MANDATORY COUNTRY OF ORIGIN LABELING

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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MANDATORY COUNTRY-OF-ORIGIN LABELING

THURSDAY, JUNE 26, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The committee met, pursuant to call, at 9:35 a.m., in room 1300, Longworth House Office Building, Hon. Bob Goodlatte (chairman of the committee) presiding.

Present: Representatives Boehner, Pombo, Smith, Lucas of Oklahoma, Moran, Jenkins, Gutknecht, Ose, Hayes, Osborne, Rehberg, Graves, Putnam, Janklow, Burns, Rogers, King, Chocola, Musgrave, Nunes, Neugebauer, Randy, Stenholm, Peterson, Dooley, Holden, Thompson of Mississippi, Etheridge, Baca, Ross, Acevedo-Vilá, Alexander, Cardoza, Scott, Marshall, Pomeroy, Boswell, Lucas of Kentucky, Thompson of California, Udall, Larsen and Davis.

Staff present: William E. O'Conner, Jr., staff director; Brent Gattis, Pete Thomson, John Goldberg, Elizabeth Parker, Callista Gingrich, clerk; Claire Folbre, Kellie Rogers, Andy Baker, and Lisa Kelley.

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

The CHAIRMAN. Good morning. This hearing of the House Committee on Agriculture to review the mandatory country-of-origin labeling will come to order.

I want to thank you all for coming to the committee hearing this morning. The topic of today's hearing is a review of mandatory country-of-origin labeling. As you all know, this committee has worked hard on this. Several years ago, then-Livestock Subcommittee Chairman Pombo and Ranking Member Peterson began a process to explore country-of-origin labeling. They started out with a hope that it could be accomplished in a way that provided an effective tool for producers to earn more in the marketplace.

The subcommittee proceeded to meet with interested parties and the administration to develop the idea. Subsequently, the fiscal year 1999 Agriculture Appropriations directed the Secretary to conduct a comprehensive study on the potential effects of the idea. During an April 28, 1999 Livestock Subcommittee hearing, the Clinton administration testified about the variety of regulatory regimes for labeling that could be adopted and further asserted that they believed there would probably have to be some kind of paperwork traceback system.

The GAO pointed out that there is going to be significant costs associated with compliance and enforcement. Concerned that the costs outweighed the benefits for producers, Mr. Pombo and Mr. Peterson turned their attention to working with the U.S. Department of Agriculture to develop a credible voluntary program that allowed producers and processors to work together. Meanwhile, the GAO released its report in January 2000 stating that mandatory labeling "Would necessitate change in the meat industry's current practices, create compliance costs across all sectors of the industry, and asserting that U.S. packers, processors and grocers would, to the extent possible, pass their compliance costs back to suppliers, U.S. cattle and sheep ranchers, in the form of lower prices or forward to consumers in the form of higher retail prices."

On September 8, 2000, interested parties submitted a petition to USDA for a voluntary program and the Livestock Subcommittee conducted another hearing on September 26, 2000 to review studies and USDA's progress on the petition. In early 2001, Under Secretary Bill Hawks wrote the industry to commit the Agriculture Marketing Service to begin action on the petition requesting a USDA voluntary, User-Fee-Funded Certification Program that will enable a label for beef products. That same month, on July 26 and 27, the House Agriculture Committee conducted a markup of the farm bill. The transcript of that markup has 12,463 lines of text with 3,167 lines on amendments to create a mandatory Country-of-Origin Labeling Program. Fully 25 percent of the markup was devoted to this proposal, which was ultimately rejected because of concerns that the costs outweighed the benefits.

An amendment for fruit-and-vegetable labeling only was adopted on the House floor. For those that attended the farm bill conference meetings that labeling was a major topic of discussion there as well. Despite a complete lack of any hearing reader on the subject, the Senate insisted on his provision requiring labeling of beef pork, lamb, fruits, vegetables, peanuts, and fish.

So today we will hear from the administration, producers, packers, processors, and retailers now that they have had time to review that law and gauge its impact.

For many of my colleagues, this will also sound very familiar. For our new members, I believe you will find this to be quite interesting. As we proceed, I would ask members to consider the question whether: If what Congress has done, is what Congress had intended? On balance, will mandatory country-of-origin labeling help or hurt the producers it was intended to benefit?

It is now my pleasure to recognize the ranking minority member, the gentleman from Texas, Mr. Stenholm.

OPENING STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. STENHOLM. Thank you, Mr. Chairman. Thank you for holding this hearing on a very important, but complicated, subject. Many of us, as you have already indicated, have spent countless hours on this issue because we realize how important it is to get this one right.

There are costs implications for our domestic producers, processors and retailers. There are trade implications and consumer

issues that must all be thoroughly examined before this law is implemented.

One purpose of making country-of-origin labeling voluntary in the farm bill for the first 2 years was to give everyone a chance to determine whether we should make changes in the law before implementing a mandatory program. With the Appropriations Committee action last week, it looks like we might get a little more time on the meat side of this question which, in my opinion, we need this time to get it right.

This committee has conducted a series of briefings on country-of-origin labeling to educate staff on implementation of the requirements. Today, we will hear a broad spectrum of views from our three panels of witnesses, and I understand that subcommittee chairman Hayes has indicated he will hold additional hearings on this issue in the near future, and that is a very positive development.

As we proceed today, I hope we can get a better sense of the objectives of proponents of mandatory country-of-origin labeling. We have heard that mandatory labeling of meat is intended to address the consumers's right to know. But this seems hard to believe, given that those pushing hardest for the legislation are not consumers, but rather producers who do not deal in cattle from Mexico or Canada. I also question the wisdom of a mandate to include on labels every piece of information that a random consumer survey identifies as something that consumers want to know. Many consumers in Europe want to know whether their beef contain hormones and many of us have argued against such labeling requirements. Current U.S. food labeling requirements are based on the attributes of the food itself, such as nutritional composition, ingredients, special safety considerations such as the presence of allergens and required handling and conditions of safe use. This was pointed out by the previous administration in a letter to the EU concerning biotechnology.

