeling requirements on an international basis,[4] efforts should be made to ensure that requirements are harmonized in an "upward" direction and reflect regulatory policies that best provide consumers with the information they need to make informed purchasing decisions. Because some nations already require the disclosure of some of the information discussed in this report, countries should learn from one another and incorporate the best requirements from around the world into their national regulatory programs.

The United States, for example, should adopt plans for requiring quantitative ingredient labeling and freshness dating as required in Europe. The U.S. should also adopt more informative disclosure requirements for the labeling of production processes. In turn, the EU should consider requirements for mandatory nutrition labeling. All nations should proceed with improved disclosure requirements for the labeling of ingredients or additives that may cause adverse health effects.

The Codex Alimentarius Commission could help facilitate such developments by increasing efforts to ensure that international standards are based on the premise of "upward harmonization." International trade agreements encourage nations to support food labeling standards developed by Codex and to adopt such standards as domestic requirements.[5] Thus, Codex has a special role to play and should take the lead in ensuring that nations learn from one another and that food labeling standards are upgraded to world-class levels that embody the best

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[4] For a general discussion of international harmonization, *see* Scott H. Jacobs, *"Cooperation for an Interdependent World: Issues for Government,"* in REGULATORY CO-OPERATION FOR AN INTERDEPENDENT WORLD, 15-46 (1994).

[5] *See, e.g.,* Uruguay Round Agreements Act, Pub. L. No. 103-465 (codified as amended at 19 U.S.C. §§ 3501 *et* seq. (1994)).

consumer protection requirements from around the globe.

The development of such standards would help raise consumer protection standards in all countries and would discourage trade disputes in which one nation argues that another nation's consumer protection requirements are too extensive and constitute an illegal trade barrier.[6] This effort would help further Codex's mission and will, hopefully, drive Codex's agenda for the 21st century.

[6] Product labeling and related health and safety regulations can be challenged as a barrier to trade under the Agreement on Technical Barriers to Trade and/or the Agreement on the Application of Sanitary and Phytosanitary Measures.

CHAPTER I: QUANTITATIVE INGREDIENT DECLARATIONS

A. The Need for Quantitative Ingredient Declarations (QUID)

Most, if not all, developed countries require packaged multi-ingredient foods to be labeled with an ingredient list. Typically, ingredients must be listed in descending order of proportion by weight in the food. However, this requirement does not provide consumers with full information. Some nations have determined that consumers also need information about the percentage of ingredients contained in a particular food. Disclosures requiring such information are referred to as quantitative ingredient declarations (QUID).

QUID informs consumers if a particular ingredient is present in a significant amount. For example, the first ingredient of a product might be listed as water. Simply listing ingredients in order of predominance does not inform consumers whether water comprises closer to 30% of the product or 90% of the product. But QUID informs consumers exactly how much water the product contains, enabling them to make more educated purchasing decisions.

QUID is necessary for consumers to compare the relative amount of ingredients between seemingly similar products. For example, two different brands of spaghetti sauce may both list the first two ingredients as water and tomatoes. Yet one brand may contain 50% water and 40% tomatoes, while the other brand may contain 70% water and 20% tomatoes. Since this difference is not detectable from the ingredient list alone, QUID is necessary to indicate clearly the proportion of ingredients in the products, allowing consumers to select the food with the greater amount of desirable ingredients.

Furthermore, QUID is essential to rectify misleading claims on food labels. Many labels

imply, through words or pictures, that the food contains significant amounts of meat, fruits, vegetables, or whole grains -- yet those ingredients may be present in only trivial amounts, if at all. For example:

- In Canada, a bottle of Libby's Strawberry Real Fruit juice contains more water and sugar than fruit juice. Based on the name, consumers might logically assume that the beverage contains 100% fruit juice, when in fact it contains only 21% fruit puree.

- In the United Kingdom, the main ingredient of a product called "Minced Meats" is chicken. A 1997 survey revealed that 92% of shoppers were misled by the name of this product.[7]

- In the United States, the front label of Kellogg's "Nutri-Grain Cereal Bars" states that the bars are made with "whole-grain oats" even though the bars actually contain more enriched white flour than whole oats. Based on this claim, many consumers might assume that the bars are a good source of whole grains.

QUID reduces the likelihood that consumers will be misled by better indicating the actual amount of ingredients in those foods. Moreover, requiring food companies to disclose the relative quantity of ingredients also enhances competition, which will result in better products. In sum, QUID provides consumers with the information they need to make informed purchasing decisions, decreases the probability that consumers will be duped by exaggerated claims and provides manufacturers with the incentive to increase the quality of food products.

B. Examples of QUID Labeling

1. European Union

The European Union (EU) has taken the lead in this area by issuing a directive requiring

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[7] CO-OP, THE LIE OF THE LABEL 6 (1997).

QUID for many foods.[8] The EU's 1997 directive requires QUID "where the ingredient or category of ingredients concerned appears in the name under which the foodstuff is sold or is usually associated with that name by the consumer."[9] For example, the amount of strawberries in "strawberry yogurt" and the amount of vegetables in "spring rolls" must be disclosed.[10]

QUID is also required "where the ingredient or category of ingredients concerned is emphasized on the labelling in words, pictures or graphics."[11] For example, if a food is described as "made with butter" or features pictures of strawberries on the label, the amount of those highlighted ingredients must be disclosed.[12]

The quantity of an ingredient must also be stated "where the ingredient or category of ingredients concerned is essential to characterize a foodstuff and to distinguish it from products with which it might be confused because of its name or appearance."[13] This provision applies when the composition of products that are marketed under the same name vary from one Member State to another.[14]

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[8] *See* Directive 97/4/EC of the European Parliament and of the Council amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, Article 1 (January 27, 1997).

[9] *Id.* at Article 7(2)(a).

[10] Ministry of Agriculture, Fisheries and Food, *Draft Guidance Notes*, July 1997, United Kingdom, Sec. 13 & 15 (hereinafter *Draft Guidance Notes*). The guidance notes are for purposes of providing informal, non-statutory guidance on QUID and should not be taken as an authoritative statement or interpretation of the law.

[11] Directive 97/4/EC at Article 7(2)(b).

[12] *Draft Guidance Notes*, *supra* note 10, at Sec. 16.

[13] Directive 97/4/EC at Article 7(2)(c).

[14] *Draft Guidance Notes*, *supra* note 10, at Sec. 18.

The EU directive requires that the quantity indicated be expressed as a percentage and correspond to the quantity of the ingredient or ingredients at the time of use.[15] This information "shall appear either in or immediately next to the name under which the foodstuff is sold or in the list of ingredients in connection with the ingredient or category of ingredients in question."[16] When the declaration accompanies the product name, it is not required that the declaration be on the principal display panel or that the lettering be of a particular size. It is sufficient that the information be provided with the product name anywhere on the label, as long as the information is easily visible, clearly legible, and indelible.[17]

QUID is not required for ingredients that are used in small amounts for the purposes of flavoring,[18] natural constituents of foods (such as caffeine in coffee) when present in their natural proportions, or ingredients mentioned in the name of a food that have not been used in the manufacture or preparation of that food.[19] Members of the EU must comply with this directive no later than February 14, 2000.

The following food labels illustrate the use of QUID labeling.[20]

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[15] Directive 97/4/EC at Article 7(4).

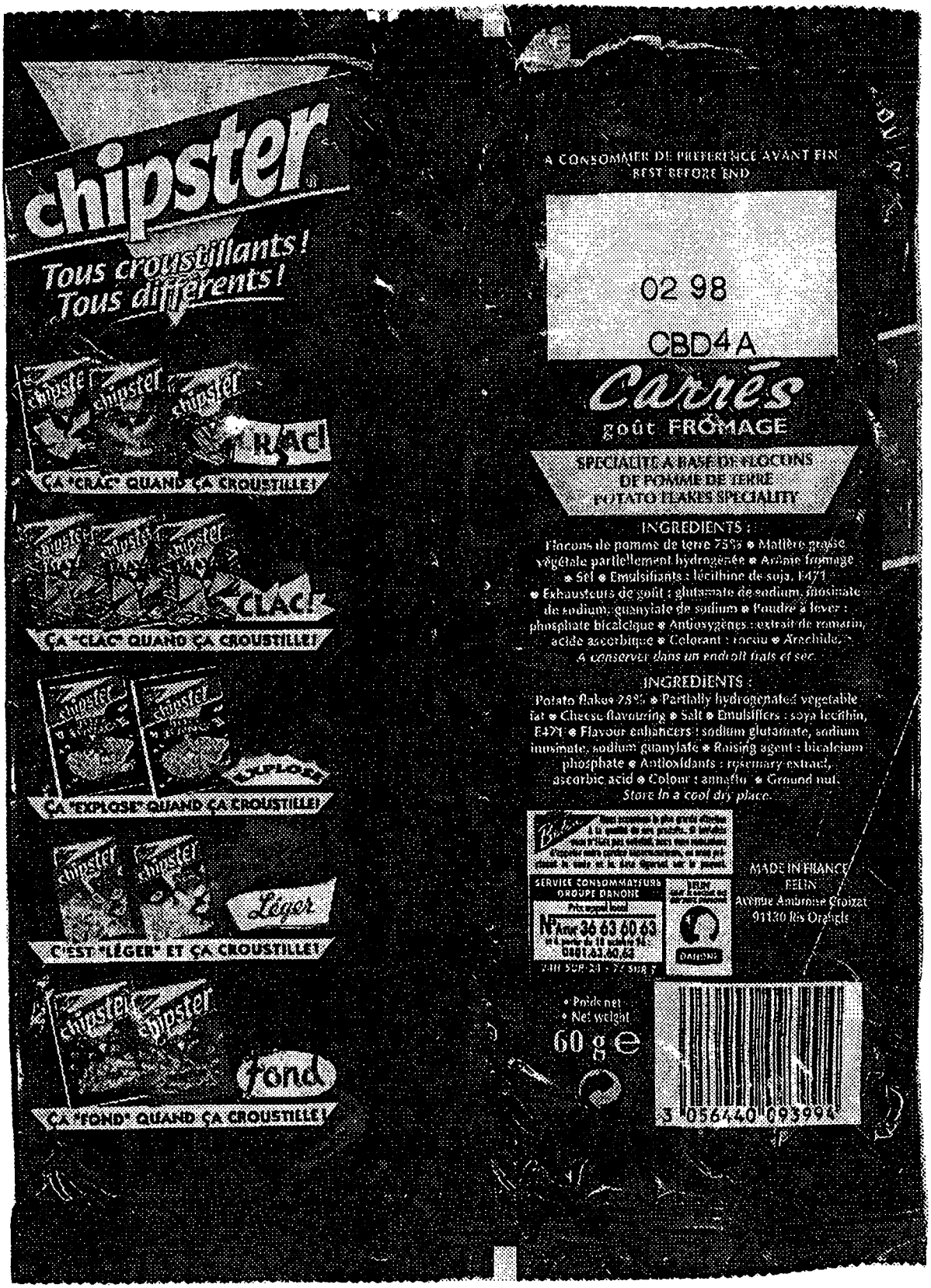
[16] *Id.* at Article 7(5).

[17] *Draft Guidance Notes*, *supra* note 10, at Sec. 41.

[18] Directive 97/4/EC at Article 7(3)(a).

[19] *Draft Guidance Notes*, *supra* note 10, at Sec. 41.

[20] France has already implemented QUID legislation, *see* Co-op, *supra* note 7, at 4.



The ingredient list of this French snack product informs the consumer of the percentage of the key characterizing ingredient -- potato flakes.

The ingredient list of these cookies informs consumers of the percentage of butter (23%) and fresh eggs (5%).

2. Thailand

The EU's directive on QUID labeling represents a major development in food labeling requirements for fully developed countries. Thailand, however, had required full percentage ingredient labeling of food products more than a decade ago. The Thai regulation requires that the percentage of each essential ingredient contained in products sold directly to consumers be disclosed on the label.[21] This requirement goes beyond the EU directive as the percentage of every major ingredient must be disclosed. The following pages contain labels illustrating Thailand's percentage ingredient labeling requirement.

3. United States

In contrast to the EU and Thailand, the U.S. basically requires only that ingredients be declared on food labels in descending order of predominance by weight.[22] In a few situations, a percentage ingredient disclosure is required. Under U.S. law, beverages that purport to contain fruit or vegetable juice must list the percentage of juice that the beverage contains, peanut spreads must indicate the percentage of peanuts in the spread; olive oil blends must indicate the percentage of olive oil contained in the blend; and seafood cocktail must include the percentage of the seafood ingredients present in the cocktail.[23] While the U.S. Food and Drug

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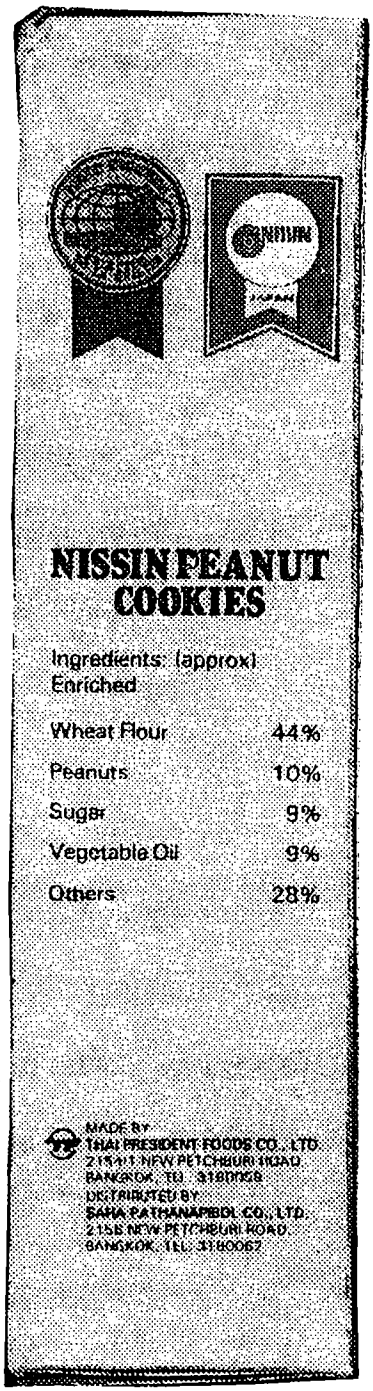
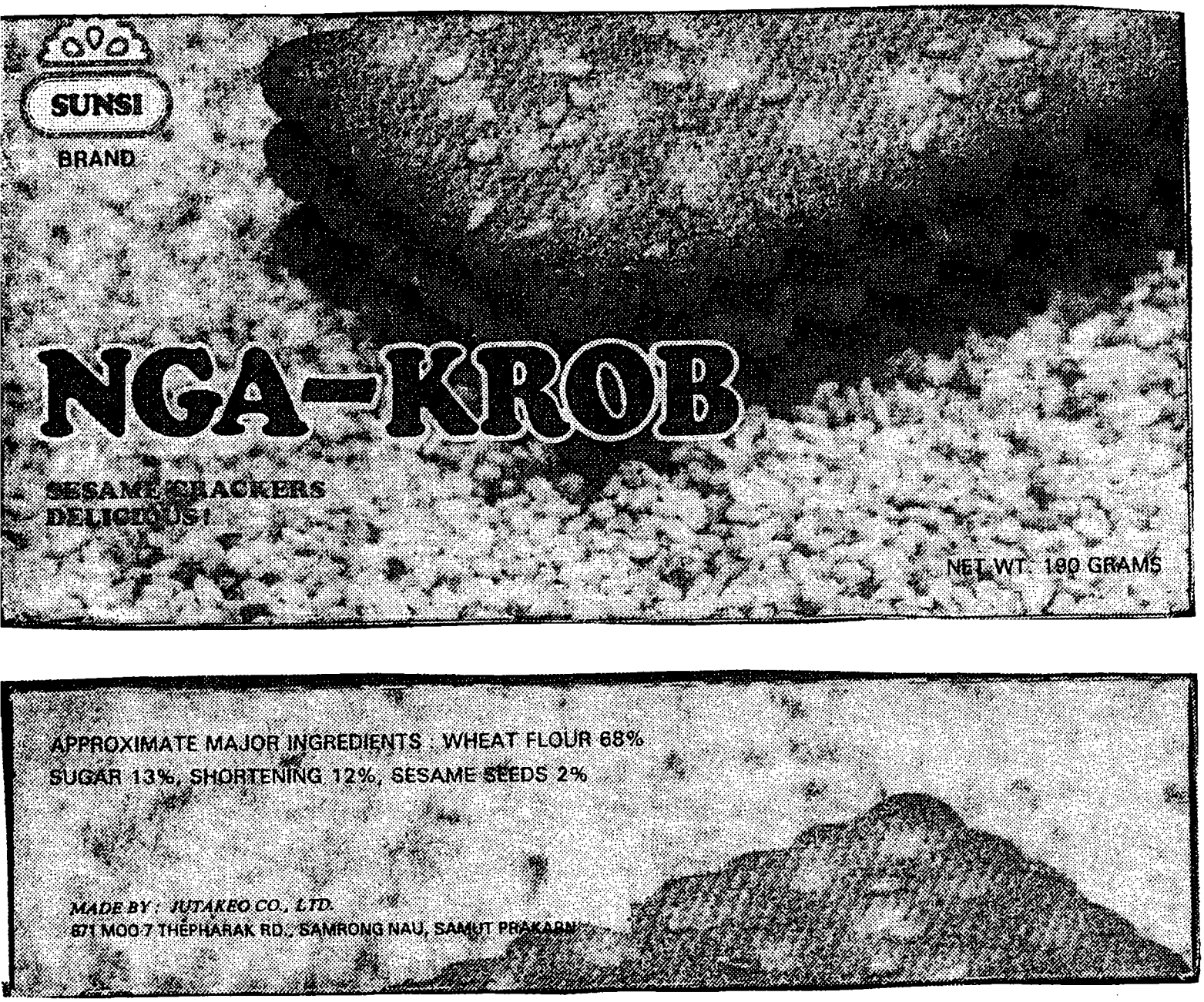
[21] OFFICE OF AGRICULTURAL AFFAIRS OF THE USDA/FOREIGN AGRICULTURAL SERVICE, THAILAND: FOOD AND AGRICULTURAL IMPORT REGULATIONS AND STANDARDS (Fairs) 9 (July 1997).

[22] 21 C.F.R. § 101.4(a)(1) (1997). However, ingredients present in amounts of 2 percent or less by weight do not need to be listed in descending order of predominance, but may be listed at the end of the ingredient statement following an appropriate quantifying statement, such as "Contains 2 percent or less of." *Id.* at § 101.4(a)(2).

[23] *Id.* at §§ 101.30, 102.23, 102.37, 102.54.



The label of these Thai peanut cookies clearly discloses the percentage of peanuts (10%) as well as the percentage of all other major ingredients.



The label of this Thai cracker product clearly discloses the percentages of all major ingredients.

Administration (FDA) encourages food companies to voluntarily provide percentage ingredient labeling on all foods, few if any have done so.[24] However, American-based food companies doing business in Thailand and other countries where quantitative ingredient disclosures are required do routinely provide such information to consumers.

The U.S. FDA clearly has the authority to require QUID to remedy misleading labeling practices. First, U.S. FDA regulations require that the common or usual name of a food accurately identify or describe the basic nature of the food or its characterizing properties or ingredients.[25] Moreover, U.S. FDA regulations require that the common or usual name of a product shall include the percentage of any characterizing ingredient when this percentage has a material bearing on product or consumer acceptance, or when the labeling creates an erroneous impression that such ingredient is present in an amount greater than is actually the case.[26] However, the agency has declined to use this authority to require QUID to clarify misleading labeling practices.

4. Codex

Codex standards require the declaration of the percentage of ingredients whenever the food label places special emphasis on the presence or low content of a "valuable and/or characterizing" ingredient.[27] However, a reference in the name of a food to a particular ingredient does not in itself constitute "special emphasis," nor is percentage labeling required

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[24] *See* 58 Fed. Reg. 2865 (1993).