Every additional piece of information we require on a label by Government mandate diminishes slightly the information that is already there. And as the National Grocers Association points out, if the goal is to provide important information to consumers, why are some of the products not covered? And why are some retailers and all restaurants left out?

Another objective mentioned recently by a COOL proponent was to reduce the dominant market control enjoyed by packers, retailers and USDA. I believe that mandatory COOL is at best an indirect and ineffective tool to address concerns about market control. A third goal sometimes mentioned is to promote U.S. product. As more and more cattlemen become aware of the requirements of the law, there have been increasing concerns that the paperwork burden may not be worth the perceived benefit of labeling. It seems unclear from the information that I have seen that a mandatory program will enhance producers's bottom lines, but we do not know that today, and that is why this hearing is so important today to examine and hear from those who are advocates, proponents and opponents of the issues that I have mentioned in my opening remarks.

I would also note that while our trade agreements allow us to implement a Country-of-Origin Labeling Program, they require that we do so in the least trade-restricting manner possible. To the extent that our trading partners regard the program as a nontariff trade barrier, we should expect to face new trade dispute actions.

We should expect it. So my caution has been all along on this issue, be careful what we ask for, lest we get it. But let's be darned certain that what we do continues to allow this committee and all who are advocates of United States agriculture to continue to say to the world and in particular to the people of the United States of America: Aren't we blessed to live in a country that has the most abundant food supply, the best quality of food, the safest food supply at the lowest cost to our people of any other country in the world? That has not happened by accident, and we can do real damage if we begin to make mistakes regarding how we address our ability to keep producing and selling not only to the U.S. customers, but to our world customers.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

In light of the fact that there is great interest in this hearing, we have 15 witnesses ahead of us, we are going to make other opening statements a part of the record and go to our first witnesses.

[The prepared statements follow:]

PREPARED STATEMENT OF HON. NICK SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you Chairman Goodlatte and Ranking Member Stenholm for holding this highly important and timely hearing on the implementation of mandatory country of origin labeling. Also, I would like to thank the witnesses for giving us their opinion and input on this matter. As we have heard today, mandatory COOL is a controversial policy to which there is much dispute over the consequences of its implementation. One thing that can't be denied, however, is the far-reaching effect it will have on producers, processors, retailers, and consumers. I applaud the actions taken by the appropriators last week to put a halt to the implementation of mandatory COOL. It is only fair to all parties involved to try and gain a more thorough understanding of the far-reaching impacts of this legislation before implementation.

In theory, mandatory COOL doesn't sound like a bad idea. After all, our producers and processors produce some of the highest quality commodities in the world, that consumers may favor if competitively priced. Surveys have shown that American consumers would prefer to buy U.S. products if all other factors are equal. The fact must not be lost, however, that these same survey also show labeling information such as freshness, nutrition, as well as storage and preparation instructions rank ahead of country of origin in the degree of importance to consumers. Clearly the consumer demand for COOL is not as high as some groups would lead us to believe.

The key question to this whole debate is: do the benefits of mandatory COOL outweigh the costs? Can the potential increase in demand for US products possibly outweigh the costs that will be born by producers, processors, retailers, consumers, and even taxpayers to implement and enforce mandatory COOL? I have yet to see any hard data that would suggest that mandatory COOL would be anything other than a tax on the entire food-chain system with little if any economic gain for anybody involved.

Some would argue that cost estimates for mandatory COOL implementation are exaggerated. Regardless, I continually hear from hog producers in my district, however, that say whether it costs $2 or $10/head, the increased cost of production to meet the standards that will be required will make the profit/loss margin even tighter than it already is for most producers. Additionally, mandatory COOL may have the unintended consequences of accelerating vertical integration, particularly in the livestock industries, as it will be easier for companies to verify a commodity origin, streamline processing logistics, and convey information to their customers. Mandatory COOL may also have the unintended consequence of encouraging retail-

ers and processors to only handle products of a particular origin, thus limiting consumer choice. As a result, mandatory COOL may actually hurt the very groups it was intended to help—producers and consumers.

I find it particularly telling that despite the supposed "need" for COOL and the market enhancement it will provide, relatively few if any have participated in the voluntary program. The potential for increased demand simply has not outweighed the costs. Thus, I believe that it would be unwise to push forward with mandatory COOL when all we know for sure is: (1) that it will definitely increase costs for producers, processors, retailers, and consumers, and (2) it may or may not increase market share for U.S. labeled commodities. It is my belief that we should leave COOL a voluntary program and let market forces determine its fate.

PREPARED STATEMENT OF HON. CHARLES W. "CHIP" PICKERING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Chairman Goodlatte, I want to thank you for holding this hearing today before the Agriculture Committee to address the various concerns surrounding the issue of country-of-origin labeling, as passed in the 2002 farm bill. Obviously, this has become a very controversial topic that has as many opponents as proponents. I believe it's crucial that we have a forum like this to address the matter. I have no doubt that while we continue to move closer to the mandated implementation date, we will address the various concerns and decide on the best course of action for the labeling issue.

I support the intent of the country-of-origin labeling provision that passed in the farm bill. I think it's important for consumers to know where their food comes from, and I also believe that given the choice, consumers will choose an American product over foreign goods as long as there is not a significant variation in price.

I know there are many on both sides of this issue, and it seems to me that USDA, Congress, producers, packers, distributors, and retailers are not singing from the same sheet of music regarding labeling. I've seen a number of studies, some purporting extremely high implementation costs and extensive paperwork and others which refute such costs and bureaucratic record-keeping. I think it's clear that we need more meaningful discussion regarding the implementation of country-of-origin labeling and I believe the listening sessions and hearings that Chairman Hayes' subcommittee has conducted around the country, as well as this one, are of great benefit to us all as we work to implement a labeling system that works the way Congress intended.

I applaud the work that USDA has done so far to implement the measures Congress instructed in the farm bill. But, I do think that we can do a better job of implementing the country-of-origin labeling provision. The current methodology the department is using is a bureaucratic nightmare. I think that's something everyone agrees on. I believe in the premise of country-of-origin labeling, and I believe there is a way to do it without enormous costs and burdensome red tape and paperwork. This issue is not going to simply go away. We've got to develop a logical and effective methodology for implementing it that is less complicated than that the department has proposed. I hope we can work together to accomplish the task that is before us, and I appreciate the work of everyone as we work toward doing that.

PREPARED STATEMENT OF HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. Chairman, I am pleased you convened this timely and topical hearing to review an issue which has become quite important as implementation has begun. Last year's farm bill contained a provision calling for country of origin labeling for meat products, which was developed with the best of intentions. However, as USDA regulations have been issued, many have begun to question how compliance will be accomplished and at what cost.

Although ensuring consumers are aware of the origin of the products they purchase is a laudable and important goal, the current country of origin labeling may very well cause more difficulty than good within our Nation's agricultural sector.

Proponents of country of origin labeling certainly have the best interests of consumers and producers at heart. However, the lengthy and costly requirements to producers, sellers and everyone in between leave me very concerned about the current proposal.

Much of our agriculture sector is under a tremendous economic strain. To require additional expensive record keeping and verification could have a tremendous negative impact on not only on agriculture, but on the national economy as well.

With implementation costs estimated in the billions, we must examine more cost efficient alternatives and reexamine how best to balance the goal of increased infor-

mation at the supermarket with the need to maintain an strong agriculture sector in our economy.

I look forward to hearing the testimony from today's witnesses to learn more about the impact of this new provision. The law of unintended consequences may well be at work in the case of country of origin labeling.

STATEMENT BY CONGRESSMAN ROBIN HAYES
HOUSE AGRICULTURE COMMITTEE
JUNE 26, 2003

I would like to thank Chairman Goodlatte and Ranking Member Stenholm for convening this hearing today to discuss the country of origin labeling law included in the 2002 farm bill. This law has gained much attention over the past several months, and I appreciate the witnesses for testifying today about how this law will affect them and their respective industry.

This law certainly requires more Congressional attention and I am pleased the House Committee on Agriculture is holding this hearing as every Member of the Committee has a constituent who will be affected by these provisions. Following the full Committee hearing, the Livestock and Horticulture Subcommittee, which I chair, will be holding further hearings on this matter.

Country of origin labeling is not a new concept. The House Agriculture Livestock and Horticulture Subcommittee, then chaired by Richard Pombo, held hearings on this issue during the 106th Congress. And as many of us recall, this issue was debated at some length during the House Agriculture Committee's consideration of the 2002 farm bill, and ultimately, the Committee voted not to include this provision because there were too many unknowns on how this would affect producers. When the farm bill went to the floor, an amendment was added to label fruits and vegetables.

As the Senate created their version of a farm bill, the provision was expanded to include beef, pork, lamb, fruits, vegetables, wild and farm-raised fish, and peanuts. I think it is important to note that the Senate held no hearings and had no debate on how producers and the industry would be affected by country of origin labeling.

I have heard concerns from many of my constituents about this issue, predominantly my livestock producers. I can tell you that not one of them has said this law will bring them additional revenue or market advantages. They all express their deep concern that this law, instead, will bring them undue burdens and headaches in order to be in compliance. Being a businessman, I firmly believe that if country of origin labeling was going to bring a retailer, processor or producer more profits or give them more market share, they would have already done it.

Unfortunately, a "Fire, Ready, Aim" approach led to the creation of the country of origin labeling law. I hope that through the hearing process and by working with the industry and our colleagues that we can better understand these unintended consequences and what adjustments need to be made.

The CHAIRMAN. At this time, we would like to invite our first panel to the table. Dr. Charles Lambert, Deputy Under Secretary for Marketing and Regulatory Programs of the U.S. Department of Agriculture; Ms. Nancy Bryson, General Counsel of the U.S. Department of Agriculture, and Dr. Keith Collins, Chief Economist of the U.S. Department of Agriculture.

Ladies and gentlemen, we are delighted to have all of you with us. We know that this has been a major challenge for each and every one of you, and we look forward to hearing your comments on the state of affairs at the Department on this issue.

The gentleman from Iowa.

Mr. BOSWELL. Thank you, Mr. Chairman, I will not interrupt the flow, but we will have an opportunity to have a statement put in the record, and I would like to do that.

The CHAIRMAN. Absolutely.

Mr. BOSWELL. And also take this moment, I implored to your predecessor but some of us on this committee are on other committees, and it seems like there is always a conflict. And this is a very, very important hearing, and we have another one going on, some of us, so I can't stay for all of this because of that situation. I ask that you use whatever influence you have got to try to get some coordination with the Transportation and some—I think your staffer can share with you that several us are on other committees and whatever progress you could make would be helpful. It would be difficult, but I ask you to give it a look.

The CHAIRMAN. We certainly will try to make it possible for maximum amount of participation today. And at this time, we will begin by welcoming Dr. Lambert. Thank you for your participation today, Dr. Lambert.

STATEMENT OF CHARLES LAMBERT, DEPUTY UNDER SECRETARY, MARKETING AND REGULATORY PROGRAMS, U.S. DEPARTMENT OF AGRICULTURE

Mr. LAMBERT. Mr. Chairman, Mr. Stenholm and members of the committee, thank you for the opportunity to discuss the farm bill's mandatory country-of-origin labeling provision and, more specifically, what USDA is doing to implement this mandate. I am Chuck Lambert, Deputy Under Secretary for Marketing and Regulatory Programs at the USDA. Mr. Chairman, as you may know, the Office of Management and Budget's Statement of Administration Policy on S. 1731, the Agriculture Conservation and Rural Development Act of 2001, found the provision requiring mandatory country-of-origin labeling highly objectionable. The administration's position and the reasons for that position have not changed.