[25] 21 C.F.R. § 102.5(a) (1997).

[26] *Id.* at § 102.5(b).

[27] CODEX ALIMENTARIUS COMMISSION, Codex Alimentarius Vol. 1, Section 5.1 (1995).

merely if a reference is made to an ingredient that is used in a small quantity or only as a flavoring.

C. Recommendations for QUID Labeling

Ingredient labeling regulations around the world should be upgraded to reflect the best aspects of the EU's QUID requirements and Thailand's percentage ingredient labeling regulations. Food labels should not only list all ingredients, but should also state the percentage of all major ingredients, i.e., those that comprise 5% or more of the total weight. The percentages for those ingredients should be included with the ingredient list.

In addition, ingredient labeling requirements should incorporate some of the theoretical aspects of U.S. regulatory requirements that could help prevent deceptive label claims. Thus, if any ingredient appears in the name of the food or is highlighted on the label through words or pictures, the percentage of this ingredient should also be listed in immediate conjunction to such statements or pictures. For example, a product called "Blueberry Waffles" should disclose the percentage of blueberries contained in the product in immediate conjunction to the name. Similarly, a bread that claims to be made from "natural whole grain goodness" should disclose the percentage of whole grains in the product. The percentage declaration should be located in immediate proximity to the name or claim in which the ingredient is mentioned or implied and should be in type no less than one-half the size of that name or claim. It is essential that the disclosure be included near the claim, rather than the ingredient list, as consumers may base their purchasing decisions on claims made on the front label without consulting the list of ingredients.

In sum, nations should build on progress being made by the EU and the example set by

Thailand and provide consumers with better information about the ingredients contained in food products. As consumers around the world come to depend more and more on pre-packaged processed food items, such information becomes increasingly important.

CHAPTER II: FRESHNESS DATING

A. The Need for Freshness Dating

Most developed countries (with the notable exception of the United States) require that a date appear on food labels, which usually represents the time after which the food manufacturer cannot guarantee the freshness of its product. An example of a freshness date may be "Best if used by June 1, 1998" or "Use before March 3, 1999."[28] Exact requirements for freshness dating vary. Some countries require dates on products with a shelf life of 90 days or less while others require dates on most pre-packaged foods including frozen items.

Freshness dates primarily provide consumers with a means to judge the quality of a food product by determining when it was produced or how long it has been on store shelves. As international trade in food increases and foods are transported over greater and greater distances, the disclosure of such information becomes increasingly important.

Surveys show that consumers want freshness dates on food labels. According to one recent U.S. survey, consumers place a high priority on purchasing dairy, bakery, deli and other foods that are at their peak freshness.[29] Another survey in the United States found that one of

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[28] Freshness dates are not absolute; the food may still be edible or taste good beyond the date that appears on the package. However, if a product is not stored properly, it may become stale even before the given freshness date.

[29] Stephen Dowdell, *Looking for a Date,* SUPERMARKET NEWS, June 17, 1996, at 27. American Consumers were surveyed for Supermarket News by the American Research Group, Charleston, South Carolina. Respondents were questioned about preferences and shopping habits regarding produce, meat, seafood, dairy, bakery and deli items. Responding to the question of which food qualities they considered most important when choosing where to shop, they said freshness was the most important, backed if possible by a sell-by date.

the top ten reasons cited by consumers for selecting a supermarket is the number of products having freshness dates.[30]

A survey conducted by New Zealand's Ministry of Health in 1995 determined that freshness dates were the most frequently scrutinized element on food labels.[31] In fact, more than three-quarters of the respondents said that they always or often look at the freshness date at the time of purchase. Moreover, 91% said they wanted freshness dates on all or some longer-life foods, and 77% wanted freshness dates for longer-life frozen foods.[32] At the time of the survey, New Zealand only required date-marking for foods with a shelf life of less than 90 days.[33]

Freshness dating may also play a role in matters concerning nutrition and food safety. Every food has a shelf life -- even frozen foods deteriorate over time.[34] As a food ages, it loses some of its nutrients. While nutrient loss varies greatly depending on the nutrient, the food, and storage and handling conditions, freshness dates, nevertheless, serve as a valuable guide for

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[30] Ryan Mathews, *Are Supermarkets Missing the Boat?,* PROGRESSIVE GROCER, Apr. 1997, at S39.

[31] *N.Z. Survey Assesses Consumer Attitudes toward Food Labels,* WORLD FOOD CHEMICAL NEWS, Apr. 3, 1996, at 11. According to the Australia-New Zealand Food Authority, "[d]ate marks were the most widely recognised, frequently used, and highly valued label elements tested." AUSTRALIA-NEW ZEALAND FOOD AUTHORITY, DEVELOPMENT OF JOINT AUSTRALIA-NEW ZEALAND FOOD STANDARDS AS PART OF THE PROCESS OF THE REVIEW OF THE FOOD STANDARDS CODE, DATE MARKING OF PACKED FOOD, FULL ASSESSMENT REPORT PROPOSAL P139, February 1998, at 8 (hereinafter *ANZFA Report*).

[32] *N.Z. Survey Assesses Consumer Attitudes toward Food Labels,* WORLD FOOD CHEMICAL NEWS, Apr. 3, 1996, at 11.

[33] *ANZFA Report*, *supra* note 31 at 10.

[34] Telephone interview with Robert Gravani, Professor of Food Science at Cornell University (Dec. 19, 1997).

consumers.[35]

B. Examples of Freshness Dating Requirements

1. European Union

The EU requires many types of foods to indicate the "date of minimum durability," which is usually expressed as "Best before ..." or "Best before end of ..." followed by the date until which the food will keep its "specific properties when properly stored."[36] Foods that are highly perishable must have "Use before" followed by the date after which the product should not be used.[37] Furthermore, storage directions must be placed near the freshness date if this information is needed to maintain freshness for the specified period.[38]

2. Japan

In 1995, Japan began enforcing a new date-marking system that requires food labels to have either a "Best before" date or an "Expiry of consumption" date, with the latter being used for those foods whose quality changes rapidly and should be consumed soon after

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[35] In most cases, out-of-date foods are still safe to eat. There have been reports of incidents, however, that implicate the sale of out-of-date foods with safety concerns. *See, e.g.*, Polly Graham, *Horror in Store: The Mirror Investigates Scandal of Old Food for Sale,* THE MIRROR, Sept. 18, 1997, at 6. Such reports may indicate that in some cases, date marking may serve an important food safety function.

[36] 1979 O.J. (L33) 7. The EU policy covers all "foodstuff," but does not require the following foods to have a freshness date: fresh fruits and vegetables, including potatoes which have not been peeled, cut, or similarly treated; wines; beverages containing 10% or more by volume of alcohol; bakers' or pastry-cooks' wares that are normally consumed within 24 hours of their manufacture; vinegar; cooking salt; solid sugar; and confectionery products consisting of flavored and/or colored sugars.

[37] *Id.*

[38] *Id.*

manufacture.[39] The law applies to all foods, including raw, processed, dried, canned and frozen foods.[40] In the case of those products bearing "Best before" dates, the date is not meant to be the last day to eat the product, but rather it is to be used as a guideline for consumers.

Before 1995, Japan's requirements were less helpful to consumers because either the pack date, or the date the food was produced, could be printed on labels. Japan changed its law in 1995 so that consumers would have a better understanding of how to use date markings on food labels.

3. Canada

Canada requires a "Best before" date on all pre-packaged foods with a durable life of 90 days or less, with the exception of prepackaged fresh fruits and vegetables, vending machine foods, individual portions of food served by restaurants and airlines, and donuts.[41] The Canadian regulations define the "Best before" date as the period throughout which a food will retain its taste, nutritional value, and normal wholesomeness when properly stored.[42]

Foods that are packaged at retail and have a durable life of 90 days or less may be labeled with either a durable life date and any necessary storage instructions or with a packing date and durable life information. This information may be placed on the label or on a poster by

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[39] JAPANESE AGRICULTURAL STANDARD, LABELING SYSTEMS FOR PROCESSED FOODS IN JAPAN: AN OVERVIEW 6 (Mar. 1995).

[40] *Id.* at 8-9, 15-16.

[41] AGRICULTURE AND AGRI-FOOD CANADA, GUIDE TO FOOD LABELING AND ADVERTISING, Sec. 2.10 (Mar. 1996) (hereinafter *Canada Guide*).

[42] *Id.*

the food.[43]

4. United States

In contrast to the European Union, Australia, New Zealand, Canada and Japan, the United States does not have any type of national requirement for freshness dating. In 1976, the U.S. FDA contemplated requiring some type of date marking system as a way to improve food labeling,[44] but no such requirement was ever instituted.[45] Furthermore, only fourteen U.S. state governments require freshness dates to appear on some products.[46] Several of those states follow the guidelines provided by the U.S. National Conference on Weights and Measures (NCWM), an organization that has developed model open dating regulations. The NCWM's model regulations call for date labeling of pre-packaged perishable foods and for optional date labeling of non-perishable pre-packaged foods.[47]

The absence of a national freshness dating requirement in the U.S. is somewhat ironic considering that U.S.-based multi-national companies, such as Nabisco and General Mills,[48]

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[43] *Id.* at Sec. 2.10.2.

[44] 44 Fed. Reg. 75,990 (1976).

[45] Infant formula, however, does require freshness dates to appear on each bottle. 21 C.F.R. § 107.20 (1997). This subsection requires that all infant formula have a "Use by __," date, the blank to be filled with the month and year that the manufacturer, distributor or packer of the infant formula has found that the formula will contain the same quantity of each nutrient that is on the label and will be of an acceptable quality.

[46] NAT'L CONFERENCE ON WEIGHTS AND MEASURES, SUMMARY OF STATE LAWS AND REGULATIONS IN WEIGHTS AND MEASURES, UNIFORM LAWS AND REGULATIONS 4-6 (Sept. 1996).

[47] *Id.* at 119-120.

[48] These companies voluntarily provide freshness dates on some of their products but fail to provide dates on other items sold in the U.S.

routinely provide freshness dates on various products sold outside the U.S. while failing to provide that information on the same products sold to consumers within the United States. Examples of U.S. food products that carry date marks when sold outside the U.S., but that fail to carry such information when sold in the United States, are depicted on the following pages.

5. Codex

Codex standards provide that the "Date of minimum durability" be declared, which consists of the day and month for products with a minimum durability of not more than three months, and the month and year for products with a minimum durability of more than three months.[49] If the product needs special storage conditions in order to preserve the food, these instructions must be placed on the label.[50]

The date shall be preceded by the words "Best before" where the day is indicated or "Best before end of" in all other cases.[51] The date must be in an uncoded numerical form; however, the month may be displayed by letters in those countries where such use will not confuse the consumer.[52]

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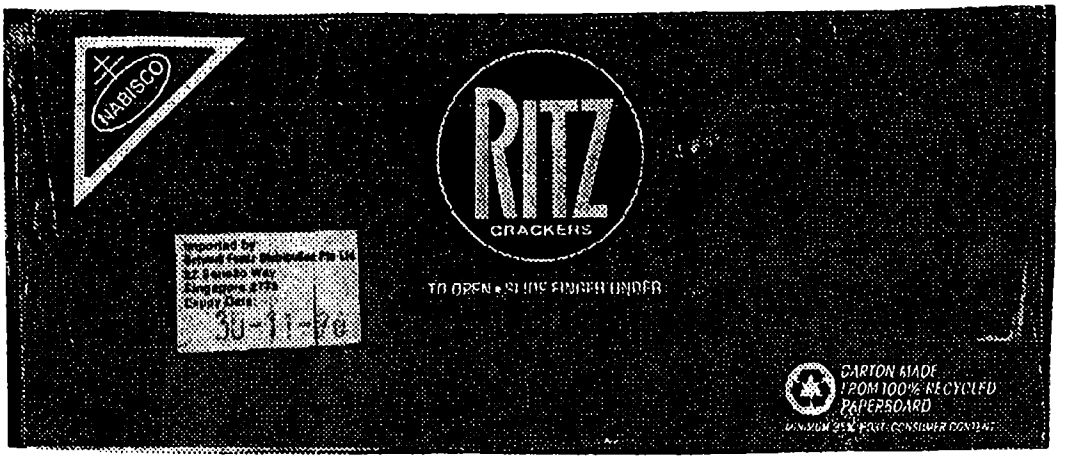
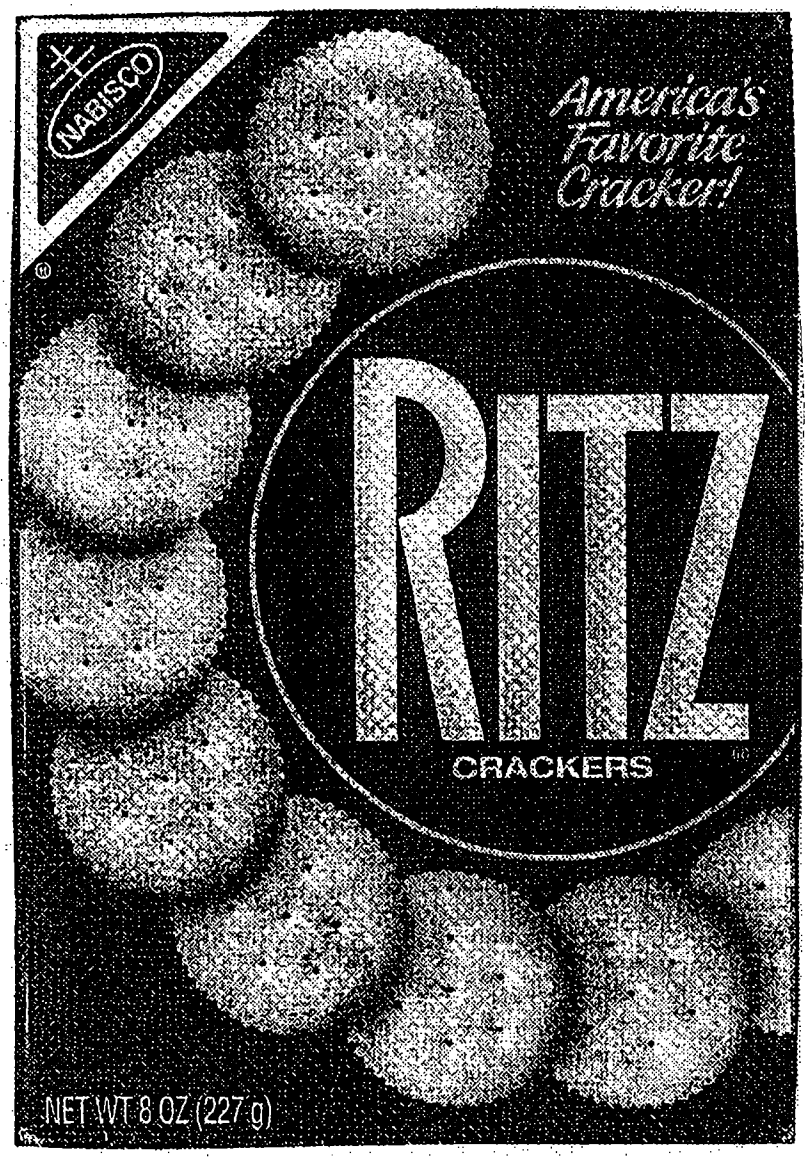
[49] Codex General Standard for the Labelling of Prepackaged Foods, Codex Alimentarius Volume 1A, Sec. 4,4.7.1 (1995). Codex does not require certain foods to have freshness dates. These foods are the same foods that the EU does not require to have freshness dates, except Codex exempts one additional food item: chewing gum. *Id.* at Sec. 4.7.1(vi).

[50] *Id.* at Sec. 4,4.7.2.

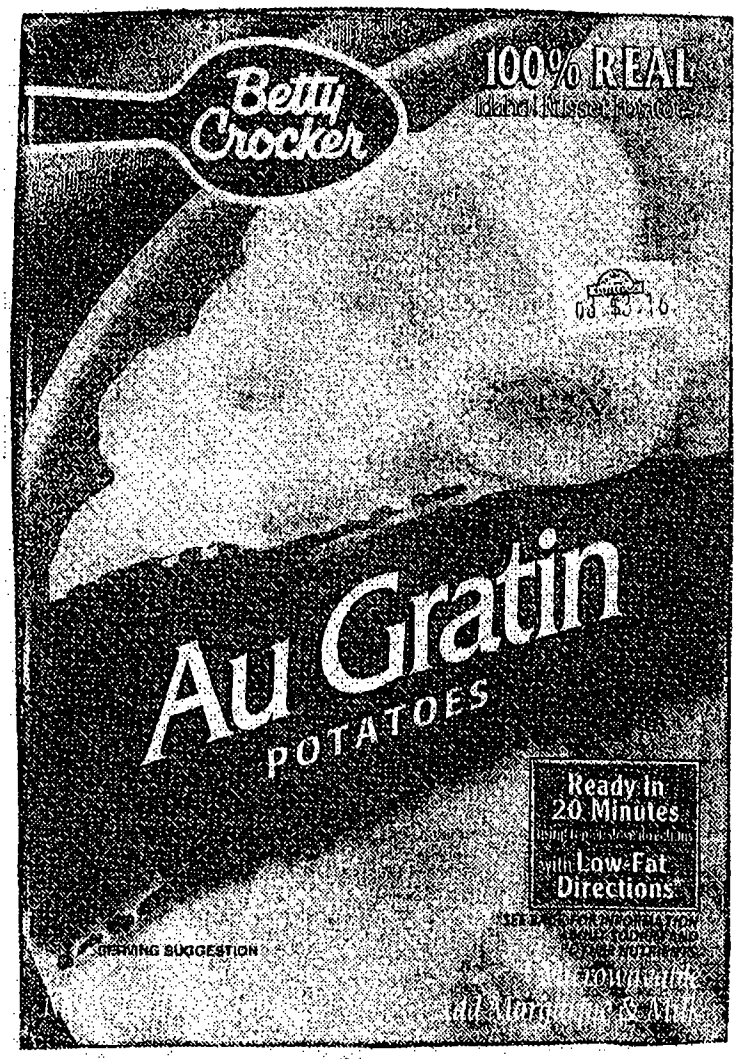
[51] *Id.* at Sec. 4,4.7.1(iii).

[52] *Id.* at Sec. 4,4.7.1(v).





This brand of American crackers sold in Singapore carries an expiration date. However, the U.S. government does not require that a date mark appear on the label of this product when it is sold in the United States.



The label of this American brand of processed potatoes sold in Singapore carries an expiration date.
However, the U.S. government does not require that a date mark appear on the label of this product when it is sold in the United States.

C. Recommendations for Freshness Dating

1. Freshness dates should appear on all perishable food products and most non-perishable food products

Many of the countries that have freshness dating requirements exempt certain categories of foods. However, manufacturers should be required to place freshness dates on all perishable products and most non-perishable products. Even canned foods that have a very long shelf life need freshness dates because they can still lose nutrients over time.[53] And even for foods that do not lose nutrients, consumers often wish to buy and eat more recently produced food products.

2. Freshness dates should be clearly and uniformly disclosed on food labels

The types of dates that appear on packages, and the nomenclature used to describe such dates, vary greatly. Some countries describe freshness dates as "expiration" dates, whereas other countries refer to them as "dates of minimum durability." Some U.S. manufacturers place freshness dates on their products that explain the meaning of the date, but other manufacturers just place a date by itself with no explanatory information. In some cases, codes that only the manufacturer or retailer can decipher are used in place of dates. Furthermore, even an actual date by itself is of little use to consumers because it could indicate the date the food was packed (pack date) or the date by which the retailer must sell the food (sell-by date).