We feel these new requirements will not have a positive effect overall and that the unintended consequences on producers and the distribution chain could be significant. At the same time, let me be clear that we do not oppose consumers having adequate information to make informed purchasing decisions. We do, however, have concerns about the approach that this law takes.

Notwithstanding the administration's view and the narrow parameters Congress adopted for this very prescriptive piece of legislation, USDA is fully committed in working diligently in implementing this provision of the farm bill. Significant efforts have

been made in the development of the voluntary guidelines announced last October and in our initiation of the rulemaking process for mandatory labelling to consult with interested parties including the public, industry groups consumer groups trade associations foreign governments and Congress.

The USDA met with over 40 groups and associations in formulating the voluntary guidelines and we have received well over 1,500 comments since the guidelines were released. In preparation for rulemaking on mandatory country-of-origin labeling, Secretary Veneman announced last March that the USDA would hold a series of listening and education sessions in 12 States across the country to gain more public input and provide interested parties more information about the new country-of-origin labeling law. Today, the last of those listening sessions is being held in Lancaster, Pennsylvania. Over the past few months, USDA has also provided numerous additional presentations and briefings. More than a thousand written and oral comments have been received thus far on the mandatory program. A common theme throughout these sessions and comments are the concerns expressed by both the proponents and the opponents of country-of-origin labeling regarding the complexities and the costs associated with implementing this law.

The law requires retailers to label at the final point of sale beef, lamb and pork, both muscle cuts and blended product, fish, shellfish, perishable agriculture commodities and peanuts must also be labeled as to their country of origin. Further, fish must be labeled as to whether it is wild or farm-raised. The law defines retailer, according to the Perishable Agriculture Commodities Act, as a business that sells fresh or frozen fruit and vegetables with an annual invoice value of more than $230,000. Approximately 4,200 PACA retail licensees operating more than 31,000 retail outlets fall into this definition.

By using this definition, Congress exempted retail butcher shops, fish markets and small retailers, in addition to the restaurants and other food service establishments that the bill specifically exempts from labeling requirements.

The farm bill defines criteria for a covered commodity to be labeled as U.S. Country of Origin. To receive this label, beef, lamb and pork must be derived exclusively from animals born and raised and slaughtered in the United States. There is an exemption for beef and cattle born and raised in Alaska or Hawaii and transported through Canada for not longer than 60 days. Wild fish and shellfish must be derived exclusively from fish or shellfish harvested in U.S. waters or aboard a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. Farm-raised fish and shellfish must be derived exclusively from fish or shellfish hatched, raised harvested and processed in the United States. Fish and frozen fruit and vegetables, as well as peanuts, must be exclusively produced in the United States.

The Act says "covered commodities" must be labeled unless they are an ingredient in a processed food item. There are several covered commodities that, while they undergo slight processing, still retain the original identity of the commodity, while others change form as a processed food item. Although the farm bill provides a

very specific definition for U.S. Country of Origin, less statutory guidance is provided for imported, mixed, or blended products. Imported products, of course, were already subject to existing labeling laws and regulations. For some products, like imported boxed beef or boxed pork original country of origin labels do not have to be maintained through the retail level once these products are subjected to further processing.

Products that include production or processing steps that occur in the United States and in an another country create a unique labeling challenge. Blended products provide a related challenge. These are produced with commodity components that can be distinguished such as a salad mix, or indistinguishable product components, such as ground beef. In both cases, components are of different origins but combined together for retail sale.

Consumer notification as to the country of origin of covered commodities can occur in a variety of ways. Many fruits and vegetables already have country of origin labels directly on the product. Some beef, lamb, and pork products also have labels on their packages. The farm bill language allows for these labels, as well as signs on a display or bin, or other forms of notification.

The law requires any person in the business of supplying a covered commodity to a retailer to provide information to that retailer about the country of origin of that commodity. It further provides the authority to require persons in the distribution chain to maintain a verifiable recordkeeping audit trail to verify compliance. However, the law does not specify what records are acceptable to verify country-of-origin labeling, and the law prohibits the Secretary from establishing a mandatory identification system to verify the origin of a covered commodity. Thus, it is left to retailers and their suppliers to determine which records will be retained to verify the country of origin of covered commodities.

With the 12 listening sessions that USDA has been holding around country, the process of developing a regulation for mandatory country-of-origin labeling has begun. We expect to publish a proposed rule this fall with ample opportunity for public comment. A final rule will be published as soon thereafter as possible.

Due to the significant nature of the mandatory country-of-origin legislation, a comprehensive economic impact analysis will be prepared as part of the rulemaking to evaluated the costs and benefits associated with implementing this rule.

The USDA has experience in supporting industry's use of various marketing claims. We have a number of programs where industry is already making credible, verifiable claims in the marketplace. However, these programs have several points in common. They are voluntary and market-driven, reflecting focused marketing opportunities for consumers who are willing to pay for the information provided. These programs do not attempt to cover all products to all consumers. The programs operate under standardized program protocols and records requirements. And being market-driven, the incentives for compliance stem from increased sales and profits, not the threat of punitive fines.

Mr. Chairman, the Congress has tasked USDA with the responsibility of implementing a Country-of-Origin Labeling Program for a wide range of food products. We take this mandate seriously and

will do our utmost to implement a program that meets the requirements of the law and minimizes the burdens on all correspond.

I will be happy to answer any questions from you or other committee members. Thank you.

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

The CHAIRMAN. Dr. Lambert, thank you. Ms. Bryson we are also pleased to have you with us today. Welcome.

STATEMENT OF NANCY S. BRYSON, GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Ms. BRYSON. Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today to discuss the mandatory country-of-origin labeling provisions and the legal requirements that USDA is required to implement.

As Deputy Under Secretary Lambert has testified, the law requires mandatory country-of-origin labeling beginning on September 30, 2004 for covered commodities. As a legal matter, this information constitutes a marketing claim. It is designed to allow the consumer to choose between similar commodities based on the factor of country of origin. By requiring mandatory disclosure of this information, Congress has determined, as a matter of law, that this information is material to consumer purchasing decisions. The validity of the claim depends on its truthfulness and reliability. These characteristics are measured by the evidence which substantiates the claim.

The mandatory COOL provisions contain a number of specific provisions which USDA has no discretion to modify. These include the following: The content of the claim, the person responsible for the claim, the method of notification, the requirement that suppliers to the retailer provide information indicating the country of origin of the covered commodity, and the requirement that USDA enforce the requirement against both retailers and packers but may not rely on a mandatory identification system in doing so.

What is USDA's job under the statute? The statute, as I have said, authorizes USDA to enforce the program, and it authorizes USDA to issue regulations to implement the program.

The statute also says USDA may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance.

The statute also provides USDA with guidance on how to verify the country of origin of a covered commodity by citing several existing certification programs as models. These include programs for carcass grading and certification, voluntary country-of-origin beef labeling, voluntary certification of certain premium beef cuts, and origin verification systems carried out under the National School Lunch Program and the Agricultural Trade Act of 1978. Each one of these certification programs described in the statute includes record keeping requirements that enable the agency to verify the accuracy of the claim.

As also indicated by Deputy Under Secretary Lambert, the voluntary guidelines which were issued by USDA in October of 2002 do precisely this. They provide guidance on the type of record-

keeping which will be required to establish a verifiable recordkeeping audit trail. There is, to be sure, a great deal of discussion over the scope of the recordkeeping audit trail requirement for the mandatory program. And particularly with respect to livestock producers who are neither suppliers of covered commodity meat products nor packers subject to USDA enforcement actions under the statute.

However, the law requires that the factual content of the claim "exclusively produced from animals exclusively born, raised, and slaughtered in the United States" be substantiated. And two-thirds of the relevant information in the case of covered commodity meat products is in the possession of such livestock producers.

How retailers and packers secure this information is a matter of contract that will be determined by the marketplace. Is there some flexibility as to the quality and quantity of that information? Yes, and AMS is exploring that in the rulemaking proceeding. I have addressed several other legal issues in my written statement which has been submitted, but in the interest of time let me stop here.

I will be happy to answer any questions.

[The prepared statement of Ms. Bryson appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Ms. Bryson. Dr. Collins welcome.

STATEMENT OF KEITH COLLINS, CHIEF ECONOMIST, U.S. DEPARTMENT OF AGRICULTURE

Mr. COLLINS. Thank you, Mr. Chairman, Mr. Stenholm, committee members. I appreciate the invitation to join you all this morning to talk about the economic effects of mandatory country-of-origin labeling.

This forthcoming rule has been declared economically significant under Executive order 12866. That triggers as a result an in-depth cost-benefit analysis on the part of the USDA. AMS is the leading agency for conducting that analysis, and they are drawing upon an interagency team of analysts to do so. While this effort is incomplete, earlier work by USDA and other analysts sheds some light on the economic effects of country-of-origin labeling.

And it is this work, I think, that illustrates why concerns have been raised, such as those by Dr. Lambert, regarding the economic effects of this program. The expected benefits arise from the belief that consumers want label information so they can buy products by country of origin. Some expect consumers to buy more U.S. product, raising the prices and quantities sold. The general point is that for some benefits to be realized in the first place, consumers must believe the label information which requires an adequate recordkeeping program sufficient to ensure against false claims.

More fundamentally, I think there is evidence that consumer preference for domestic product is weak. This evidence is the lack of voluntary programs that provide products labeled as domestic origin. USDA has been offering the opportunity for a U.S.-origin meat abeling program for years and there have been no takers.

If consumers distinguish goods depending on their country of origin, market incentives exist for suppliers to act without Government intervention, just as they do under voluntary certification programs such as for organic foods. There, consumers willing to

pay a premium sufficient to cover the additional costs of the program. While the market has given us evidence that consumers would be willing to pay for organic, if has not done so for U.S. origin.

Other evidence comes from some of the comments USDA has received. Two retailers, for example having 105 stores, told us that out of 60,000 customer communications they received last year, only one pertained to country of origin of a covered commodity. Despite such evidence of weak demand for country-of-origin information, some believe otherwise, citing studies asking consumers what they are willing to pay for U.S. meat. Such studies do not tell us, however, whether consumers actually would pay more if they were spending from their household budgets, and they do not tell us whether consumers will be willing to pay more day in and day out after the survey date.

The uncertain nature of this work led the authors of the most cited study to state recently, quote, it is unwise to apply these results in estimating the benefits of country-of-origin labeling, unquote.

I have little doubt that some consumers value knowing the origin of a product, but what worries me is whether that will translate into a price premium in the marketplace. The supply of U.S. origin meat, for example, exceeds 80 percent of the available U.S. supply. That far exceeds the quantity demanded by those who would actually pay more for origin information.

Regarding the costs of country-of-origin labeling, they depend on the extent to which firms have to implement new control and verification systems including recordkeeping, reconfiguring processing and handling, producing signage and labels and training and educating their staff. The Government will incur costs as well to the extent it conducts audits and other compliance activities.

To date, the USDA has issued a recordkeeping cost estimate of a voluntary program under the assumptions required by the Paperwork Reduction Act. Some have claimed these costs are seriously overestimated. Some have claimed these costs are seriously underestimated.

Several studies have estimated costs for the cattle/beef and hog/pork sectors at up to several billion dollars annually, after examining all costs for the entire supply chain, including segregation and identity preservation.