A national U.S. survey discovered that most Americans are confused about expiration

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[53] For instance, after one year, canned vegetables that are stored at 65° F (18° C) lose approximately 10% of their vitamin C; at 80° F (27° C), canned vegetables can lose as much as 25% of their vitamin C. Audrey D. Hylton, *Take Stock of Kitchen Cupboards*, THE PLAIN DEALER, Feb. 5, 1997, at 1E.

dates that appear on foods.[54] Two-thirds of Americans think that the date on cans (e.g., "DEC 04" or "December 4, 1997") denotes the last day the food can safely be sold; another third believe that the date is the last day that the food can be safely eaten. However, the date generally refers to food quality, not safety.[55] In order to avoid confusion over the meaning of dates, freshness date markings need to be accompanied by appropriate explanatory terminology.

In sum, labels on all perishable and most non-perishable foods should bear a date marking that is clearly legible and easy to understand. All freshness dates should have accompanying explanatory information, such as "Best before (date)" or "Use before (date)." Freshness dates should be easy to locate on the label and should appear in a uniform place, preferably the principal display panel. Where the validity of the date mark of a food depends on its storage, storage instructions for that food should accompany the freshness date. Both Codex and the EU require that storage instructions accompany the freshness date if the validity of the date is contingent on how the product is stored.

The U.S., in particular, appears to be lagging behind many other developed countries of the world in this area of food labeling regulation. American consumers deserve the same information that is routinely provided by U.S. based food companies to consumers in other parts of the world. The U.S. government should bring its regulatory standards in line with those of other developed countries and require the disclosure of such information in the U.S.

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[54] *Food Poisoning: A Third of the Nation Tempts Fate When They Eat Take-Out According to Prevention/NBC Today - Weekend Edition National Survey*, PR NEWSWIRE, July 21, 1997 (*available in* NEXIS Library).

[55] *Id.*

CHAPTER III: NUTRITION LABELING

A. The Need for Nutrition Labeling

When societies become more affluent, traditional dietary patterns often change as consumers begin to increasingly rely on pre-packaged processed foods. As a result, diets often become higher in calories, fat, saturated fat, refined carbohydrates, and sodium. Diets high in calories, fat, and sodium are associated with the increased prevalence of heart disease, diabetes, obesity, hypertension, and some cancers.[56] Not surprisingly, diet related diseases are widespread in many developed countries.

Cardiovascular disease is the leading cause of morbidity and premature death in developed countries and is responsible for more than 12 million deaths each year -- almost one-quarter of deaths worldwide. Cancer is the second highest cause of death in most developed countries.[57] Hypertension, a leading risk factor for heart disease and stroke, affects about 20% of adults in most countries.[58] The number of people suffering from diabetes is projected to be more than double from about 135 million to 300 million by 2025.[59]

Health authorities worldwide recommend that people eat a healthful diet to reduce their

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[56] For example, studies have demonstrated that diets high in saturated fat and cholesterol tend to increase the risk of heart disease. High-fat diets have been associated with an increase in the risk of cancers to the colon, rectum, prostate, and endometrium. The connection between high-sodium diets and hypertension is also well-supported.

[57] *See* World Cancer Research Fund & American Institute for Cancer Research, *Food, Nutrition and the Prevention of Cancer: a global perspective* (July 1997).

[58] *Id.*

[59] *Id.*

risks of serious health conditions. But if consumers are to make dietary adjustments, they must be able to make informed decisions when selecting foods. Nutrition information is important for consumers who are trying to follow a healthful diet and is absolutely essential for consumers who are medically advised to select foods based on their nutrient content. However, only two nations, the United States and Israel, have mandatory nutrition labeling requirements, and thus, most consumers do not have the information they need to put official dietary recommendations into practice. Given the prevalence of diet related diseases, nutrition labeling is a public health necessity.

Evidence shows that nutrition labeling is very useful in helping consumers to select more healthful foods. In the U.S., where nutrition labeling is required on almost all food products, a 1997 survey found that 54% of American consumers said they almost always read the nutrition label when buying a food for the first time.[60] Twenty-eight percent of those reading the nutrition label said they stopped buying a food product because of something they read on the label, and 25% started buying and using a certain item after examining the label.[61]

These changes in consumer purchasing decisions have been sufficient to spur competition on the basis of nutrition, which even benefits consumers who do not read labels. Since nutrition labeling has been mandatory in the U.S., companies are marketing many more low and reduced-fat foods.[62] Thus, requiring companies to analyse and disclose the nutrient

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[60] FOOD MARKETING INSTITUTE AND PREVENTION MAGAZINE, SHOPPING FOR HEALTH 1997 15 (1997).

[61] *Id.* at 18-19.

[62] More than 2,000 new low-fat or reduced-fat products were introduced in 1996. That number has almost tripled since 1993, the year before nutrition labeling became mandatory in the

content of their products may motivate them to improve the nutritional quality of their foods.

B. Examples of Nutrition Labeling Requirements

1. European Union

In the European Union, nutrition labeling is voluntary unless a nutrition claim appears on "labeling, in presentation or in advertising, with the exclusion of generic advertising."[63] This standard has been established by a directive that has been implemented by most of the Member States.[64]

When nutrition labeling is provided, the nutrients listed must consist of either group one (energy value, protein, carbohydrate, and fat) or group two (energy value, protein, carbohydrate, sugars, fat, saturated fat, fiber, and sodium). When a nutrition claim is made for sugars, saturated fat, fiber, or sodium, the group two nutrients must be listed. Nutrition information may also include the amounts of one or more of the following: starch, polyols, monounsaturated fat, polyunsaturated fat, cholesterol, and select minerals and vitamins.[65] The amount of nutrients must be expressed per 100 grams or 100 milliliters, but they may also be expressed per serving,

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U.S. New Product News, *Products Bearing Health Claims, 1989-1996.*

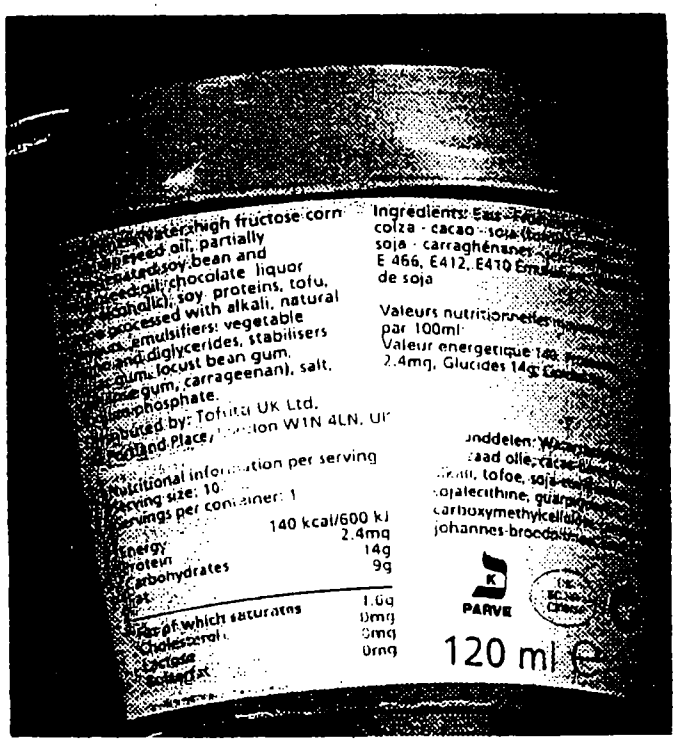
[63] Council Directive 90/496/EEC, 1990 O.J. (L276) 40, at Art. 2 [hereinafter *Directive 90/496*].

[64] Marsha A. Echols, *The International Tower of Babel: The Small Business Perspective*, 51 FOOD & DRUG L.J. 175, 181 (1996).

[65] *Directive 90/496* at art. 4. The following minerals or vitamins may be listed: vitamin A, vitamin D, vitamin E, vitamin C, vitamin B6, vitamin B12, thiamin, riboflavin, niacin, folacin, biotin, pantothenic acid, calcium, phosphorus, iron, magnesium, zinc, and iodine. *Id.* at Annex.

provided that the number of servings contained in the package is stated.[66]

Nutrition information must be presented together in one place on the label in tabular form, with the numbers aligned if space permits. Where space does not permit, the information must be presented in linear form. Nutrition information must be printed in "legible and indelible characters in a conspicuous place."[67] Below is an example:



2. Canada

Canada has recently begun a review of its nutrition labeling requirements.[68] Presently,

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[66] *Id.* at art. 6.

[67] *Id.* at art. 7.

[68] *See, e.g.* BUREAU OF NUTRITIONAL SCIENCES, HEALTH CANADA, NUTRITION LABELLING: DISCUSSION PAPER (March 26, 1998).

nutrition labeling is not mandatory. A food label is only required to divulge nutrition information when a nutrition claim is made on the label or in advertising.[69] Only the amount of the nutrient for which the claim is made must be disclosed.[70] However, companies may also voluntarily list other nutrients as desired.

When nutrition information is provided, it must be based on one serving. The serving size must be reasonable, i.e., "an amount of food which would reasonably be consumed at one sitting by an adult."[71] Although the *Guide to Food Labelling and Advertising* sets forth suggested serving sizes for use in nutrition labelling, the serving sizes are voluntary and expressed in ranges for many foods.[72] For example, the suggested serving size for vegetable oil is 5-10 milliliters. Thus, manufacturers have the flexibility to determine the serving size for a given product, and therefore the serving size upon which nutrition information is provided.

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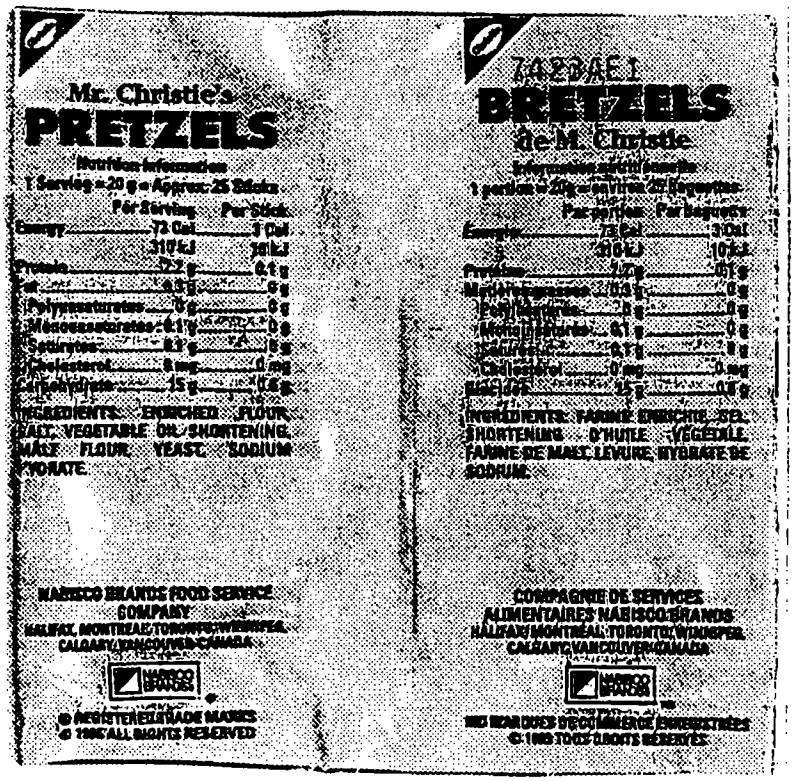
[69] Food and Drug Regulations (FDR), Sec. B.01.300. When a nutrition claim is made on a food label, the nutrient declaration must appear on the label. When a nutrition claim is made in an advertisement, the required nutrient declaration must be in the advertisement or on the label. *Id.* at Sec. B.01.304.

[70] *Canada Guide*, *supra* note 41 at Sec. 6.1.4 (Mar. 1996). However, when a claim is made for a fatty acid or cholesterol, the four components of fat (polyunsaturates, monounsaturates, saturates, and cholesterol), and total fat, must be listed. *Id.* at Sec. 6.2.3. When a nutrition claim is made for potassium *or* sodium, both sodium *and* potassium must be listed. Sec. 6.2.5. If the food is for "special dietary use," its energy value, protein, fat, and carbohydrate content must be disclosed. (A "food for special dietary use" is a food that has been specially processed or formulated to meet the particular requirements of a person in whom a physical or physiological condition exists as a result of a disease, disorder or injury; or for whom a particular effect, including but not limited to weight loss, is to be obtained by a controlled intake of foods. Foods described as "carbohydrate-reduced," "sugar-free," "calorie-reduced," "energy-reduced," "low in energy," "low-calorie," "low-sodium," and their synonyms must meet the requirement for foods for special dietary uses.) FDR, Division 24.

[71] *Canada Guide*, *supra* note 41, at Sec. 5.6.

[72] *Id.*

Currently, Canadian regulations do not require that nutrition information be provided in any particular format. Although a "standardized presentation format" of nutrition information has been set forth in the *Guide to Food Labelling and Advertising*, that format is voluntary and only consists of the heading ("Nutrition Information"), a statement of the serving size, the "core list" of nutrients (energy, protein, fat and carbohydrate), and optional nutrient declarations given equal prominence in a standardized order.[73] That information must be provided in both English and French. The prescribed format does not include specifications regarding type style and spacing. Moreover, the nutrition labeling format may appear on any part of the label, except the bottom of the container.[74] Below is an example of a food label using this format:



[73] *Id.* at Sec. 5.1.3. Other nutrients may be listed as desired or as required if a nutrition claim is made.

[74] FDR at Sec. B.01.310.

Health Canada, however, has commenced a comprehensive review of these requirements. The Canadian initiative aims to increase the availability of nutrition labeling, improve its usefulness, and broaden public education on its use.[75]

3. United States

The United States is one of only two countries that routinely require nutrition information on food labels.[76] In the United States, nearly all packaged foods have been required to provide nutrition information since 1994.[77] The following nutrition information must be listed: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamins A and C, calcium, and iron. These nutrients reflect current U.S. public health concerns and recommendations.[78]

Nutrients must be expressed in terms of the amount per serving. Serving sizes are

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[75] Health Canada, *Nutrition Labelling: Health Canada Announces a Review* (March 1998).

[76] Israel also requires nutrition labeling on foods. Letter from P. Ketsch, Ministry of Trade (Feb. 10, 1998) (on file with author).

[77] Nutrition Labeling and Education Act of 1990, P.L. 101-535, 104 Stat. 2353 (1990). Although nutrition labeling is required for almost all packaged foods, there are several exceptions: plain coffee and tea; some spices, flavorings, and other foods that contain no significant amounts of nutrients; ready-to-eat food prepared primarily on site, such as deli and bakery items; restaurant food; bulk food that is not resold; and food produced by small businesses. Foods in small packages do not have to have nutrition information on their labels unless they make a nutrition claim. However, they must carry a telephone number or address consumers can use to get required nutrition information. 21 C.F.R. § 101.9(j) (1997). Nutrition information is voluntary for raw fruits, vegetables, fish, meat, and poultry. 21 C.F.R. § 101.44 (1997), 9 C.F.R. §§ 317.345, 381.445 (1997).

[78] Vitamins such as thiamin, riboflavin, and niacin are not required because deficiencies of these vitamins are no longer considered significant public health problems. However, manufacturers may list these and other nutrients if they choose, subject to certain conditions. FDA Consumer, *Focus on Food Labeling* 12 (May 1993).

defined by law and based on an amount of food customarily consumed per eating occasion.[79] As a result, serving sizes reflect typical eating patterns and are uniform across product lines so that consumers can easily compare the nutritional qualities of similar products.

Nutrients must also be expressed in terms of a dietary reference value called the Percent Daily Value.[80] For vitamins and minerals, the Percent Daily Value represents the contribution that one serving of food makes toward the Reference Daily Intake that the U.S. Food and Drug Administration has established for each of those nutrients. For total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber, the Percent Daily Value represents the contribution that one serving of food makes toward the Daily Reference Value established for each of those nutrients.[81] For example, the Daily Reference Value for sodium is 2,400 milligrams. Thus, a food that contains 1,200 milligrams of sodium per serving has a Percent Daily Value of 50%. Percent Daily Values help consumers eat healthfully by understanding the role of individual foods in the context of their total daily diet.

Nutrition information must be provided in a distinctive, easy-to-read format that enables consumers to quickly locate and read the nutrition information on the label. FDA regulations contain detailed label format requirements that specify where and how the nutrition information must be displayed.[82] To enhance legibility, the regulations stipulate many graphic requirements including easy-to-read typeface, upper and lower case letters, bold lettering, large type size, and

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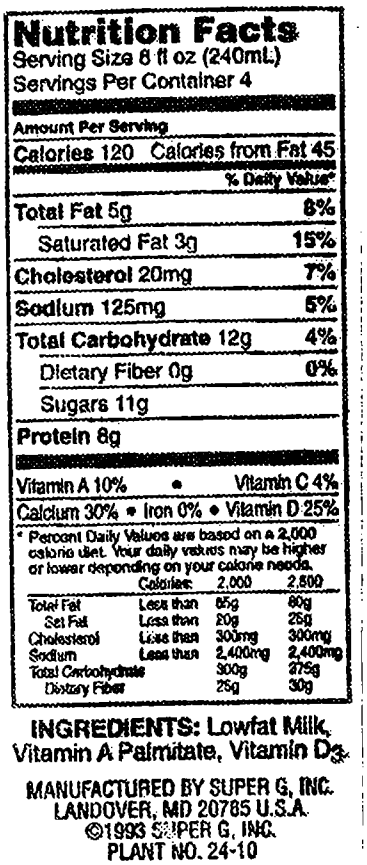
[79] 21 C.F.R. § 101.9(b)(2) (1997).

[80] 21 C.F.R. § 101.9(c)-(d) (1997).

[81] 21 C.F.R. §§ 101.9(c), 101.9(d)(6) (1997).

[82] 21 C.F.R. § 101.9(d)-(f) (1997).

spacing between letters and lines. The following is a sample U.S. label:



Nutrition Facts
Serving Size 8 fl oz (240mL)
Servings Per Container 4

Amount Per Serving
Calories 120 Calories from Fat 45
% Daily Value*
Total Fat 5g 8%
Saturated Fat 3g 15%
Cholesterol 20mg 7%
Sodium 125mg 5%
Total Carbohydrate 12g 4%
Dietary Fiber 0g 0%
Sugars 11g
Protein 8g
Vitamin A 10% • Vitamin C 4%
Calcium 30% • Iron 0% • Vitamin D 25%
* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

Calories:	2,000	2,500
Total Fat	Less than 65g	80g
Sat Fat	Less than 20g	25g
Cholesterol	Less than 300mg	300mg
Sodium	Less than 2,400mg	2,400mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g

INGREDIENTS: Lowfat Milk, Vitamin A Palmitate, Vitamin D3.
MANUFACTURED BY SUPER G, INC.
LANDOVER, MD 20785 U.S.A.
©1993 SUPER G, INC.
PLANT NO. 24-10

4. Codex

The *Codex Guidelines on Nutrition Labeling* state that nutrition labeling should be mandatory for foods for which nutrition claims are made, but should be voluntary for all other foods.[83] When a nutrition claim is made, the following nutrients must be provided: energy, protein, carbohydrate (excluding dietary fiber), fat, any other nutrient for which a claim is made, and "any other nutrient considered to be relevant for maintaining a good nutritional

[83] Codex Guidelines on Nutrition Labelling, Codex Alimentarius Vol. 1A, Sec. 4.2, 3.1 (1995).

status, as required by national legislation."[84] Vitamins and minerals that are present in significant amounts may also be listed -- but only those for which recommended intakes have been established and/or which are of nutritional importance in the country concerned.[85]

Nutrition information should be expressed per 100 grams, per 100 millilitres, or per package if the package contains only a single portion. This information may be stated per serving provided that the number of servings contained in the package is listed. The *Codex Guidelines* do not specify how or where the nutrition information should be displayed on the label. The Codex Committee on Food Labeling is considering whether to expand the required list of nutrients to include fiber, sugars, sodium and saturated fat.