There is also a concern about who will bear these direct costs. If retailers push their costs on to consumers who do not care or who are not willing to pay much for U.S. origin information, consumer welfare would decline.

The risk our producers face, I believe is that their direct costs, plus costs passed back to them, may outweigh quantifiable benefits if consumer preference for origin information is weak.

That completes my statement, Mr. Chairman.

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

The CHAIRMAN. Dr. Collins, thank you very much.

We will now proceed with questions, and we will very tightly enforce the 5-minute rule, including on myself in recognition of the large number of questioners that it appears we have..

Dr. Lambert, some proponents of country-of-origin labeling have, in my opinion, irresponsibly muddled Canada's BSE problems with the debate about the implementation of this new law. Does the administration see any linkage between these two issues?

Mr. LAMBERT. Mr. Chairman, these are two completely different systems and there is no linkage. Animal health issues require a proactive and preemptive Federal control of animals in the manufacturing process, and those cases the Government negotiates the blueprint, and we do that on science and then we inspect as the product moves through the system to assure that the blueprint is followed.

The country-of-origin labeling law that we have to implement provides for a retail market label, and it requires government to conduct an after-the-fact verification of food product records as the product moves through to retail. So, in effect, there is no linkage between these two programs.

The CHAIRMAN. Thank you. Ms. Bryson, in addition to the regulations that the Department will put forward later this year, is there anything in this law that would bar a retailer or a packer from specifying the certification criteria that they would require of their suppliers, given that the law places a great deal of liability on those retailers and packers?

Ms. BRYSON. I see nothing in the COOL statute that would bar retailers or purchasers from specifying the certification criteria they are going to require.

The CHAIRMAN. In other words, no matter how the Department might write these regulations—and I am sure try to be as friendly as possible to those who are going to have to comply with them—if the retailers are concerned about their ultimate liability and they impose their own certification scheme, including various types of records that they might require be produced to assure themselves that they are not going to be held liable for falsely labeled products, there is nothing in this law that would bar them from doing that?

Ms. BRYSON. That is correct.

The CHAIRMAN. Some of the proponents have argued that if meat products are not labeled as imported, they should be deemed as to be domestic in origin. Should such a scheme be permitted under the law?

Ms. BRYSON. I think not, Chairman Goodlatte. And the reason is that the criteria for the claim, which I referred to, are specified in the statute and those are matters of fact. A legal presumption is not adequate to substantiate issues of fact.

The CHAIRMAN. So in other words, failure to comply with the law or a lax procedure followed by somebody is going to put them afoul of the law? It will not exempt them from the law?

Ms. BRYSON. Yes, that is right.

The CHAIRMAN. And Dr. Collins, I think you have shed some light on this already but perhaps you could amplify what I think is the critical question here in terms of our efforts to try to help producers of these various products. Will country-of-origin labeling for imported beef result in higher livestock prices or higher profits for producers?

Mr. COLLINS. Mr. Chairman, in a nutshell, I think the prospects are not good. First of all, livestock are not a covered commodity, so what happens to livestock producers is a consequence of the market adjustments from this rule. Generally, when there is an increase in marketing cost like this rule would require, those costs would get passed on to consumers, and they would get passed back to suppliers—passed back to suppliers in the form of decreased demand for their product. That is one possible consequence livestock producers face, decreased demand because of increased marketing costs. Then they have their own direct increase in costs themselves that will be forced on them by suppliers. The prospect is that livestock prices would be the same or decline and profits probably decline. The only thing that would overcome that is demand in retail expands far out to overcome those effects, and as I stated, I think the prospects of that are low.

The CHAIRMAN. Thank you very much. The gentleman from Texas, Mr. Stenholm.

Mr. STENHOLM. Our three largest markets for our exports of meat have country-of-origin labeling requirements at the retail level. Could you please describe in detail the labeling requirements in Mexico, Japan and Korea for meat? And tell us if any of them require that to be eligible to be labeled as domestic product at the retail level, the meat must be from an animal born, raised and processed in that country?

Mr. LAMBERT. The country-of-origin labeling requirements that you refer to, Congressman Stenholm, are based on processed-only product. In other words, that product was processed from and shipped to the importing country.

Mr. COLLINS. Let me just follow up, as part of this rulemaking process we have going on. We do have our Foreign Agricultural Service taking an inventory of country-of-origin labeling programs around the world, and we will be incorporating that information into this process as we go forward. I think in 2002, the European Union did adopt a labeling program that requires beef to be labeled by country of origin. They are not one of the countries you mentioned. You asked for export destinations. I think the closest one to COOL is beef in Japan, where they have made an effort to try and get premium prices and protect the price structure for Wagyu cattle. The other countries, as Mr. Lambert said, are not on a par with country-of-origin labeling, but we will have more information on that and will be happy to provide that to you.

Mr. STENHOLM. The 2002 farm bill prohibits the Secretary from using a mandatory identification system to verify country of origin. In light of the grave concerns caused by a single case of BSE in one Canadian cow, is a mandatory system needed in the United States?

Mr. LAMBERT. USDA and AFIS, along with several State Government representatives and industry have been working on an animal ID program, and there is a program in place that is in the process of being developed and implemented.

Mr. STENHOLM. I know the beef industry itself has been looking at this question now for several months. A lot of times we tend to get the cart before the horse in this endeavor. And I personally really believe that traceback is going to be an absolute right. As

you answered the chairman's question a moment ago, there is a tendency to mix up the BSE question with country of origin and there is no real relationship. Only indirectly is there a relationship. But also, those of us in the cattle industry and sheep and goat and everywhere else understand the importance now of traceback. That is a consumer issue and also a producer issue and it is one in which we must be sensitive.