C. Recommendations for Nutrition Labeling

1. Nutrition labeling should be mandatory for all foods

Nutrition labeling should be mandatory for all packaged foods[86] -- and should be

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[84] *Id.* at Sec. 4.2, 3.2.1. In addition, when a claim is made regarding the amount and/or type of carbohydrate, the amount of total sugars should also be listed. Where a claim is made regarding the dietary fiber content, the amount of dietary fiber should be declared. *Id.*, at Sec. 4.2, 3.2.2. When a claim is made regarding the amount or type of fatty acids, the amount of saturated fatty acids and polyunsaturated fatty acids should be declared. *Id.* at Sec. 4.2, 3.2.3.

[85] *Id.* at Sec. 4.2, 3.2.4-3.2.5. Five percent of the recommended intake (of the population concerned) supplied by a serving should be taken into consideration in deciding what constitutes a significant amount. *Id.* at note 1.

[86] Once nutrition information is required for all packaged foods, governments should consider mechanisms for requiring nutrition information for all foods sold in restaurants. Because restaurant foods -- unlike most packaged foods -- do not provide an ingredient list nor indicate how they were prepared, the nutritional value of such foods is especially difficult to assess. In the U.S., restaurant foods are exempt from nutrition labeling requirements. Restaurants are only required to provide nutrition information for foods for which health or nutrition claims are made. Moreover, only nutrition information that pertains to the particular claim is required to be provided, and it need only be provided upon request. 21 C.F.R. § 101.10.

required regardless of whether a nutrition claim is made. Consumers must have complete nutrition information for all foods in order to make informed purchasing decisions, to compare the nutritional value of different foods, and to select foods in accordance with the dietary advice of health authorities.

Nutrition information should also be provided for both processed and raw foods, such as seafood, poultry, and meat.[87] Because raw foods are a substantial part of consumers' diets, it is imperative that nutrition information be provided for these foods -- especially meat -- which adds a significant amount of fat and saturated fat to consumer's diets.

Less extensive requirements for nutrition labeling, such as those that are merely triggered when a food company makes a nutrition claim, do not adequately address these needs. Before the U.S. required nutrition information on all food labels in 1994, the FDA merely required that nutrition information be provided when a company made a nutrition claim about a product. Under this system, about 60% of foods in the U.S. carried nutrition information, but the prevalence of such information was not equally representative among food categories. For example, while about 100% of breakfast cereals provided nutrition labeling, only about 31% of carbonated soft drinks provided such information.[88] Thus, consumers in the U.S. were often provided with nutrition information on relatively healthful foods such as breakfast cereals, but

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[87] In the U.S., raw fruits, vegetables, fish, poultry, and meat are exempt from nutrition labeling requirements. Instead, the FDA and USDA have established a voluntary nutrition labeling program for these foods. Under these programs, at least 60% of retailers must provide nutrition information or else the agencies will make nutrition labeling mandatory. 9 C.F.R. §§ 317.343, 381.443(2) (1997); 21 C.F.R. § 101.43 (1997).

[88] Tom O'Brien, Center for Food Safety and Applied Nutrition, Food and Drug Administration, *Status of Nutrition Labeling of Processed Foods: 1995 -- Food Label and Package Survey (FLAPS)* (Aug. 26, 1996) 14.

did not receive such information on foods with high sugar or calorie content. The U.S. experience prior to 1994 indicates that partial requirements for nutrition labeling do not provide consumers with adequate information.

2. Nutrition labeling should include all nutrients for which national public health authorities have made recommendations

Consumers need information to make food choices on all nutrients that may affect the incidence of diet related diseases. Accordingly, nutrients for which national and regional public health authorities have made recommendations should be disclosed.

For example, public health concerns in the U.S. are focussed on over-consumption rather than under-consumption of particular nutrients. Thus, the U.S. food label emphasizes the amounts of nutrients, such as fat and saturated fat, that are related to chronic diseases, such as cancer, heart disease, and obesity.[89] Other nutrients, such as niacin, riboflavin, and thiamin are not required to be listed. However, countries in which deficiency diseases are a concern should require the disclosure of these vitamins or minerals.

Mandatory requirements for complete disclosure of a comprehensive list of relevant nutrients is also necessary to prevent consumer deception. The experience of some developed countries that have permitted partial nutrient disclosures shows that when food manufacturers are allowed to list selected nutrients and not required to list the amount of other important nutrients, consumers may be misled about a food's overall nutritional value. In such situations, food manufacturers may list the content of nutrients that make the food appear healthful but are

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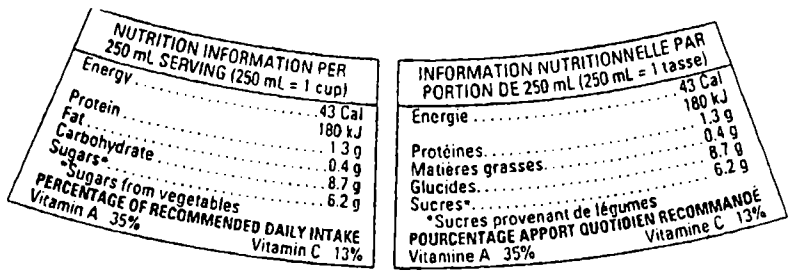
[89] However, it should be noted that the U.S. does not require the disclosure of *trans* fatty acid content, despite the fact that an increasing body of evidence suggests that *trans* fatty acids raise blood cholesterol levels, increasing the risk of coronary heart disease.

not required to disclose the fact that the food may be high in undesirable nutrients.

For example, the nutrition information provided on the label of Campbell's V8 Cocktail sold in Canada reveals that it has little fat and is a good source of vitamins A and C. However, the label fails to disclose that V8 is high in sodium.[90] That information is important for consumers who are trying to follow a healthful diet and is absolutely essential for consumers who are medically advised to limit their sodium intake. Similar problems occurred in the U.S. before 1994 when comprehensive labeling requirements became mandatory. Thus, it is imperative that foods be required to list nutrition information for *all* essential nutrients.



The label of Cambell's V8 Cocktail in Canada lists the amount of energy, protein, fat carbohydrate, sugars, vitamin A, and vitamin C. However, the sodium content is not listed. According to the manufacturer, the product contains 730 mg of sodium in a one-cup serving, a relatively high amount. Such information is disclosed on the U.S. label for V8.

[90] According to the manufacturer, the Canadian product contains 730 mg of sodium in a one-cup serving (more than one quarter of a day's worth, based on the U.S. labeling standard).

3. Nutrition information should be based on serving sizes

Nutrition information should be expressed in terms of the amount of nutrients per serving, rather than per 100 grams or other standard unit. Providing nutrition information in terms of a standard unit is likely to confuse and mislead many consumers.

For example, the EU directive (based on the Codex standard) requires nutrition information to be expressed per 100 grams or 100 millilitres, which makes it very difficult for consumers to determine the nutrient value of the portion of food that they actually consume. Consumers would have to know how many servings of food are in 100 grams and then multiply or divide accordingly. Moreover, providing nutrition information in terms of a standard weight is also likely to mislead consumers about the food's nutritional value in comparison with other foods. For instance, foods that are typically consumed in small amounts, such as Parmesan cheese, may appear to be relatively high in certain nutrients when compared with foods, such as cottage cheese, that are typically consumed in larger amounts.

A U.S. FDA survey revealed that the per-serving standard was preferred by the majority of consumers, food and nutrition professionals, and food industry representatives.[91] Providing nutrition information on the basis of serving sizes allows consumers to determine the nutrient value of the serving of food they actually consume and make nutritional comparisons among different foods.

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[91] INSTITUTE OF MEDICINE, NUTRITION LABELING: ISSUES AND DIRECTIONS FOR THE 1990S 214 (1990) (*citing* J.T. HEIMBACH, R.C. STOKES, NUTRITION LABELING FOR TODAY'S NEEDS: OPINIONS OF NUTRITIONISTS, THE FOOD INDUSTRY, AND CONSUMERS (1981)). This preference was based on the belief that it would be less useful to consumers to have the nutrient content of all products calculated against a standard weight, which would often be greater or smaller than a usual serving. *Id.*

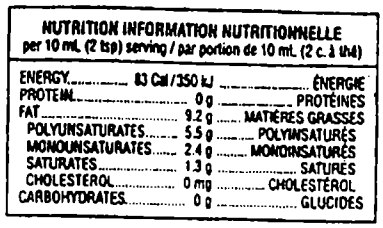
4. Serving sizes should represent the amount of food customarily consumed and should be standardized within food categories so that consumers can easily compare different products

Serving sizes should represent the amount of food that people typically consume to ensure that food companies do not use an unrealistically small or large serving size to favorably portray the nutritional composition of their products. The serving size should also be standardized within food categories to enable consumers to easily compare different products.

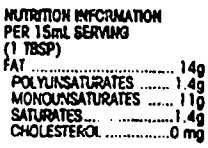
In Canada, the *Guide to Food Labelling and Advertising* sets forth recommended serving sizes that provide ranges, and which does not facilitate inter-brand comparability. As a result, serving sizes are determined by individual manufacturers and may vary significantly among brands within a given food category. Thus, it can be difficult for consumers to make meaningful nutritional comparisons among similar products.

For example, in Canada, Kraft Peanut Butter lists the amount of nutrients present in *one* tablespoon of peanut butter, while President's Choice Peanut Butter uses a serving size of *two* tablespoons. To compare nutrition information between those two products, Canadian consumers must double the numbers listed on the Kraft label or halve the numbers on the President's Choice label.

Comparing nutrition information between Mazola and President's Choice oils sold in Canada is even more difficult as the information is based on serving sizes using two different units of measurement. Nutrition information for Mazola Oil is based on a serving size of two *tea*spoons while President's Choice bases this information on a one-*table*spoon serving.



NUTRITION INFORMATION NUTRITIONNELLE per 10 mL (2 tsp) serving / par portion de 10 mL (2 c. à thé)		
ENERGY	83 Cal / 350 kJ	ÉNERGIE
PROTEIN	0 g	PROTÉINES
FAT	9.2 g	MATIÈRES GRASSES
POLYUNSATURATES	5.5 g	POLYINSATURÉS
MONOUNSATURATES	2.4 g	MONOINSATURÉS
SATURATES	1.3 g	SATURES
CHOLESTEROL	0 mg	CHOLESTÉROL
CARBOHYDRATES	0 g	GLUCIDES



NUTRITION INFORMATION PER 15mL SERVING (1 TBSP)	
FAT	14g
POLYUNSATURATES	1.4g
MONOUNSATURATES	11g
SATURATES	1.4g
CHOLESTEROL	0 mg

Canadian consumers would have to know that there are three teaspoons in one tablespoon and then multiply and/or divide accordingly to make the appropriate comparisons.

Without standardization, consumers can easily be misled about a food's nutritional value and may have difficulty in making meaningful comparisons among foods. Thus, it is essential that serving sizes are standardized and that they represent the amount of food people typically consume at one sitting.

5. Nutrition information should be expressed in a way that is meaningful and useful to the average consumer

Merely listing the amount of nutrients per serving does not help consumers understand how those nutrients contribute to the optimal amount one should eat per day in order to maintain a healthy diet. For example, a food label may disclose that a serving of a food contains 1,600 mg of sodium, but a consumer may not know if 1,600 milligrams of sodium in one serving is high or low.

In the U.S., nutrition information is not only provided per serving, but it is also expressed in terms of a Daily Reference Value. This reference value helps consumers understand how a serving of a food fits into a healthful daily diet. Putting the 1,600 milligrams of sodium in the context of a desirable daily goal of no more than 2,400 milligrams enables consumers to recognize that a serving of the food provides more than half the maximum daily

recommended intake of sodium.

Before nutrition labelling became mandatory in the U.S., the U.S. Food and Drug Administration found that many Americans could not specify the recommended intakes for some nutrients, such as sodium, even when those interviewed indicated that the nutrient was important to their health and that they were concerned about their intake of the nutrient.[92] Similarly, a recent survey for the British Heart Foundation found that 65% of shoppers did not know the maximum amount of fat that men should consume in one day.[93] Thus, it is not only essential that all foods provide nutrition information, but it is also imperative that this information is provided in a context that is meaningful to consumers.

National governments should conduct research to determine how nutrition information should be disclosed. Formats that communicate to consumers the relative contribution that a portion of a food contributes to the maximum or minimum amounts of a nutrient that should be consumed per day to maintain good health should be favored over formats that merely disclose the amount of nutrients in a standard measure of the food.

Because dietary problems differ among various regions of the world, specific nutrition labeling requirements may never be able to be harmonized internationally. However, a basic requirement for mandatory nutrition information based on these principles should be instituted globally because consumers in all countries need such information to protect their health and reduce their risk of disease.

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[92] Christine J. Lewis & Elizabeth A. Yetley, *Focus Group Sessions on Formats of Nutrition Labels*, 92 J. AM. DIET. ASSOC. 62 (1992).

[93] Chris Mihill, *Shoppers "Confused" by Nutrition Labels on Food*, THE GUARDIAN, June 30, 1997, at 8.

CHAPTER IV: LABELING OF FOODS POSING HEALTH CONCERNS

A. The Need for Labeling of Foods Posing Health Concerns

It is well known that certain foods and additives can cause severe health problems, even death, if ingested by individuals who are allergic or otherwise sensitive. Consequently, it is important that foods be labeled so that consumers can easily determine whether a product has an ingredient or additive that may be hazardous to their health.

Some food additives, while not allergenic, can cause other types of adverse reactions in some individuals. For instance, monosodium glutamate (MSG), caffeine,[94] and olestra are examples of additives that can cause health problems -- sometimes severe health problems -- in sensitive individuals.

The ingredients and additives discussed in this chapter illustrate some of the more well-known substances posing health concerns. These examples demonstrate the need for national regulatory authorities to adopt comprehensive label disclosure policies so that sensitive individuals can identify offending substances and avoid food products that may cause health problems.

1. Health risks posed by food ingredients

There are a variety of health problems that can be caused by the ingestion of certain foods. Food allergies involve the body's immune system, which recognizes a reaction-provoking substance -- an allergen -- as foreign and produces antibodies to attack the offending

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[94] U.S. Food and Drug Administration, *FDA Consumer* (May 1994).

substance.[95] For instance, one may experience swelling of the lips, hives, rashes or eczema on the skin, or wheezing or other respiratory problems.[96] The severity of health problems varies with the individual, substance, and amount ingested.

The most common causes of food allergies in children include soy, cow's milk, eggs, and wheat. In adults, however, tree nuts, fish, shellfish, and peanuts are the most common causes.[97] Peanuts are just one of several allergens that can cause anaphylaxis, which is an extreme, life-threatening allergic reaction. Symptoms can appear in as little as five to fifteen minutes, but life-threatening symptoms may progress over several hours.[98] Some individuals have died from anaphylactic shock by ingesting as little as one-fifth to one-five-thousandth of a teaspoon (1g to 1mg) of the offending food.[99]

Another type of sensitivity is called a food intolerance. Food intolerances can take many forms and are not well understood. They may result from the body's inability to digest adequately a portion of a particular food, sometimes as a result of an enzymatic deficiency.[100] Some individuals with food intolerances can eat a modest quantity of the offending food without

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[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] Harrison's Principles of Internal Medicine, (13th ed. 1994), at 1632. For an example of the impact of such allergies on the individual consumer, *see Peanut Allergy - What You Need to Know*, Allergy Asthma and Immunology Society of Ontario, (visited on March 25, 1998) <http://www.oma.org/phealth/peanuts.htm>.

[99] *FDA Consumer, supra* note 94. *See also* Katherine Forestier, *One Small Bite Could Be Fatal,* SOUTH CHINA MORNING POST, March 25, 1997, at 24.

[100] *FDA Consumer, supra* note 94.

uncomfortable symptoms resulting. For instance, many consumers are lactose intolerant, but they are still able to consume milk and milk products in small amounts.[101]

Because some individuals experience health problems as a result of ingesting certain food ingredients, efforts should be made to inform consumers of potential sources of such food ingredients. The disclosure of the presence of such ingredients in a food product is therefore appropriate.

2. Health risks posed by additives

Food additives may also cause allergic and other types of adverse reactions.[102] Monosodium glutamate (MSG) is an example of an additive that can cause food sensitivity reactions in some individuals.[103] It is often added to foods to enhance their flavor. In 1992, the U.S. FDA contracted with the Federation of American Societies for Experimental Biology (FASEB) to review studies on the health effects of MSG and hydrolyzed protein products as food ingredients.[104] The FASEB report found that although most individuals are not affected by even high levels of MSG consumption, a small segment of the population does experience

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[101] National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, *Lactose Intolerance* (April 1994).

[102] *FDA Consumer, supra* note 94.

[103] 61 Fed. Reg. 48,102 (1996). MSG is glutamic acid in its salt form, and glutamic acid is a normal component of the human body and some foods. There are two types of glutamate: "free" and "bound." Free glutamate is not "bound" or incorporated into a protein. Free glutamate occurs naturally in certain foods, such as tomatoes, mushrooms, and certain cheeses, but it can also be produced by the hydrolysis of proteins. *Id.* at 48,103.

[104] *Id.* at 48,104.

adverse effects. Individuals with "MSG symptom complex"[105] may experience burning sensations of the back of the neck, forearms, and chest, headache, broncho spasms and other symptoms.[106] Those symptoms can severely decrease the quality of life of individuals who unexpectedly and/or frequently experience them. Reports suggest that those symptoms are related to the amount of MSG consumed.[107] Individuals with severe, poorly controlled asthma may be at particular risk.[108]

Caffeine is a substance that has physiological effects that can cause adverse reactions in some individuals. Caffeine is a natural component of coffee, tea, and chocolate (and coffee flavored desserts such as ice cream). It also is added to carbonated soft drinks, such as Coca-Cola and Pepsi, and more recently to bottled waters and fruit flavored soft drinks. (Some non-prescription drugs contain caffeine in doses similar to that found in beverages.) The amount of caffeine in various processed foods, such as orange soda or coffee flavored yogurt, is often unpredictable.

Many epidemiological studies have examined the effects of caffeine on several aspects of reproduction with some of the studies indicating that caffeine consumption has adverse effects on fertility and fetal development.[109] Studies suggest that daily doses of 100 to 300 mg

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[105] *Id.* at 48,105.

[106] *Id.*

[107] *Id.*

[108] U.S. Food and Drug Administration, Monosodium Glutamate (MSG) (August 31, 1995), (visited March 11, 1998) <http://vm.cfsan.fda.gov/~lrd/msg.tx>.

[109] *See* W. Srisuphan, M.B. Bracken, *Caffeine consumption during pregnancy and association with late spontaneous abortion*, 154 AM. J. OB. AND GYN. 14-20 (1986); L. Dlugosz

of caffeine (the amount found in one to three cups of coffee) increase the time it takes for a woman to conceive. Similar doses of caffeine have also been found to adversely affect fetal growth.

In addition to its effects on women of childbearing age, caffeine can affect the general population. A stimulant of the central nervous system, caffeine is the most widely consumed psychoactive drug in the world[110] and is the only drug that is widely added to processed foods.

Caffeine is addictive and can cause physical dependence in those who regularly consume it.[111] Those who abruptly stop consuming caffeine after a long period of use can expect withdrawal symptoms, which include headaches, sleepiness, lethargy, and irritability.[112] In addition, caffeine can cause restlessness, nervousness, insomnia, gastrointestinal disturbances,

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et al., Maternal caffeine consumption and spontaneous abortion: A prospective cohort study, 7 EPIDEMIOLOGY 250-255 (1996); V. Dominguez-Rojas *et al., Spontaneous abortion in a hospital population: Are tobacco and coffee intake risk factors?* 10 EUROPEAN JOURNAL OF EPIDEMIOLOGY 665-668 (1994); B.G. Armstrong *et al., Cigarette, alcohol, and coffee consumption and spontaneous abortion*, 82 AM. J. OF PUBLIC HEALTH 85-87 (1992); T.R. Martin, M.B. Bracken, *The association between low birth weight and caffeine consumption during pregnancy*, 126 AM. J. OF EPIDEMIOLOGY 813-821 (1987).

[110] R.M. Gilbert, *Caffeine Consumption, in* THE METHYLXANTHINE BEVERAGES AND FOODS: CHEMISTRY, CONSUMPTION, AND HEALTH EFFECTS 185-214 (F.A. Spiller ed. 1984).

[111] J.E. James, *Caffeine, health and commercial interest*, 89 ADDICTION 1595-1599 (1994).

[112] J.R. Hughes *et al., Caffeine self-administration, withdrawal, and adverse effects among coffee drinkers* 48 ARCHIVES OF GENERAL PSYCHIATRY 611-617 (1991); K. Silverman *et al., Withdrawal syndrome after the double-blind cessation of caffeine consumption*, 327 NEW ENG. J. MED. 1109-1114 (1992); M Van Dusseldorp, M.B. Katan, *Headache caused by caffeine withdrawal among moderate coffee drinkers switched from ordinary to decaffeinated coffee: a 12 week double blind trial*, 300 BRITISH MEDICAL JOURNAL 1558-1559 (1990).

and cardiac arrhythmia in even those who regularly consumer caffeine.[113] In children, caffeine can cause anxiety and restlessness,[114] and high consumption of caffeinated sodas by children may contribute to poor diets. For example, children who drink more soda consume less calcium.[115]

B. Examples of Labeling Requirements for Ingredients and Additives Posing Health Concerns

1. United States

- **Labeling of ingredients**

The FDA has no formal definition of "allergen," but it gives as examples those foods that are most likely to cause serious allergenic responses (e.g., legumes, such as peanuts and soybeans; wheat; tree nuts; fish; crustacea; mollusks; milk; and eggs).[116] While U.S. law requires a listing of most ingredients in a food, there are exemptions from the ingredient labeling requirements that have contributed to some reports of adverse health reactions by consumers.

One of the exemptions applies to ingredients that are present at insignificant levels and

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[113] R.R. Griffiths *et al.*, *Low-dose caffeine physical dependence in humans*, 255 JOURNAL OF PHARMACOLOGY AND EXPERIMENTAL THERAPEUTICS 1123-1132 (1990).

[114] G.A. Bernstein *et al.*, *Caffeine effects on learning, performance, and anxiety in normal school-age children*, 33 JOURNAL OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 407-15 (1994).

[115] The average adolescent boy in the U.S. drinks 21 ounces of soda per day and only 10 ounces of milk per day. The average adolescent girl drinks 12 ounces of soda per day and less than eight ounces of milk per day. AGRICULTURAL RESEARCH SERVICE, USDA, FOOD AND NUTRIENT INTAKES BY INDIVIDUALS IN THE UNITED STATES, 1 DAY, NFS Report No. 94-2 (1994).

[116] 57 Fed. Reg. 22,984, 22,987 (1992).

do not have a functional or technical effect in the particular food.[117] Such ingredients are referred to as incidental additives and include substances that are present in a food as a result of being a component of an ingredient in a food. However, if a component of an ingredient has the same effect in the finished food as it would if consumed independently, then the ingredient is not an incidental additive and its use should be declared on the label.[118]

Nevertheless, some manufacturers neglect to list such ingredients. The FDA recently issued a Notice to Manufacturers that reminded companies of the importance of properly interpreting the agency's exemption for the labeling of incidental additives. It explained that "when an ingredient added to another food continues to have an effect in the finished food (e.g., egg white as a binder in breading used on a breaded fish product) the ingredient is not an incidental additive and its use must be declared on the label."[119]

Some manufacturers also are incorrectly interpreting what FDA regulations term an "insignificant level" of a substance. Studies have shown that even trace amounts of certain substances can cause adverse reactions in some consumers; consequently, even very small amounts of the substance are significant and should thus be listed in the ingredient

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[117] 21 C.F.R. § 101.100(a)(3) (1997). The other is a partial exemption for flavors and spices from the required ingredient list. Under U.S. law, those items can be disclosed on the ingredient list collectively. Hence, consumers cannot determine whether a product contains a specific flavoring or spice that may cause them to suffer an adverse reaction, except in cases where the FDA has required that a particular substance be specifically listed. The FDA recently adopted a regulation requiring that any protein hydrolysate used as a flavoring be disclosed. The food source from which the protein was derived must also be listed. 21 C.F.R. § 101.22 (h)(7) (1997).

[118] U.S. Food and Drug Administration, Notice to Manufacturers, Label Declaration of Allergenic Substances in Foods (June 10, 1996).

[119] *Id.*

declaration.[120]

The use of single production lines for different food products can inadvertently contaminate a food product with an unexpected ingredient. An example of such cross-contamination might be the presence of peanut oil in a food that is not supposed to contain peanuts, but that was produced on a production line that was previously used to manufacture peanut butter.

Some manufacturers have voluntarily labeled their products with the statement "may contain _____," with the name of the potentially allergenic substance following so that consumers can be alerted to the possible contamination of the food. While that action is meritorious, the FDA has stressed that informational statements should not replace good manufacturing practices (GMP) and that manufacturers should take the necessary measures to eliminate cross-contamination.[121]

The FDA is closely monitoring the response of food companies to the agency's Notice to Manufacturers regarding allergen labeling and evaluating adverse reaction reports. Because there have been recent incidents of adverse reactions to foods containing allergenic substances that were improperly omitted from the ingredient declaration, the FDA may take more formal action to clarify its regulations so that food manufacturers fully comprehend when they need to declare allergenic food ingredients.[122]

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[120] *Id.*

[121] *Id.*

[122] *Id.*

- **Labeling of additives**

In the U.S., FDA regulations require most additives to be listed in the ingredient list. But this requirement sometimes fails to adequately protect consumers. MSG provides a good example of this problem.

MSG must be declared in the ingredient statement by its common or usual name when it is added to a food.[123] MSG also must be declared in the ingredient statement when it has been added indirectly as part of another ingredient that contains MSG.[124] Nevertheless, a loophole exists in this disclosure requirement because foods that contain certain other sources of free glutamate do not have to declare their presence. For example, free glutamate can be added to food in the form of hydrolyzed vegetable protein. Under current labeling regulations, only the ingredient containing the free glutamate needs to be declared in the ingredient statement by its common or usual name.[125] The presence of free glutamate does not have to be disclosed.

Most consumers are not aware that certain ingredients, such as hydrolyzed vegetable protein, contain free glutamate; moreover, they do not realize that free glutamate is, for sensitive individuals, essentially equivalent to MSG. Consequently, it is likely that some individuals are suffering adverse health effects from consuming foods that contain hidden sources of free glutamates.

As a result of recent consumer requests to require the labeling of the presence of free glutamate in finished foods, the FDA published an advance notice of proposed rulemaking

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[123] 21 C.F.R. § 101.22(h)(5) (1997).

[124] 61 Fed. Reg. 48,102, 48,103 (1996).

[125] *Id.*

(ANPR) and requested comments as to how the labeling of free glutamate should be accomplished.[126]

The ANPR discussed two possible ways that free glutamate could be labeled. One way is to require all foods that have 0.4 g or more of free glutamate per serving to have a label stating the amount of free glutamate.[127]

The ANPR noted another labeling method that would take into account consumers who ingested larger than average serving sizes. For instance, if products need only be labeled if they have 0.4 g or more of free glutamate, then foods that have just under 0.4 g of free glutamate would not have to bear quantitative labeling; consequently, consumers who eat twice the usual serving size would not be informed that they were eating large amounts of free glutamate. Therefore, a labeling threshold of 0.2 g of free glutamate would provide an additional margin of safety.

CSPI has recommended that the FDA require quantitative labeling on foods that contain at least 0.2 g of free glutamate and additional disclosures on foods that contain at least 1g of free glutamate. CSPI also urged the FDA to permit "No MSG" claims on food labels only in cases where the food does not contain other sources of free glutamate. After reviewing comments on the public record, the FDA is expected to propose a regulation detailing disclosure requirements for free glutamate.

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[126] *See supra* note 124.

[127] That trigger amount of free glutamate was chosen because the FDA concluded that glutamate-intolerant consumers are at risk if the total amount of free glutamate in a meal is equal to or greater than 2.4 g. If one assumed that meals consist of approximately six servings, then each serving should contain no more than 0.4 g of free glutamate.

FDA's treatment of caffeine is another example of the inadequacy of U.S. labeling requirements for additives[128] that may cause adverse health reactions. U.S. FDA regulations only require that the presence of caffeine be labeled if it does not naturally occur in a food product.[129] FDA regulations do not require the disclosure of caffeine in foods that naturally contain it, such as coffee, tea, or coffee flavored ice cream or yogurt. Furthermore, FDA regulations do not require that the amount of caffeine be disclosed, even though the FDA has advised pregnant women to consume little or no caffeine.[130] In 1997, the FDA received a citizen's petition from CSPI requesting mandatory quantitative labeling of caffeine content. The American Medical Association pledged to work with the FDA to require the disclosure of the caffeine content of foods containing added caffeine.[131] It is not clear what action the FDA will take.

2. Canada

The Canadian *Food and Drug Regulations* require almost all prepackaged foods to have a complete list of ingredients and components (ingredients of ingredients) which include any substances that performs a function in, or has any effect on, that food.[132] However, special rules

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[128] Similar issues regarding the labeling of caffeine content are also raised when caffeine occurs naturally in foods.

[129] 21 C.F.R. § 101.100 (1997); 21 C.F.R. § 101.4 (1997).

[130] FDA Office of Public Affairs, *Caffeine and Pregnancy*, Department of Health and Human Services Publication No. (FDA) 81-1081.

[131] Resolution passed by the American Medical Association, Annual Meeting, June 22, 1997, House of Delegates resolution No. 523 (A-97).

[132] FDR at Sec. B 01.008. Exceptions from labeling requirements are provided for the ingredients of colors, flavors, spices, flavor enhancers, and hydrolyzed plant protein. However,

apply to such foods as butter, margarine, flour and rice.[133]

In an attempt to improve upon this policy, the Canadian Food Inspection Agency has recently issued an allergy information letter to food manufacturers.[134] The information letter was accompanied by a report[135] listing those "foods and their derivatives" that should always be declared on food labels by their specific common names. This list includes peanuts,[136] tree nuts, sesame seeds, milk, eggs, fish, shellfish, crustaceans, soy, wheat and sulfites. To further assist consumers in making safe food choices, the information letter encourages manufacturers to identify the plant source of ingredients, such as hydrolyzed plant proteins, starches, modified starches and lecithin (e.g., hydrolyzed soy protein, wheat starch, modified wheat starch, and soy lecithin). The Canadian government is distributing the information letter and report to food manufacturers, distributors, and importers to encourage the voluntary labeling of food ingredients known to cause serious allergic reactions when present in prepackaged foods.

The information letter also encourages manufacturers to develop "allergen prevention plans" to prevent cross contamination and improper labeling. Canada encourages precautionary

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salt, glutamic acid or its salts, potassium, aspartame, and peanut oil in any form must be declared. FDR, at Sec. B.01.009(3) and (4).

[133] *Id.*

[134] *See* Government of Canada, Canadian Food Inspection Agency, *Labelling of Foods Causing Allergies and Sensitivities* (Apr. 7, 1998).

[135] Government of Canada, Canadian Food Inspection Agency and Health Canada Committee, *Proposed Labelling of Foods Causing Severe Adverse Reactions in Canadian,* Food and Drug Regulations Review Project 19 Consultation (Apr. 7, 1998).

[136] Peanut oil, hydrogenated or partially hydrogenated peanut oil, and modified peanut oil must appear in the ingredient list of any food that has an ingredient, preparation, or mixture that is not normally required to list its ingredients.

labeling such as "may contain peanuts" but has informed manufacturers that such labeling must not be used as a substitute for good manufacturing practices.[137]

Furthermore, claims that a food does not contain or has no added MSG when in fact the product has other sources of free glutamates (i.e., hydrolysed vegetable protein, soya sauce or autolysed yeast extracts) are considered misleading and deceptive.[138]

Canada also has a policy whereby any claim made regarding the absence or non-addition of an ingredient or substance to a food must meet certain thresholds.[139] For example, there is no tolerance for allergens, so if a product has even a minute trace of peanuts, then the product cannot declare the absence of peanuts. "Food hypersensitivity agents," however, must be at levels of physiological insignificance (e.g., 10 ppm for sulfites) in order to make a claim of the absence of such agents.

3. European Union

The European Union is considering a directive that would require that certain substances "which are recognized scientifically as being the source of allergies or intolerances be included in the list of ingredients and not qualify as exceptions..."[140] This proposal is based on the Codex proposed draft amendment to the Codex General Standard for the Labeling of Prepackaged Foods, *infra* page 57,except that the EU also requires sesame seeds to be included in the list of

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[137] *Supra* note 134.

[138] *Canada Guide*, *supra* note 41, at 4.2.4.4.

[139] *Canada Guide, supra* note 41, at 4.2.4.

[140] EU, Draft proposal for a European Parliament and Council Directive amending Directive 79/112/EEC (January 16, 1998).

ingredients.[141]

4. Codex

Codex has a proposed draft amendment to the Codex General Standard for the Labeling of Prepackaged Foods that would require foods and ingredients that are known to cause "hypersensitivity" to always be declared.[142] The draft proposes that the following foods and additives always be declared: cereals containing gluten (i.e., wheat, rye, barley, oats, spelt, or their hybridized strains and products of these); crustacea and products of these; eggs and egg products; fish and fish products; peanuts, soybeans and products of these; milk and milk products (lactose included); tree nuts and nut products; and sulfite in concentrations of 10 mg/kg or more. The Codex proposal exempts components constituting less than 5% of the food from disclosure requirements so long as such components are not food additives which serve a technological function, known allergens, or ingredients associated with intolerances.[143]

C. Recommendations for the Labeling of Food Ingredients and Additives that can Cause Adverse Health Reactions

National regulatory authorities should consider a continuum of labeling requirements for the disclosure of all ingredients and additives with special attention paid to substances that can cause adverse health problems. At a minimum, all ingredients and additives should be clearly disclosed. Governments should also endeavor to advise consumers of the presence of

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[141] *Id.*

[142] Proposed Draft Amendments to Codex General Standard for the Labeling of Pre-Packaged Foods (at Step 5 of the Procedure), Codex Alimentarius, Alinorm 97/22A, Appendix IV, at Sec. 4.2.1.3 (1997).

[143] *Id.*

processing aids, accidental contaminants and other substances that are capable of causing adverse reactions.

Ideally, additives that can cause serious reactions should be banned. In cases where ingredients or additives are considered essential, but can cause severe or life threatening reactions, labels should include appropriate cautionary statements. For example, if governments do not ban high levels of sulfites, labels should advise consumers that sulfites may cause life threatening anaphylactic shock. Providing cautionary statements on products will educate consumers and may discourage the use of substances that are harmful to various segments of the population. The following is an example of a manufacturer who has included special labeling disclosure regarding the presence of peanuts and almonds.

The presence of peanuts and almond flour is conspicuously disclosed in the ingredient list of this product and is mentioned again in a cautionary statement below the ingredient list.

In some cases, the amount of the ingredient or additive capable of causing adverse health reactions should also be disclosed when the incidence and/or severity of adverse reactions are dependent on the amount of the ingredient or additive consumed. For instance, one person may be able to consume up to 500 milligrams of free glutamate without having any adverse effects, but another person might have adverse effects after consuming less than 20 milligrams. Listing the amount of free glutamate in foods would allow such consumers to regulate their intake and make appropriate purchasing decisions.

Caffeine represents another example where quantitative disclosure would be useful for consumers. Caffeine is a drug, the effects of which, are dose dependent. If the amount of caffeine was disclosed on the labels of caffeine containing foods, consumers could better manage their caffeine intake.

The amount of these and other ingredients and additives that pose adverse health effects based on the quantity consumed should be disclosed in appropriate measures in the ingredient list next to the name of the substance. Quantitative disclosure of such substances would allow consumers to choose those products that have the least amount of the ingredient or additive that they are trying to avoid. In turn, such disclosure requirements would give manufacturers an incentive to lower the amounts of such substances in food products.

In sum, a comprehensive framework for ingredient disclosure requirements would provide peace of mind to individuals who suffer from food allergies or other sensitivities, reduce health care costs, and possibly save lives. National regulatory authorities should adopt a comprehensive regulatory scheme for disclosing such information in a consistent manner.

CHAPTER V: DECLARATIONS REGARDING METHODS OF PRODUCTION

The food industry increasingly is embracing new technologies to produce and process food. Technologies such as irradiation and genetic engineering, according to their proponents, will help make food safer, increase production, and even end world hunger.[144] While some consumers welcome the use of these new technologies or are just indifferent, others oppose their use and seek to purchase food that is produced using more traditional methods. Consumer interest in purchasing food products produced in traditional manners, for example, has led to an increased demand for organic foods and foods meeting centuries-old religious requirements such as kosher or halal.

Disclosures regarding methods of production are necessary for those consumers who wish to select or avoid a particular food because of how it was produced. Because the method of producing a food is most often not apparent from examining the food itself, food labels must provide this information.[145] If a food has been irradiated or produced with genetically engineered ingredients, that fact should be clearly indicated on the label. If a food claims to be in compliance with rules for organic agriculture or with specific religious practices, the definition of those terms should be clear and consistent.

The disclosure of such information is necessary to permit consumers to exercise free

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[144] Peter Scher, Deputy U.S. Trade Representative, remarks at the 1998 Ceres Conference on "Politicizing Science: What Price Public Policy?" (Georgetown University Center for Food and Nutrition Policy) (April 4, 1998).

[145] Caswell, *supra* note 1.

choice in the marketplace and "vote with their pocketbooks," which is essential in a free market economy. If consumers are not given adequate information, then they cannot make informed purchasing decisions, and producers cannot respond with the types of products that consumers want to purchase. Not surprisingly, the most common rationale for disclosure laws, therefore, is economics -- they improve market efficiency.[146]

The disclosure of information regarding methods of production is also necessary to fulfill what has been called the consumers' "right to know." The consumers' right to information was recognized by the General Assembly of the United Nations in its Guidelines for Consumer Protection. The guidelines are intended to provide "[a]ccess of consumers to adequate information to enable them to make informed choices according to individual wishes and needs."[147] The guidelines urge governments to "encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products."[148]

The U.N. guidelines were inspired by the pronouncement of U.S. President John F. Kennedy that consumers have "the right to be informed." In his landmark message to Congress in March 1962, President Kennedy defined this right as not only encompassing the right of the consumer "to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, and other practices," but also the right "to be given the facts he needs to

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[146] *See* Caswell, *supra* note 1; Clifford Rechtschaffen, *The Warning Game: Evaluating Warnings Under California's Proposition 65*, 23 Ecology L.Q. 302, 313 (1996)

[147] United Nations, Resolution Adopted by the General Assembly, Annex Guidelines for Consumer Protection, Apr. 16, 1985, at II. (c), *reprinted in, Consumer Law in the Global Economy National and International Dimensions* (Iain Ramsay, ed. Dartmouth Pub. Co., Ltd. 1997) at 372.

[148] *Id.* at 375 (III. B.21).

make an informed choice."[149] Each subsequent U.S. President has endorsed this right,[150] and it continues to be a major element of the United Nations Guidelines for Consumer Protection.

This chapter will examine these principles in reference to requiring disclosure requirements for four different food processing and production methods that are currently the subject of debate. These methods include food irradiation, genetic engineering, organic food production, and methods used to produce foods in accordance with religious dietary requirements.