And that is why I think today's hearings, as you have testified, the complexity, the unintended consequences that you point out in your testimony of well-intentioned and well-meaning desires on the part of our industries, our own industry in this country. We have got to take a good hard look at that. So I hope that my colleagues and all understand that the process that you have gone through, the process that we begin today is going to be critical in answering those questions and doing it in the context that it doesn't shoot ourselves in the foot in the world market. Because that is where the future—in this case, we are talking mainly about meat, but the future for all production in the United States is in the international marketplace. And if we end up putting things on that others are going to put on us, it is not going to have the desired effect.

So I appreciate your early answer there from the standpoint of looking at other markets. I think that is going to be critical. And perhaps, Mr. Chairman, as we go further into this, it might be that we want to on this committee address this question in a way in which we have learned from everything to this point and do it in a way that will be consistent and will also be a way that will not have an adverse effect on the prices to the producers, which Dr. Collins, I happen to agree with your analysis as a producer myself in the answer to the question. But thank you for your testimony.

The CHAIRMAN. I think the gentleman's observation is very well-taken.

The gentleman from Kansas, Mr. Moran.

Mr. MORAN. Mr. Chairman, thank you.

One of my interests in this topic is the legislative language that was included in the farm bill. So I think this is a question for Ms. Bryson. How much of the difficulties USDA is facing in developing a program is just the direction that the statute requires you to comply with? Is there a way to make the language work better?

Ms. BRYSON. Our job at this point, obviously, is to implement the law that Congress passed for us. And looking at that, I think that the question you asked is one that is going to be illuminated in the rulemaking that USDA has yet to undertake. Certainly, the listening sessions have given us a lot of additional information. To the extent that the legal requirements that we have to work under, that are in the statute, need to be changed, that is a matter for the legislature to consider.

Mr. MORAN. No recommendation?

Ms. BRYSON. We have no recommendations at this point.

Mr. MORAN. The solution in the coffee shops of Kansas is to require those who import meat products that would not meet that definition of a U.S. product, that we label those as being non-U.S. products. Is that an option either under the legislative language that you have to deal with or under trade agreements that we have

already entered into with other countries? Is that kind of common-sense solution to this problem possible?

Ms. BRYSON. We haven't analyzed that question. I would say two things about it. One, I don't think that it is permissible for us to adopt that kind of approach under the language that we have right now. And that is because the language doesn't say, doesn't define the claim of U.S. origin as anything that doesn't have an import record. It doesn't say that.

The question of whether the change you suggest could be written legislatively in a way that does not affect our trade agreements is one that we at USDA would have to defer to USTR on.

Mr. MORAN. Anything else Dr. Collins or Dr. Lambert?

Mr. COLLINS. If you ask what makes this thing complicated, I think from a cost-benefit point of view, one of the things that makes it complicated is the statutory definitions. When you require born, raised, processed in the United States, and the covered commodities starts at the slaughter house, not where the animal is born, those kinds of things make it very complex and those are statutory requirements. With fruits and vegetables, the covered commodity is when it is grown; the process starts there.

So I think there are lots of aspects to this rule that do make it difficult. I have no recommendations for change, however. I am simply pointing out some of the things that show up as reasons why the costs go up for this.

Mr. MORAN. The definitions are obviously important. And one of the things in your testimony that caught my attention was the question out there as to whether or not consumers will believe, whether that label will have credibility. And obviously the definitional aspect of the requirement may play a significant role in that consumer confidence in the label. So, changing the definition, although it may make the process simpler, also may eliminate the belief that this product is superior. So I think—I don't mean to put words in your mouth, but I think there is a catch–22. If you solve this problem by making it easier to comply with, the benefits that are at least perceived to be there perhaps are diminished as well. Does that make sense?

Mr. COLLINS. Yes. If those benefits are there in the first place.

Mr. MORAN. Yes, sir.

Mr. Chairman, thank you.

The CHAIRMAN. I thank the gentleman.

The gentleman from Minnesota, Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. And thank you for calling this hearing. I think it is important that we sort through all of this.

I don't remember which one of you said, I guess Dr. Lambert, that the mandatory animal ID issue is really not—BSE is not connected to this. But the fact that we put in the farm bill that you cannot do this, I think, draws the connection, because I have been following—there has been a lot of press accounts in Minnesota about this Canadian situation, where these five bulls came in to Canada, and they were shipped to different places. And we have tried to trace this down. We think that five of them went to Minnesota, but they still have not been able to tell me where they went from that point. And I think that, in my judgment, is my concern

about this whole situation, that you are prohibited from even looking at national animal ID, because if we for some reason got a hoof and mouth case in this country or a BSE case, it looks to me like we don't have the ability to trace that down and figure out where it came from on any timely basis. Because this was reported on May 20, and we are here June 26 and we still can't tell where these went. Am I wrong?

Mr. LAMBERT. We haven't been able to trace forward the bulls that went from that one ranch that had imported those five animals. Those were traced forward to individual packing plants, and so the trace forward was possible.

But I do not disagree with the concept of an identification system. As I indicated, there is a process under way where representatives of Federal Government, State government, and the industry have worked, reached consensus on a plan. And, for animal health reasons, that system is moving forward.

Mr. PETERSON. And you are involved in that process?

Mr. LAMBERT. USDA is involved in that process.

Mr. PETERSON. What was put in this COOL law would prohibit you, if you did come up with a solution, from implementing it. Am I not——

Ms. BRYSON. If I might help out here. The Department's position would be that, under the authorities of APHIS with respect to animal and plant health, if a mandatory identification system were needed as an animal health protection measure, we would have authority under that statute to develop that kind of program. Obviously, it couldn't be used for COOL purposes because of the prohibition on against a mandatory identification system for the labeling program. But because we view animal health as separate from labeling, we think the health statutes allow us the authority.

Mr. PETERSON. OK. So that is what I was getting at. So we don't have to repeal that provision in COOL in order for you to be able to do this from an animal health and food safety view?

Ms. BRYSON. That is correct.