Part One:
The Labeling of Irradiated Foods and Food Ingredients

Irradiation involves exposing foods to ionizing radiation -- gamma rays from radioactive isotopes or machine-produced, high-energy electrons and x-rays.[151] Irradiation can retard spoilage and kill microorganisms that can contaminate meat and poultry.[152] Food irradiation has been approved by over 40 countries and has been endorsed by the World Health Organization

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[149] President John F. Kennedy, Message Relating to Consumers' Protection and Interest Program (March 15, 1962) at 2.

[150] For example, in his address marking National Consumer Week in 1994, President William J. Clinton recognized the importance of the consumer right to know. He stated, "What has come to be called the Consumer Bill of Rights has evolved as our marketplace has evolved. At present, it includes: 'The Right to Information' -- the right to have full and accurate information upon which to make free and considered decisions and to be protected against false or misleading claims." William J. Clinton, Proclamation, National Consumers Week, 1994.

[151] Rosanna Mentzer Morrison, *Food Irradiation Still Faces Hurdles*, Food Review (Oct.-Dec. 1992) at 11-12.

[152] International Consultative Group on Food Irradiation, Joint FAO/IAEA Division of Nuclear Techniques in Food and Agriculture, *Facts About Food Irradiation* (May 1991).

and the Food and Agriculture Organization.[153] However, the practice is not accepted by some consumers who wish to avoid eating irradiated foods for nutritional, environmental or other reasons.

A. The Need for Labeling of Irradiated Foods

Irradiation can cause significant nutrient losses in foods. For example, studies of the effect of irradiation on thiamine levels in fresh foods, conducted under a variety of conditions, show nutrient losses ranging from approximately 10 to 50 percent over a dose range of 0.6 to 7.3 kGy.[154]

Irradiated foods may also taste different than non-irradiated foods. Some studies have found that irradiation can create off-flavors and odors in beef and chicken.[155] Therefore, labeling is also necessary to inform consumers about possible taste differences in irradiated foods.

Some consumers may wish to avoid purchasing irradiated foods because of environmental and worker safety concerns. The U.S. Nuclear Regulatory Commission has recorded 54 accidents at 132 irradiation facilities worldwide since 1974.[156] If irradiated foods are clearly labeled, consumers can "vote with their pocketbooks," refrain from purchasing such

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[153] P.J. Skerrett, *Food Irradiation: Will It Keep the Doctor Away?* TECHNOLOGY REVIEW (MIT), Nov. 21, 1997.

[154] 62 Fed. Reg. 64,107, 64,114 (1997).

[155] Other studies, however, have found no such effects. Rosanna Mentzer Morrison, et al., *Irradiating Ground Beef to Enhance Food Safety*, Food Review (Jan.-Apr. 1997) at 34.

[156] Susan Meeker-Lowry & Jennifer Ferrara, *Meat Monopolies: Dirty Meat and the False Promises of Irradiation*, Food & Water, at 25.

foods, and help discourage a technology that they oppose.

Consumer surveys throughout the world show that consumers have consistently demanded that irradiated food be labeled as such.[157] In Britain, a national opinion poll found that 95% thought all food, including foods that contain irradiated ingredients, should be labeled.[158] In a public opinion poll conducted in the United States, 92% of those surveyed said that foods should be labeled if they have been irradiated.[159] For whatever reason, consumers have a right to make an informed choice when deciding whether to purchase and consume irradiated foods.

B. Examples of Irradiation Labeling Requirements

1. United States

The use of irradiation was first approved by the U.S. Food and Drug Administration[160] in the early 1960s to control insects in wheat and wheat flour and to prevent sprouting in white potatoes. U.S. growers and manufacturers have not used either application because less

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[157] Tony Webb, Tim Lang, Kathleen Tucker, FOOD IRRADIATION: WHO WANTS IT? 53 (Thorsons Publishers, Inc. 1987) (*citing* Titlebaum, Dubin, and Doyle. *Will Consumers Accept Irradiated Foods*, Journal of Food Safety, 5, 219-228 (1983)); *See also* Bruhn, Schultz, and Sommer, *Attitude Change Toward Food Irradiation Among Conventional and Alternative Consumers*, Vol. 40, Food Technology 86 (Jan 1986); Survey conducted by UK Consumers' Association, London (Nov. 1986).

[158] *Food Irradiation*, Omnibus Research by Marplan Ltd. Conducted for the London Food Commission, London (January 1987).

[159] Bruskin/Goldring Research, (Irradiation Telephone Survey for the Center for Science in the Public Interest) (June 1996) (on file with author).

[160] Under U.S. law, irradiation is considered to be a food additive and, as such, must be approved by the FDA. For both meat and poultry irradiation, the FDA approves its use at set levels, while USDA is responsible for labeling requirements and other implementation issues.

expensive and easier-to-use chemicals are available. Subsequently, irradiation was approved to kill microorganisms in vegetable seasonings, to sterilize trichinae in infected pork, to delay ripening and sprouting in fresh fruit and vegetables, to control salmonella and other pathogens in poultry,[161] and to kill disease-causing microorganisms in red meat.[162]

In the U.S., all FDA-regulated packaged foods that have been irradiated must be labeled with the international symbol for irradiation and the words "treated by irradiation" or "treated with radiation." Irradiated foods that are not in package form must display the required logo and phrase with either the labeling of the bulk container plainly in view or a counter sign, card, or other appropriate device bearing the information that the product has been treated with radiation.[163]

The Radura -- The international symbol indicating food irradiation

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[161] Rosanna Mentzer Morrison, *Food Irradiation Still Faces Hurdles*, Food Review (Oc Dec. 1992) at 13.

[162] 62 Fed. Reg. 64,107 (1997).

[163] 21 C.F.R. § 179.26(c) (1997). The USDA has similar labeling requirements for pou products (9 C.F.R. 381.135) and is currently preparing a proposed labeling regulation for mea products.

U.S. regulations do not require that products containing irradiated ingredients be labeled. The treatment of irradiated ingredients under U.S. law is in marked contrast to those of many developed countries and is inconsistent with Codex standards. Furthermore, under pressure from the food industry, in 1997, the U.S. Congress mandated that the required irradiation disclosure for FDA regulated food products be reduced in size. The required disclosure on such foods must now be no more prominent than the food's ingredient listing.[164]

2. Canada

In Canada, irradiation has been approved to inhibit sprouting on potatoes and onions, to control insects in stored wheat flour, and to kill microbes in spices and dehydrated seasoning preparations.[165]

Any irradiated food that is prepackaged must contain the international symbol on its principal display panel. The outer diameter of the symbol must be no smaller than the height required for the declaration of net quantity of the package. Foods that are not prepackaged must display a sign that carries that symbol immediately next to the food. The symbol must be no less than 5 centimeters.

In addition, one of the following statements must appear in close proximity to the symbol: (1) "treated with radiation"; (2) "treated by irradiation"; or (3) "irradiated." Any irradiated food that is an ingredient or component of a prepackaged product that constitutes 10% or more of the prepackaged product must be included in the list of ingredients and preceded by

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[164] Food and Drug Administration Modernization Act of 1997, Pub. L. 105-115, §306 (1997).

[165] FDR at Sec. B.26.003.

the statement "irradiated."[166]

3. European Union

The European Union authorizes the use of irradiation only if it can be demonstrated that there is a reasonable technological need, if the use of irradiation presents no health hazard, if it is of benefit to the consumer, and if it is not used as a substitute for good hygiene, good manufacturing, or good agricultural practices. Furthermore, irradiation may only be used to reduce the incidence of food-borne disease by destroying pathogenic organisms, to reduce spoilage of foodstuffs, to reduce loss of foodstuffs by premature ripening, germination or sprouting, or to rid foodstuffs of organisms that are harmful to plants or plant products.[167]

The EU requires irradiated foods to bear the words "irradiated" or "treated with ionizing radiation" on the label. If an irradiated product is used as an ingredient, the same words must accompany the designation of ingredients.[168]

4. Codex

The Codex standard for irradiated foods requires such foods to be labeled with a written statement indicating that the food has been irradiated. This statement must be placed in close proximity to the name of the food.[169] The use of the international food irradiation symbol is optional, but when it is used, it must also be in close proximity to the name of the food.

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[166] *Id.* at Sec. B.01.035.

[167] European Commission, Official Journal of the European Communities, C389/36, 41, Common Position (EC) No.46/97, Foods and Food Ingredients Treated with Ionizing Radiation, Directive 97/C 389/02, December 22, 1997, Annex I.

[168] *Id.*, Article 6.

[169] CODEX ALIMENTARIUS COMMISSION, Codex Alimentarius Vol. 1, Section 5.2.

When an irradiated product is used as an ingredient in another food, this must be declared in the list of ingredients. When a single-ingredient product is prepared from a raw material that has been irradiated, the label of the product shall contain a statement indicating the treatment.

C. Recommendations for Labeling of Irradiated Foods

Any foods, or any foods containing ingredients, that have been treated by irradiation should be labeled with a written statement on the principal display panel indicating such treatment. The statement should be easy to read and placed in close proximity to the name of the food and accompanied by the international symbol. If the food is unpackaged, this information should be clearly displayed on a poster in plain view and adjacent to where the product is displayed for sale.

The U.S. government, in particular, should revise its regulatory standards to provide consumers with the level of protection accorded by the EU, Canada, and Codex standards. U.S. requirements in this area fall below those of many other developed countries and should be upgraded to world class levels. The U.S. should expand its disclosure regulations to require labeling of foods that contain irradiated ingredients. The U.S. should also reverse recent legislation that tends to obscure the irradiation disclosure by requiring that it appear in small print.

In addition, national regulatory authorities should take steps to ensure compliance with labeling regulations. Since there is no reliable post-treatment technique for detecting irradiation, it is imperative that treatment plants are consistently inspected to guarantee that dosage and labeling requirements are followed. Moreover, control over imported foods is

particularly difficult, as importing countries must rely on the integrity of exporting governments and the effectiveness of their monitoring systems.[170] Thus, governments should work together to ensure that imported foods are also labeled reliably and consistently.

Part Two:
The Labeling of Genetically Engineered Foods and Food Ingredients

Genetic engineering is a process by which deoxyribonucleic acid (DNA), the genetic material inside the cells of living organisms, is manipulated to block or add desired traits to an organism. Plants, animals, bacteria, and other life forms that have been subjected to such processes are referred to as genetically modified organisms (GMOs) or as transgenic. For example, tomatoes can be produced with delayed ripening ability so that they will stay fresher longer, corn can be grown so that it is resistant to insect borers, and soybeans can be made resistant to herbicides.

A. The Need for Labeling of Genetically Engineered Foods

Consumers may want to know whether a food product contains genetically engineered ingredients for a variety of reasons. Some consumers may perceive such foods as better than their conventional counterparts because of considerations relating to taste, cost, convenience or other factors. Other consumers may hold contrary views. The labeling of genetically engineered foods is necessary to permit all consumers to exercise free choice in the marketplace. If consumers are not given adequate information, then they cannot make informed purchasing

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[170] Consumers International Briefing Paper; American Dietetic Association Statement (citing M.H. Stevenson, *Identification of Irradiated Foods*, Food Technology, 1994 48(5) 141-144.)

decisions and producers cannot respond with the types of products that consumers want to purchase.

Those consumers who wish to avoid purchasing genetically engineered foods may wish to do so for several reasons. First, some consumers may have safety concerns about genetically engineered foods. It is possible, for example, that a gene for an allergen could be transferred from one food to another food to which a consumer would not normally be allergic.[171] Without proper labeling, consumers would not know whether a genetically engineered food contains an allergen.

Some segments of the food industry argue that companies can effectively screen for allergens. However, the report of the 1996 Joint FAO/WHO Consultation states "[u]nfortunately, reliable models for the assessment of the allergenicity of genetically modified foods do not presently exist, although the development of such models is to be encouraged."[172] In light of this problem, appropriate labeling of genetically engineered foods is essential.

Other consumers have broader concerns about the safety of genetically engineered foods. While there is no evidence that genetically engineered foods are unsafe, some consumers remain skeptical. For instance, many Europeans feel betrayed by their government's handling of the bovine spongiform encephalopathy (BSE -- "Mad Cow Disease") crisis.[173] In Great Britain, 24

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[171] Julie A. Nordlee *et al.*, *Identification of a Brazil-Nut Allergen in Transgenic Soybeans,* 334 New Eng. J. Med. 688-92 (1996).

[172] JOINT FAO/WHO CONSULTATION, BIOTECHNOLOGY AND FOOD SAFETY, FAO FOOD AND NUTRITION PAPER NO. 61 14-15 (1997).

[173] *See, e.g.*, Marion Nestle, *Food Biotechnology: Labeling Will Benefit Industry As Well As Consumers,* NUTRITION TODAY, Jan./Feb. 1998, at 10; Tassos Haniotis, First Secretary (Agriculture) European Commission Delegation to the U.S., speech presented at The Integrated

people died after they apparently ate meat from tainted cows.[174] The European Commission's handling of the outbreak was criticized by the European Parliament and undermined consumer confidence. With such actual food safety disasters in recent memory, many consumers are suspicious of new food technologies that governments and experts claim to be unquestionably safe.

Second, some consumers may be concerned about adverse effects that genetically engineered crops may have on the environment. The production of genetically engineered foods raises ecological concerns including damage caused by cross-pollination and unwanted pesticide and herbicide tolerance.[175] For example, in 1996, cotton that was genetically engineered to contain the naturally-occurring insect toxin from Bacillis thuringiensis (Bt) failed to protect against bollworms and other insect pests. This suggests that "widespread use of the Bt gene, particularly at moderate levels, might induce selection for Bt-resistant insects. Such an event would destroy the use of this toxin for sustainable agriculture systems in which it has been a mainstay." There have also been reports of recombinant oilseed canola plants passing their gene for herbicide resistance to rapidly producing weeds.[176]

In light of these and other environmental concerns, some consumers do not want to

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Crop Management Conference, *The Economics of Agricultural Biotechnology: Differences and Similarities in the US and EU,* (Ames, Iowa) (Nov. 17-18, 1997, <http://www.eurunion.org/news/speeches>.

[174] U.K. Department of Health, (visited Apr. 6, 1998) <http://www.coi.gov.uk/coi/depts/GDH/GDH.html> (monthly Creutzfoldt-Jakob Disease Figures).

[175] Nestle, *supra* note 173 at 6, 8.

[176] *Id.* at 8-9.

purchase genetically engineered products. However, if food products containing genetically engineered ingredients are not appropriately labeled, consumers will not have sufficient information to exercise free choice, and market forces will not be able to operate properly.

Third, some consumers want to know for philosophical, ethical, or religious reasons whether a food product contains a genetically engineered ingredient. Consumers may object to the development and use of genetic engineering because they fear that it could be misused in the future for other purposes. For example, some European consumers object to the use of genetic engineering based on historical experience during World War II when the Nazis conducted experiments in an attempt to create a superior Aryan race.[177] Others object on more general grounds to a technology that, in theory, could eventually be applied to humans. Furthermore, some Jews and Muslims, who do not eat certain foods such as pork, fear that genes from a pig could be inserted without their knowledge into a plant or animal that is part of their traditional diet. In addition, some Muslims, who do not eat insects, may be concerned that insect genes could end up in other foods.[178] Would the use of a protein derived from insects prevent Muslims from eating a genetically modified food? Religious leaders and their followers must answer such questions, but they cannot begin to even address these issues if they do not know which products are affected.[179]

Surveys show that consumers in various countries around the world want labeling

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[177] *See* Nestle, *supra* note 173, at 10.

[178] *See* Letter from Margaret Mellon, Director of Agriculture and Biotechnology, Union of Concerned Scientists, to the Editor of N.Y. Times (June 4, 1997) (on file with author).

[179] Vegans and vegetarians have similar concerns about consuming any plant products that contain genetic material from animals.

advising them whether food products have been genetically modified. A survey of American consumers conducted by Novartis, a Swiss-based company that is the world's largest agribusiness, chemical, and pharmaceutical firm, found that 93% of those surveyed want genetically engineered foods to be labeled.[180] That figure is consistent with survey results that show that European consumers also strongly favor labeling of genetically engineered foods.[181]

Novartis began labeling its genetically modified corn in 1996 and has urged its customers to label their products as coming from genetically engineered seeds. Wolfgang Samo, head of agribusiness at Novartis has stated that "[g]enetically enhanced products are overall superior to conventional ones. Industry should have many reasons to label them . . . . If we believe in the right to choose for consumers, the industry cannot reasonably argue against labels facilitating this choice."[182]

B. Examples of Labeling Requirements for Genetically Engineered Products

The EU leads the world in developing labeling regulations designed to let consumers know whether foods contain genetically engineered ingredients. The U.S. strongly opposes such

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[180] Brian Williams, *Firm's Stance on Labeling Genetically Engineered Food Continues to Spark Debate,* THE COLUMBUS DISPATCH, Feb. 27, 1997, at 2C. Significantly, the survey also showed that 71% feel bioengineered food is very safe and that 73% prefer bioengineering to pesticides as a means of increasing crop production. *Id.* Surveys cited by certain segments of the U.S. food industry tend to show less demand among Americans for labeling of genetically engineered foods. International Food Information Council, U.S. Consumer Attitudes Toward Food Biotechnology, (Survey conducted by Wirthlin Group Quorum) (March 1997). Survey results can be influenced by how the labeling question is posed to respondents.

[181] Stefan Flothmann, Greenpeace Germany, remarks at the 1998 Ceres Conference on "Politicizing Science: What Price Public Policy?" (Georgetown University Center for Food and Nutrition Policy) (April 4, 1998).

[182] Williams, *supra* note 180, at 2C.

labeling requirements except in cases where a new product is essentially created or where a known safety hazard (e.g. allergenicity) is created by transferring the genes of one organism to another. The Codex Alimentarius Commission is presently considering two conflicting recommendations for labeling that reflect the differences between the U.S. and the EU. The conflict between the EU and the U.S. over the labeling of genetically engineered products has been called "the battle royale"of the 21st century world agriculture by U.S. Agriculture Secretary Dan Glickman.[183]

1. United States

Genetically engineered foods and food ingredients are widely sold in the United States. They include canola, corn, cottonseed oil, potatoes, soybeans, tomatoes, and cheese-making enzymes (chymosin). Transgenic ingredients occur in products ranging from soy-based baby formulas to corn chips.

The U.S. FDA does not generally require the labeling of food produced through genetic engineering. Labeling is required in only two situations:

- The food differs so much from its traditional counterpart that the "common or usual name" no longer applies to the new food; or
- A safety or usage issue exists to which consumers must be alerted, e.g., an allergen is present in a food, or the food no longer functions during food preparation like its traditional counterpart.[184]

When labeling is required, it need not mention that the product has been genetically modified -- it must only state the relevant change. For example, the FDA would require a label

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[183] *European Stance on Labeling Genetically Modified Crops Prompts Farm Chemicals Association Response,* Food Labeling & Nutrition News, Jul. 17, 1997, at 11.

[184] 57 Fed. Reg. 22,984 (1992).

declaration if a tomato has had a peanut protein introduced into it, and the introduced protein could cause an allergic reaction. In such cases, however, the label would only need to indicate the presence of peanuts -- not the fact that it was genetically altered.[185]

The FDA has defended its policy by claiming that its statutory mandate, the Federal Food, Drug and Cosmetic Act (FDCA), "does not require disclosure in labeling of information solely on the basis of the consumer desire to know."[186] In comments addressing a Codex Alimentarius proposal on labeling genetically modified foods, the U.S. explained its position:

> The United States is mindful of the contention by some that mandatory labeling of all genetically engineered foods is within the concept of consumers' right to know. The United States has long supported the inclusion in food labeling of information related to dietary guidance (such as nutrient values) and information relating to economic value (such as quantity of contents). However, under current United States' laws and policy, consumers' right-to-know does not automatically extend to mandatory disclosures on food labels beyond relevant information on health, safety, altered nutritional composition, required handling and conditions of use. We are also aware that various groups have raised issues characterized as 'ethical concerns.' The United States believes that consumers should have access to information on bioengineered foods and that manufacturers ought to provide such information. There are a number of means of providing such information, other than labeling. Providing such information on the label would be highly impractical and unequitable in that the difficulties and costs in applying such labeling to commingled commodity products and to processed foods containing such ingredients from many different sources would be substantial and would be borne by all consumers regardless of the level of their own concerns and without providing any greater assurance of safety.[187]

The U.S. discourages voluntary labeling of foods that do not contain genetically

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[185] *Id.* at 22,987, 22,991.

[186] FDA, *FDA's Policy for Foods Developed by Biotechnology,* FDA Education/Compliance Program: 1995, <http://vm.cfsan.fda.gov/~lrd/biome.html>.

[187] Joint FAO/WHO Food Standards Programme, Codex Committee on Food Labelling, *Implications of Biotechnology for Food Labelling, Governments Comments,* Additional Comments from U.S.A. (Ottawa, Canada) (May 14-17, 1996).

modified organisms on the grounds that such labeling can be potentially misleading. Although there is no official policy statement governing the use of phrases such as "contains no genetically engineered material," an Interim FDA Guidance Policy on the voluntary labeling of milk and milk products from cows that have been treated with Recombinant Bovine Somatotropin (rBST) indicates that such statements must be carefully crafted to avoid implying that products produced without bioengineering are safer or of higher quality than those produced with bioengineering. FDA stated that "such misleading implications could best be avoided by the use of accompanying information that puts the statement in a proper context." In the case of rBST-treated milk, FDA explained that a "proper context" could be achieved in a number of ways, including a statement that "no significant difference has been shown between milk derived from rBST-treated and non-rBST-treated cows."[188]

The American position has been criticized both in the U.S. and abroad. Critics have pointed out that in some cases, the U.S. does require labels to indicate a food production method or process, such as "frozen," or "from concentrate." The U.S. also requires food labels to disclose whether added colors and flavors are "natural" or "artificial." These critics have pointed out that there are ample grounds for considering the process of biotechnology "a material fact" -- which triggers labeling requirements under U.S. law.[189]

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[188] 59 Fed. Reg. 6,279, 6,280 (1994).

[189] Under U.S. law, a food is "misbranded" if its "labeling is false or misleading in any particular." 21 U.S.C. § 403(a) (1997). In determining whether labeling is false or misleading, the FDA must consider representations actually made as well as "the extent to which the labeling or advertising fails to reveal facts material in the light of such representations ...." 21 U.S.C. § 201(n) (1997). *See* Consumers Union and Mother & Others for a Liveable Planet, comments to the U.S. Delegation to the Codex Committee on Food Labelling (Oct. 9, 1997).

The policy of the FDA is often viewed as being inconsistent with requirements in other parts of the world. In the fall of 1997, the FDA hosted visitors from eight countries -- all of whom were interested in the agency's biotechnology policy. According to an unnamed FDA official, the journalists among the visitors wanted to get the "straight scoop as to why the U.S. is out of step with the rest of the world" on this issue.[190]

The U.S. remains under pressure to label genetically engineered food. For example, in May 1997, 24 major European food retailers urged the U.S. food industry to develop a system for segregating and labeling genetically modified corn and soybeans exported to the EU. The retailers cautioned U.S. seed developers, farmers, and traders that European consumers demand such labeling to enable them to make informed purchasing decisions.[191]

Recently, Monsanto, the leading U.S. agricultural biotechnology company, has dropped its opposition to labeling requirements issued by the EU. This change in corporate policy is significant considering that the U.S. government has strongly objected to the EU's labeling requirements as unjustified. Although Monsanto has now agreed to comply with those requirements, the company claimed that segregating genetically modified soybeans in the U.S. commodity chain is not viable.[192]

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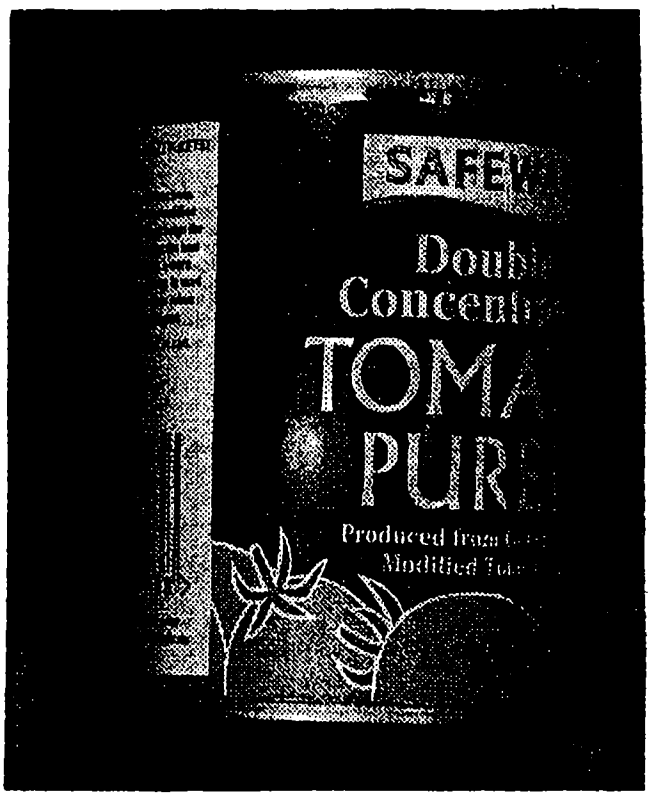
[190] *Labeling of Biotech Foods Highlighted by FDA's Foreign Visitors,* WORLD FOOD CHEMICAL NEWS, Oct. 15, 1997, at 12.

[191] *EU Approves Labeling Rules for Genetically Modified Products,* WORLD FOOD CHEMICAL NEWS, June 25, 1997, at 18.

[192] *"Monsanto changes stand on labeling genetically modified food in the EU,"* FOOD LABELING AND NUTRITION NEWS, May 13, 1998, at 10.



The label of this food product from the United Kingdom discloses that it was "produced from genetically modified tomatoes." Similar products sold in the United States do not bear such labeling.

2. European Union

The EU is at the forefront of developing labeling standards for genetically engineered foods. On May 15, 1997, the EU's Novel Food Regulation, 97/258 EC, went into effect, the first European act setting forth specific labeling requirements for genetically engineered food products. The regulation "requires that consumers be informed of differences between a new product and existing equivalent products. This requirement refers to the differences resulting from the use of biotechnological processes including the presence of 'live' and/or processed GMOs."[193]

Much confusion has arisen in the EU over how to interpret the novel food law and how

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[193] European Commission, Memo/97/110, *Labelling of Genetically Modified Organisms,* Dec. 18, 1997, at 4.

it will be implemented.[194] On July 22, 1997, the EU Commission sought to clarify how the laws will be interpreted and enforced by issuing a policy statement enunciating principles that will be contained in future legislation. In its statement, the Commission indicated that it will prepare draft legislation based on the following principles:

- "labeling of products consisting of, containing or derived from GMOs throughout the food chain;
- labeling intended to give consumers clear, honest and neutral information about the GMO origin of products, facilitating choice for consumers without stigmatising modern biotechnology, scaremongering or raising doubts about the safety of products;
- a system which is science-based in order to ensure enforceability (for domestic and imported products alike), and to limit the scope for fraud (through the possibility of verification);
- labeling which can co-exist with different existing labelling frameworks, such as that foreseen by the Novel Foods Regulation;
- an approach which is simple and not unduly costly for operators to comply with and one which minimizes uncertainty;
- an approach that is in accordance with the Community's international obligations and which does not impose mandatory segregation of production, transport and distribution lines on operators but only proportionate labeling requirements;
- a coherent and flexible framework to determine the precise labeling rules with a clear proactive role for the Community."[195]

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[194] *E.g.*, Gillian Handyside, *EUR: EU Gnawed by Worries Over Genetically Changed Foods*, AAP Newsfeed, Jan. 11, 1998 (available in NEXIS file) ("Faced with criticism from consumers, environmentalists and industry, the European Union is trying to turn its hotch-potch of rules on genetically modified crops and foodstuffs into something resembling a coherent policy." The Novel Foods Regulation has been characterized as resulting in "a plethora of convoluted regulations, only some of which dovetail, and a great deal of confusion, consumer concern and delays for industry seeking product approval.").

[195] European Commission, *Broad Orientation for an Extended Community Labelling System for GMO Products* (July 22, 1997).

The Commission agreed that:

- products without GMOs can be marketed without any labeling. Voluntary labeling of products of certified non-GMO origin should be facilitated;
- for products known to be of GMO origin, mandatory labeling (e.g., "this contains") should be required;
- in cases where material of GMO origin cannot be excluded but where no evidence of the presence of such materials is available, mandatory labeling (e.g., "this may contain") should be required.[196]

Because genetically engineered maize (corn) and soybeans were not covered by the Novel Food Regulation, the Commission adopted Regulation 1813/97, which became effective November 1, 1997. This regulation provides for detailed labeling requirements to be imposed for these products at a later time.

On February 25, 1998, the EU Commission formally proposed for Council consideration a regulation to replace 1813/97 that would set detailed labeling procedures for foods derived from genetically modified corn and maize. The proposal was important because it is the most detailed blueprint for a labeling scheme that the EU has issued to date, reflecting the policy enunciated in the July 1997 statement.

Under the proposal, products containing soy or maize products whose genetic modification can be confirmed through DNA or protein testing will be subject to the following requirements:

- If the food consists of more than one ingredient, the words "produced from genetically modified soya" or "produced from genetically modified maize" must appear in the ingredients list in parentheses following the name of the relevant ingredient. For products that do not contain a list of ingredients, those words must appear clearly on the

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[196] European Commission, *The European Commission Agrees on an Orientation for Labelling of GMO Products*, press release (July 25, 1997).

labeling.

- An ingredient of a compound ingredient that is derived from genetically engineered corn or maize must be mentioned in the final product labeling.

- The use of the terms "may contain" or "may have been produced from" genetically modified _____ must be used if there is no evidence that the ingredients have been genetically modified but evidence of such modification cannot be excluded.[197]

The proposal was approved recently by the European Parliament in May with minor amendments.[198] Council approval is expected shortly.

The Bureau Europeen des Unions de Consommateurs (BEUC), a European consumer advocacy organization, has criticized the proposal for relying on DNA or protein testing to determine whether consumer products are to be labeled. BEUC believes that because many ingredients are processed in such a way that the modified DNA and new protein will not be detectable, few products will be required to be labeled. BEUC instead advocates that "business-to-business" information be used, with each entity in the production chain passing on information about product origin in an "audit trail." The group stated that testing for genetic material should be done on raw materials as they enter the country, when testing is more accurate. In the alternative, produce with a certificate of origin from a certified laboratory indicating that it does not contain GMOs would be acceptable. BEUC also criticized the "may

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[197] Proposal for a Council Recommendation concerning the compulsory indication on the labeling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC.

[198] *"European Parliament Approves Plans for Labeling GM Foods,"* FOOD REGULATION WEEKLY, May 18, 1998, at 19.

contain" labeling option as fostering consumer uncertainty. [199]

3. Australia and New Zealand

On February 24, 1998, the Australia New Zealand Food Authority (ANZFA) published a proposal to require labeling of genetically engineered products where the products are not "substantially equivalent" to traditional foods. Unlike the EU requirements, the use of genetic engineering does not automatically mean that a food product is "not substantially equivalent" to its traditional counterpart. Unlike the U.S., however, the Australian proposal does not discourage negative claims (i.e. that foods do not contain products of a GMO).[200]

The proposal creates three categories of food, only one of which requires food labeling. Category l is comprised of "[f]oods produced using gene technology that are not substantially equivalent to their existing conventional counterparts and which contain new or altered genetic material." The category includes foods that are altered in their composition, allergenic properties, nutritional value, or end use. Examples include capsicum (hot or sweet peppers) modified to contain enriched vitamin A and C content, and tomatoes modified to be sweeter. Labeling would be required for such products. The label would be required to state the biological origin and nature of the characteristic or property modified.

Category 2 is comprised of "[f]oods produced using gene technology that are substantially equivalent to their existing conventional counterparts whether or not they contain

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[199] BEUC's comments on the proposed Commission Regulation concerning the compulsory indication on the labeling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC, BEUC/002/98 (Jan. 6, 1998).

[200] ANZFA, Statement of Reasons, Proposal P97, For Recommending, Standard A18, Food Produced Using Gene Technology (Feb. 25, 1998).

new or altered genetic material." Foods that contain new or altered genetic material could include tomatoes genetically modified to be insect resistant and potatoes genetically modified to reduce their susceptibility to browning and bruising. Foods that do not contain new or altered genetic material could include: sugar from sugar cane genetically modified to be resistant to viruses or cotton seed oil from cotton genetically modified to be insect resistant. Category 2 foods would not require labeling.[201]

Category 3 is comprised of foods produced without using gene technology. Such foods may be labeled as containing no GMOs so long as it can be substantiated.[202]

The Australian Consumers Association (ACA) issued a statement that ANZFA "betrayed" consumers. ACA stated, "[t]he Authority has not kept faith with consumers. Consumers simply do not consider [that] genetically modified foods *can* be equivalent to conventional ones. This ruling denies their right to know about the *process* used to produce their food."[203] ACA explained that consumer surveys have shown that up to 90 percent of Australians want labeling for all genetically modified foods. The group, however, was pleased with the provision permitting manufacturers to indicate that their products do not contain

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[201] ANZFA, *Australia New Zealand Food Authority Makes Recommendation to Health Ministers on Regulation of Foods Produced Using Gene Technology,* press release and information sheet (Feb. 24, 1998). The proposal rejected mandatory labeling for food that was "substantially equivalent" to traditional food because it could not be justified on the basis of sound scientific principles; it is not necessary to protect public health and safety; it is more restrictive than necessary; it is not practicable; and it is too difficult to enforce. Proposed Standard A18, Draft Variation to the Food Standards Code (Australia, New Zealand). *See* ANZFA Statement of Reasons, *supra* note 200.

[202] ANZFA Press Release and Information Sheet, *supra* note 201.

[203] Australian Consumers Association, *Consumers Betrayed by Ruling on Gene Foods,* press release (Feb. 25, 1998).

genetically modified organisms.

4. Japan

Although Japan has issued Guidelines for Safety Assessment of Foods and Food Additives Produced by Recombinant DNA Techniques, it has not yet issued guidelines on labeling genetically modified organisms. Currently, a legislative subcommittee and the Advisory Committee on Food Labeling at the Ministry of Agriculture, Forestry and Fisheries are discussing labeling issues. When the deliberations by the two bodies are completed, the government will present its position.[204]

5. Codex

The Codex Committee on Food Labeling will discuss two alternative recommendations for the labeling of foods obtained through the use of biotechnology in May 1998,[205] reflecting the fundamental disagreement between the U.S. and the EU over "whether to apply specific labelling requirements to genetically modified products which are different from conventional products or to apply them to all genetically modified foods irrespective of their characteristics."[206]

The first proposed recommendation reflects the position of the U.S. It states:

"When a food or food ingredient obtained through biotechnology. . . is no

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[204] Joint FAO/WHO Food Standards Programme, Codex Committee on Food Labeling, *Proposed Draft Recommendations for the Labelling of Foods Obtained through Biotechnology,* CX/FL 98/8 (Government Comments of Japan).

[205] The proposed draft recommendations are at step 4 in the 8-step process.

[206] Joint FAO/WHO Food Standards Programme, Codex Committee on Food Labelling, 26th Session (May 26-29, 1998) (Ottawa, Canada), *Proposed Draft Recommendations for the Labelling of Foods Obtained through Biotechnology,* CX/FL 98/8, at Part B (2).

longer substantially equivalent to the corresponding existing food or food ingredients as regards

- composition
- nutritional value
- intended use

the characteristics which make it different from the reference food would be clearly identified in the labeling."

The second proposal reflects a position more akin to that of the EU. It states:

> All foods that are or contain genetically modified organisms shall be labeled. Foods that are produced from genetically modified organisms but do not contain them shall always be labeled, if natural variations considered, an adequate analysis demonstrates that they differ from equivalent conventional foods.
>
> The presence of any substance[s] that are absent in existing equivalent foods and may have implications for the health of certain sections of the population and/or are the subject of ethical objections shall be indicated in the label.[207]

Two alternatives regarding the labeling of known allergens created by the use of bioengineering are also being considered by Codex. The first recommendation is to discourage the marketing of foods containing potential allergens. The second approach is to declare the presence of an allergen in any food or food ingredient produced through biotechnology. If adequate information about allergens cannot be provided through labeling, food containing an allergen should not be marketed.

The introductory comments to those recommendations appear pessimistic that a proposal will be adopted any time soon. They stated that "the Committee may wish to recognize that the positions are too different at this stage to establish international recommendations which would be generally acceptable and defer action until further information is available which could lead

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[207] *Id.*

to consensus on these issues."[208]

The Codex Executive Committee at its 43rd session stated that "while consumers may claim the right to know whether or not foods had been prepared by biotechnology, it also notes that the claimed right to know was ill-defined and variable and in this respect could not be used by Codex as the primary basis of decision-making on appropriate labelling."[209] However, the consumer's need for adequate information in order "to make informed choices according to individual wishes and needs" has been recognized by the UN General Assembly in its Guidelines for Consumer Protection.[210] Moreover, the provision of such information is necessary to permit market forces to operate properly, *supra* page 61. Ensuring fair trade practices within the food industry is one of the primary purposes of the Codex Alimentarius, and the importance of labeling standards as a means to prevent deceptive trade practices by food companies is specifically recognized by the Codex Executive Committee.[211] Thus, regardless of how the Commission views the consumers' right to know doctrine, any action taken by Codex in this area should be consistent with its responsibilities to ensure fair trade practices.

C. Recommendations for Labeling of Genetically Engineered Foods and Ingredients

Consumers need to know the process by which a food was produced so that they can

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[208] *Id.* at B(1).

[209] Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Report of the 43rd Session of the Executive Committee (June 4-7, 1996) Alinorm 97/3, paragraph 29.

[210] United Nations, Guidelines for Consumer Protection, Article 3(c) (United Nations Publications, New York) (1986).

[211] *See* Alinorm 97/3, *supra* note 209.

make informed purchasing decisions and exercise choice in the marketplace. Such requirements are necessary to ensure fair trade and allow free market forces to function properly. Thus, national regulatory authorities should require, to the greatest extent possible, that genetically engineered foods be labeled. Furthermore, authorities should also allow labels to say that foods are not genetically engineered, or do not contain genetically engineered ingredients, without burdensome qualifying statements. An important issue still to be resolved concerns the circumstances under which foods that *may* contain genetically engineered ingredients should disclose this fact on the label. The EU's implementation of its regulation will, hopefully, provide guidance on this issue.

Part Three:
Labeling of Organic Foods

Organic food is one of the fastest growing segments of the food industry. In the United States, the size of the organic industry has risen from $78 million in 1980 to $3.5 billion in 1996.[212] The market for organic foods in the EU was valued at $1.7 billion in 1990 and has been projected to grow at a rate of 25% per year.[213] Japan's retail sales for 1994 were estimated to be $688 million.[214] In Canada, 1995 retail sales were estimated at $50 million and are

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[212] 62 Fed. Reg. 65,850, 65,856 (1997).

[213] *Id.* at 65,959 (citing William Tate, *Organic Produce in Europe*, The Economist Intelligence Unit Special Report No. 2128. London: Business International Limited (1991)).

[214] *Id.* at 65,856.

expected to grow by 15 to 25 percent per year.[215]

Some restaurants are beginning to use organic produce and other ingredients. In the U.S., the National Restaurant Association reports that organic menu items are offered in 57% of restaurants with per person checks of $25 or more.[216] Japanese family and fast-food restaurants are taking advantage of the organic boom by adding such products to their menus. Higher-priced restaurants in Japan even serve organic wine.[217]

Some major corporations are also beginning to add organic lines. For example, Heinz Co. now markets the Earth's Best line of organic baby food products.[218] In Japan, Mitsubishi Corp. has entered the organic market for environmental as well as business reasons.[219]

A. The Need for Regulating the Labeling of Organic Foods

Consumers purchase organic foods for a variety of reasons. Some consumers believe that organic foods are of higher quality and taste better. Others favor organic foods because they want to protect the environment or are concerned about the risks that pesticides and other agricultural chemicals pose to farm workers.

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[215] Anna Kohn, *Natural Growth: Organic Produce is Becoming Part of the Mainstream Food Chain as Consumers Question Whether 'Safe' Levels of Pesticides are Really as Safe as We Think*, THE FINANCIAL POST LTD., Mar. 1, 1998, at 38.

[216] Cathy Hainer, *Organics cropping up everywhere. Natural superstores cater to families hungry for chemical-free food*, USA TODAY, Oct. 7, 1997, at 8D.

[217] Sei Sasaki, *Organic foods starting to outgrow niche as more consumers look for such products, more companies see them as business opportunity,* THE NIKKEI WEEKLY, Nov. 10, 1997 (available in NEXIS Library, News, Non-U.S. file).

[218] *See* Hainer, *supra* note 216.

[219] *See* Sasaki, *supra* note 217.

Although more consumers are buying organic food, there is worldwide confusion over what the term "organic" means. Without a standard definition (and reliable enforcement), the word "organic" may, as a practical matter, provide consumers with little useful information.

Presently, a plethora of private entities for certifying organic products has created considerable confusion and controversy. For example, 27 individual U.S. state governments have organic certification laws.[220] Editorials in Japan have called on the government to establish a certification system for products labeled as organic because "fake products are commonly sold."[221]

One of the best general definitions of "organic" was recommended by the U.S. National Organic Standards Board in April 1995. This definition incorporates language from the Codex Alimentarius Draft Guidelines for organically produced foods:

> Organic agriculture is an ecological production management system that promotes and enhances biodiversity, biological cycles and soil biological activity. It is based on minimal use of off-farm inputs and on management practices that restore, maintain and enhance ecological harmony. . . .The principal guidelines for organic production are to use materials and practices that enhance the ecological balance of natural systems and that integrate the parts of the farming system into an ecological whole. Organic agriculture practices cannot ensure that products are completely free of residues; however, methods are used to minimize pollution from air, soil and water. Organic food handlers, processors and retailers adhere to standards that maintain the integrity of organic agricultural products. The primary goal of organic agriculture is to optimize the health and productivity of interdependent communities of soil life, plants, animals and people.[222]

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[220] 62 Fed. Reg. 65,850, 65,963 (1997).

[221] Asahi Shimbun, *Japan Needs System to Certify Organic Products,* ASAHI NEWS SERVICE, Jun. 2, 1997.

[222] National Organics Standards Board, Definition of Organic (Apr. 1995) *reprinted in,* Rural Advancement Foundation International-USA, *Toward Organic Integrity: A Guide to the Development of US Organic Standards,* July 1997, at 199.

The following general conditions are among those that usually must be met for the production of organic foods:

- Synthetic pesticides, fertilizers and additives are not permitted.
- Soil is fertilized using composed plant and animal wastes, organic soil enrichers, mineral sprays and green manure. Green manure includes crops such as peas, beans and clovers which are planted in alternation with the primary crop to boost the nitrogen content of the soil.
- Insect pests are controlled through alternating crops, releasing competitive or sterile bugs, and by the use of sexual attractant traps, microbes and soap or vegetable sprays to reduce spores and eggs.
- Weeds are controlled through planting and trimming methods, rather than by chemical intervention.[223]
- Foods are not subjected to high-tech processing methods such as irradiation or genetic engineering.
- Meat and dairy products must be produced without the use of synthetic growth hormones such as rBGH or the use of antibiotics. Animals must have access to the outdoors and must be fed organic feed.[224]

Unfortunately, those presumptions may not be satisfied unless the use of the term "organic" has been clearly and consistently defined and enforced. Without appropriate regulations, such as those adopted by California and certain other U.S. states, consumers have no assurances that organic foods have been produced in accordance with their expectations. The need for regulations is particularly important since consumers may pay up to twice as much for organic foods as conventional foods.

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[223] Fresh Fields Whole Foods Market, *Fresh Fields Primer, Organic Food An Introduction to Sustainable Agriculture* (1996); Margaret Wittenberg, Fresh Fields Whole Foods Market, *Everything You Need to Know About Organic* (visited Jan. 30, 1998) ‹http://www.wholefoods.com/wfm/whatsnew/organicquestions.html›.

[224] *Id.*, at 2.

B. Examples of Labeling Regulations for Organic Foods

1. European Union

The EU permits the use of the term "organic" on raw foods meeting specified rules of production.[225] The rules are set out in Article 6 and Annexes I and II to the regulation and detail general principles for organic production and specific methods and products authorized for use in soil conditioning and fertilization.[226]

The EU permits the use of the term "organic" on processed foods (the rules do not cover livestock) where "at least 95% of the ingredients of agricultural origin of the product are, or are derived from" products produced in accordance with Article 6.[227] The product may indicate that it contains organic ingredients where "at least 70% of the ingredients of agricultural origin are, or are derived from" products produced in accordance with Article 6. Products that are marketed as organic or made with organic ingredients may not be subject to ionizing radiation.[228] Genetically modified micro-organisms may only be used if they are specifically approved.[229]

2. United States

The U.S. FDA currently allows the use of the word organic on most food labels, but the

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[225] Council Regulation (EEC) No. 2092/91 (update July 1995).

[226] *Id.* at Article 6, Annex I, Annex II.

[227] *Id.* at Art. 5.3(a).

[228] *Id.* at Art. 5.3(e), Art. 5.5a(f).

[229] *Id.* at Annex VI, Sec. A.4.

USDA has withheld approval for the use of organic labeling of meat and poultry.[230] Because of the lack of national standards, 27 state governments have adopted standards governing the production or handling of organic food.[231] Thus, food that is considered organic in one state may violate the organic standard of another state. There are currently 33 private and 11 state certification agencies with their own standards and identification marks.[232] That inconsistent and confusing patchwork of standards in the U.S. is a disservice to consumers and has impeded the growth of the industry.

In 1990, the U.S. Congress directed the USDA to develop a national standard for organic foods. After seven years of delay, USDA finally proposed a national organic standard for both raw and processed foods.[233] Under the USDA proposal, raw foods could be labeled as "organic" if they were produced according to a set of principles restricting the use of pesticides, fertilizers, synthetic growth hormones, and antibiotics. Processed foods could be labeled "organic" or "made with certain organic materials" based on the percentage of organic materials in the product. Processed foods containing at least 95% organic materials may be labeled organic. Processed foods with less than 95% but at least 50% organic ingredients may be labeled as "made with certain organic materials."

The original USDA proposal permitted foods to be labeled organic if, among other things, they contained genetically modified organisms (GMOs), were irradiated, or were

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[230] 62 Fed. Reg. 65,850, 65,855 (1997).

[231] *Id.* at 65,963.

[232] *Id.* at 65,856.

[233] 62 Fed. Reg. 65,850 (1997).

INGREDIENTS: *ORGANIC ONIONS, *ORGANIC WHEAT FLOUR WITH *ORGANIC OAT BRAN AND WHEAT GERM, FILTERED WATER, ARTICHOKES, *ORGANIC ROASTED RED PEPPERS, OLIVE OIL, *ORGANIC SHIITAKE MUSHROOMS, *ORGANIC EVAPORATED CANE JUICE, BALSAMIC VINEGAR, SEA SALT, YEAST, LEMON JUICE, GARLIC, SPICES.

*Organically grown/processed in accordance with the California Organic Foods Act of 1990.

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The United States has not yet established national organic standards. This U.S. product indicates that it was "organically grown/produced in accordance with the California Organic Foods Act.

fertilized with sewage sludge. The USDA was bombarded with a record number of negative public comments (more than 200,000). U.S. Secretary of Agriculture Dan Glickman promised that the final regulation would delete these provisions. However, other aspects of the USDA proposal remain controversial, and a national consensus-based U.S. standard for organic food has not yet been developed.

3. Canada

Currently all food products labeled "organic" are produced and handled according to the certification requirements of an independent organic certification body.[234] Foods that are labeled organic but fail to meet this certification requirement may be deemed misleading and deceptive under the *Food and Drugs Act* and the *Consumer Packaging and Labelling Act.* The food label must indicate the name or number of the certifying agency. Food ingredients may be designated as organic only if they have been certified as such. The term organic is not synonymous with terms such as "pesticide free."[235]

Although organic production in Canada is currently controlled by independent organic certifying agencies, the Canadian Organic Advisory Board will soon issue new standards for organic labeling. The Board is proposing to exclude foods that have been irradiated, genetically engineered, or grown using sewage sludge as fertilizer, and to exclude meat from animals that

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[234] *See* Subsec. 5(1) of the *Food and Drugs Act,* R.S.C. 1985, C.F-27; Sec. 7 of the *Consumer Packaging and Labelling Act,* R.S.C. 1985, c.C-38; *Canada Guide, supra* note 41, at Sec. 4.2.9.

[235] Although synthetic pest control products are not used in organic agriculture, there may be a carry-over of pesticides from applications prior to the certification period, or spray drift from neighboring fields. In addition, a limited number of pesticides are approved for use in organic production.

have been given antibiotics to stimulate growth. The standards will be voluntary at first, but may become law at a later date.

4. Codex

Codex is in the process of developing guidelines for the production and marketing of organic foods. "Draft Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods" [236] are nearing completion. The draft guidelines set out a comprehensive framework for organic regulation including rules of production, lists of approved substances for treating plants and animals, inspection and certification systems, and other matters. With respect to label claims, the draft guidelines provide that manufacturers may refer to multi-ingredient processed products as organic if 95% of the ingredients are organic. Products containing between 70 and 95% organic materials may state that they contain organic ingredients. Materials and/or products produced from genetically modified organisms are specifically excluded from the guidelines.[237] Irradiated products are also excluded.

C. Recommendations for Labeling

In general, organic foods should not be permitted to contain more than five percent artificial ingredients or preservatives or be produced with the aid of synthetic pesticides or fertilizers, synthetic growth hormones, or antibiotics. Foods that contain between 70% and 95%

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[236] Joint FAO/WHO Food Standards Programme, Codex Committee on Food Labeling, and Marketing of Organically Produced Foods, *Draft Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods,* Government Comments at Step 6 (France, Japan, Poland, Consumers International) CX/FL 98.4.

[237] CODEX ALIMENTARIUS COMMISSION, *Draft Guidelines for the Production, Processing, Labeling and Marketing of Organically Products Foods,* Alinorm 97/22 A Appendix III at Section 1.5.

organic ingredients should be permitted to state on the front label "Made with ___% organic ingredients." The percentage of organic ingredients should be clearly disclosed in direct conjunction with the claim.[238]

Consumers expect that products that are labeled "organic" are not produced with high-tech processing techniques such as irradiation or genetic engineering. Thus, the organic label should not be permitted on products that have been irradiated or that contain genetically modified organisms.

Because it is impossible for consumers to distinguish organic products from conventionally produced products, they must rely on verification methods, such as certification by public or private entities and audit trails. Thus, national regulatory authorities should establish accreditation programs to certify that organic products and products containing organic ingredients are produced in accordance with national regulations. Organic certifiers should be subject to strict controls to ensure their objectivity in evaluating organic products. Organic producers should be inspected at regular intervals.

Part Four: Labeling of Foods Meeting Religious Dietary Specifications

A. The Need for the Labeling of Foods Meeting Religious Dietary Specifications

Internationally, many consumers demand foods produced in accordance with two of the

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[238] Some countries, such as the U.S., have made initial determinations not to allow percentage declarations on the principal display panel (PDP) on the grounds that only essential information should be on the PDP. USDA believes that the percentage of organic ingredients in a product is not essential information.

most widely observed religious laws — kosher foods produced under Jewish dietary laws and halal (lawful) foods produced under Islamic law. Although many consumers buy such foods to follow their religious beliefs, many non-Jews and non-Muslims buy such products for other reasons.

This label is an example of how foods meeting kosher requirements are marketed.

According to a survey of American kosher food buyers, more than a third believe that "kosher is better;"[239] twenty-nine percent are Jews, 19% are Muslims and Seventh-Day

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[239] Steve Levin, *New Products Abound at Kosherfest,* PITTSBURGH POST-GAZETTE, Dec. 11, 1997, at G5.

Adventists, and 16% are vegetarians or lactose-intolerant. By the year 2007, the kosher food industry is expected to reach 36 million U.S. buyers, of whom 44% are expected to be Muslims and 37% to be vegetarians.[240]

Both Jewish and Muslim dietary laws forbid the eating of certain foods, including pork. The laws require animals to be slaughtered as quickly and as painlessly as possible so that the animal does not suffer. While kosher meat is generally taken from the front quarters of an animal, Islamic law permits the use of the entire carcass, as long as it is wholesome and properly slaughtered.[241]

Jewish law prohibits consumption of meat and dairy products together, and dishes, cutlery and cooking equipment for each type of product must be kept separate at both the manufacturing and consumption stages. Manufacturing equipment must be dedicated to processing only kosher foods. Products that contain neither meat nor dairy products (e.g., vegetable products, some baked goods, some soups) are considered "pareve" and may be consumed with either meat or dairy products. Pareve products are often purchased by vegetarians and those with milk allergies.

B. Labeling Requirements for Kosher and Halal Foods

1. United States

Recently, as part of an initiative to "reinvent government" and cut down on the number of government regulations, the U.S. FDA revoked an official policy statement governing kosher

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[240] *Id.*

[241] Mike Dunne, *What the 'Halal' Means: Meat's Guaranteed to meet Muslim Dietary Laws,* SACRAMENTO BEE, Jan. 28, 1998 (*available in* NEXIS Library, News File).

labeling that had appeared in the U.S. Code of Federal Regulations since 1957.[242] The FDA claimed that its policy would be more appropriately reissued as a Compliance Policy Guide, which the agency defines as "an FDA informal guidance document."[243] While the FDA has withdrawn its formal policy statement, it has not yet reissued the statement as a Compliance Policy Guide. The revoked guidelines provided that:

> The term *kosher* should be used only on food products that meet certain religious dietary requirements. The precise significance of the phrase "kosher style" as applied to any particular product by the public has not been determined. There is a likelihood that the use of the term may cause the prospective purchaser to think that the product is "kosher." Accordingly, the Food and Drug Administration believes that use of the phrase should be discouraged on products that do not meet the religious dietary requirements.[244]

The U.S. has no policy regarding halal and has no plans to develop one.

2. Codex

In response to the expanding demand for halal products and rapidly increasing trade in such products, Codex Alimentarius approved new guidelines for the use of the term.[245] The guidelines were opposed by the U.S. food industry. The Grocery Manufacturers of America (GMA) criticized the plan to issue guidelines, stating that: "GMA believes that [the commission's] scientific principles reinforce the view that cultural/religious factors should not play a role in the development of Codex guidelines/recommendations. . . Religious authorities

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[242] 61 Fed. Reg. 29,701, 29,710 (1996), 62 Fed. Reg. 43,071-73 (1997).

[243] *Id.*

[244] 21 C.F.R. § 101.29 (1997) (revoked).

[245] Food and Agriculture Organization of the United Nations, *Codex Commission makes major decisions on food claims, hygiene, labelling at Geneva meeting* (July 17, 1997) <http://www.fao.org/waicent/faoinfo/economic/esn/codex/cacnote.htm>.

having the necessary [expertise] should be the ones to develop and issue such guidelines for the use [of the term] by food manufacturers."[246]

In issuing the guidelines, Codex explained that:

> The guidelines are of a general nature in order to allow for minor differences of interpretation according to the different Islamic schools of thought, and it is recognized that they are subject to the interpretation of the appropriate authorities of the importing countries. However, the certificate granted by the religious authorities of the exporting country should be accepted in principle by the importing country, except when the latter provides justification for other specific requirements. The guidelines define criteria for the use of "halal", lawful and unlawful sources of food, general requirements for slaughtering and processing, packaging, storage and transport of foods claimed to be "halal."[247]

Significantly, the guidelines provide that "claims on *halal* should not be used in ways which would give rise to doubt about the safety of similar food or claims that *halal* foods are nutritionally superior to, or healthier than, other foods."[248]

C. Recommendations for Labeling

National regulatory authorities can help facilitate consumer choice and protect consumers from unfair trade practices by working with religious authorities and developing enforcement standards for the labeling of foods meeting religious dietary specifications. Although religious authorities must be the ones who will ultimately determine whether products should be certified as kosher or halal, government authorities can prosecute the fraudulent or

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[246] *Guidelines for 'halal' term should be developed by religious authorities, not Codex:* Ziller, FOOD LABELING & NUTRITION NEWS, June 6, 1996, at 5.

[247] FAO, *supra* note 245.

[248] CODEX ALIMENTARIUS COMMISSION, Draft General Guidelines for Use of the Term 'Halal,' ALINORM 97/22 (version submitted by Codex Committee on Food Labelling was adopted without revision).

misleading use of such terms on package labels.

In nations such as the United States, where the Constitution requires the separation of church and state, guidelines must be carefully drafted to ensure that there is a neutral regulation aimed at preventing fraud in the sale of food. As the U.S. Court of Appeals has stated:

> The city [or other government authority] can prevent fraud in the sale of kosher food in a less restrictive and neutral manner by simply requiring that any vendor engaged in the sale of kosher food state the basis on which the food is labeled kosher . . . . Anyone offering for sale food marked [kosher] . . . . when the product had not in fact been approved by the relevant authority could be convicted of consumer fraud without any intrusion into the internal affairs of the Jewish faith, and without requiring the involvement of adherents of Orthodox Judaism interpreting a city ordinance.[249]

Unfortunately, the U.S. has moved in the opposite direction and is attempting to diminish its activity in this area. The U.S. should reexamine its policy and consider adopting the Codex standard for halal foods.

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[249] Barghout v. Bureau of Kosher Meat and Food Control, 66 F.3d 1337, 1346, n.15 (4th Cir. 1995).

CONCLUSION

Food labeling regulations represent a valuable tool to improve consumer decision making in the marketplace and provide incentives to producers to improve product quality.[250] Although some countries have required the disclosure of greater information about ingredients, nutritional composition, product quality, health effects, and production methods, no single nation has required disclosure of complete information in all of these areas. As national governmental authorities proceed with international harmonization of food labeling regulations, efforts should be made to ensure that new requirements are based on the premise of "upward harmonization." Such requirements should reflect regulatory policies from around the world that best ensure that consumers are provided with the information they need to make informed purchasing decisions.

The United States, for example, should require quantitative ingredient labeling and freshness dating as required in Europe. The U.S. should also adopt more extensive disclosure requirements for the labeling of production processes including irradiation and genetic engineering. In turn, the EU should consider requirements for mandatory nutrition labeling. All nations should proceed with improved disclosure requirements for the labeling of ingredients or additives that may cause adverse health reactions.

Codex could help facilitate such developments by establishing international standards that are based on the premise of "upward harmonization." The development of such standards would raise consumer protection standards and discourage trade disputes in which one nation

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[250] Caswell, *supra* note 1.

argues that another nation's consumer protection requirements are too strict and constitute an illegal trade barrier.[251]

Codex should increase efforts to help nations learn from one another and take the lead in ensuring that food labeling requirements are upgraded to world-class levels that embody the best labeling provisions from around the globe. Such efforts would further Codex's mission and will, hopefully, drive Codex's agenda for the 21st century.

[251] Echols, *supra* note 64.