Mr. PETERSON. Well, I just want to—I have been spending some time looking into this, and the more I look into it, I become convinced that we need to do this in this country for a lot of different reasons, terrorism, and all this other stuff that is going on. And in the research that I have been doing, they are telling me that the cost of this would be something like 5 cents a transaction? Is that correct? You know, putting these chips in or whatever? If it is—have you seen any of that information? Some study that I read said that it is 5 cents a transaction to put this identification in, and there may be six transactions a year for livestock.

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

Mr. PETERSON. You haven't gotten that far into this to look into the types of systems, what the cost would be, and that sort of thing?

Mr. COLLINS. We are doing that now. I think——

Mr. PETERSON. How soon will you have some of that information available?

Mr. COLLINS. Well, we are not going to make it available until we publish the proposed rule. We will publish the detailed cost analysis as part of the proposed rule.

Mr. PETERSON. But that is on COOL.

Mr. COLLINS. I am sorry.

Mr. PETERSON. I am talking about setting up an animal ID.

Mr. COLLINS. Yes. That, I can't answer. I don't know the answer to that.

Mr. PETERSON. Is there any part of this process going on where we are going to get an answer to that, what it would cost to set something up?

Mr. LAMBERT. Yes, Congressman. I will make sure we get back to you with an answer on that question. I know that there is a group working on that. The steering committee, if you will, is slated to meet the 1st of July. And so that process is under way, and we will get you the information on what they have with respect to cost of that program.

Mr. PETERSON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

The gentleman from Nebraska, Mr. Osborne.

Mr. OSBORNE. Thank you, Mr. Chairman. Thank you for being here today.

My questioning is going to be a little bit along the lines of Congressman Moran. We are out there with a lot of folks who are a little skeptical of the process. They got burned on mandatory price reporting. And so sometimes the intent of legislation, what the people out in the field want is fairly clear; and yet, by the time we are done parsing words and coming up with legal definitions here in Washington, we get something very different. And so the conventional wisdom out there is, well, we are able to label almost everything else, whether it be T-shirts, socks, other products. And so what they are saying is, well, why can't we have every meat product, particularly that comes into the country labeled as Argentine, Japanese, whatever. And then what that does is leave everything else U.S. I realize that may not meet the statute, but those are the kinds of questions we have to be able to answer.

And so my question would simply be this: Given the statutory requirements, is there any way that you can see that this can be implemented without throwing a huge cost back on the producer? That is question No. 1.

And then No. 2. This would be for Dr. Collins. I think you were generally skeptical as to whether this would really increase prices. But is it possible to have some surveys, to actually survey the consumer in a way where we get some feedback? It may not be foolproof, but it doesn't seem like we have done a whole lot to this point where we have really gone out and tried to get the data. Dr. Lambert, if you would want to take a shot at the first question, then Dr. Collins.

Mr. LAMBERT. Now, as defined in the statute, you know the origin begins with the producer, but the producer knows where that livestock was born. So that begins that trail. So the cost and the complexities of the system that is required is determined by the definition of the product as is in the statute.

Mr. OSBORNE. So you really see no way that this could be implemented any other way than what you have outlined, and that it is going to be somewhat time consuming and expensive.

Mr. LAMBERT. Congressman, as we have defined it, and as I think interpreted by legal counsel, this is the way that we are restricted to implementing that law.

Mr. OSBORNE. OK. Thank you.

Dr. Collins?

Mr. COLLINS. You asked about getting more analysis of demand. Economists love to do demand analysis. And what we like to do is go out and look at actual market transactions, look at all of the different factors that might be involved in a consumer purchase decision, run all kinds of statistical relationships, and isolate those factors, so that we can know the effect of each one, so that we would know what the effect of origin information is. The problem is, we don't have any data because origin labeling has not been done in the United States. Now, there are some other countries, as we talked about earlier, that have done it, and we could probably look at some foreign country demand-analysis. But I would be very skeptical about applying that to U.S. consumers.

So then that gets to your suggestion that we go out and survey consumers' opinions. And that has been done. There has been some work done the last couple of years on that. Economists call that contingent valuation, willingness to pay studies. They do it several ways. They ask people simply how much they would be willing to pay for that information, or they have mock auctions where they give consumers $50 or $100 and let them bid in an isolated room on different pieces of meat. This has been done for steak, and it has been done for ground beef. And they do show that there are consumers that are willing to pay more. The question is, how much weight do you put on those studies? And in my opening comment, I quoted the authors of probably the most prominent of those studies, who said in a statement issued a month or so ago that they thought it would be unwise to use that type of analysis for benefit analysis, because it is a very hypothetical and uncertain situation. It does suggest to me that there are consumers that value this information. But to go from that to think that we are going to have enough increase in demand that it is going to raise price, to me it is just too much of a stretch at this point based on what we know.

But, this COOL legislation has set in motion the interest of the academic community. So there is no doubt that we are going to see more studies about this as we go down the road.

The CHAIRMAN. The time of the gentleman has expired. I thank the gentleman.

There are about 6 minutes remaining on the first of three votes. The committee will stand in recess until immediately after the third vote, and I would ask the panel to remain. I am sure there will be plenty more questions. Thank you.

[Recess.]

The CHAIRMAN. The committee will come to order.

The Chair recognizes the gentleman from California, Mr. Baca.

Mr. BACA. Thank you very much, Mr. Chairman.

I would like to ask this question to Dr. Lambert. We recently saw the discovery of one cow in Canada that tested positive for mad cow disease. Would the country-of-origin labeling help boost consumers' confidence? Is question No. 1.

Number 2, is it possible labeling could help restrict through the market the importation of meat from countries with mad cows? Is the second question.

Mr. LAMBERT. I think I will take the last one first. Food safety guidelines basically say, if it isn't safe, we don't import it. So labeling is not an issue there. And we say that if the inspection is not equivalent to ours, then we do not bring that product into the United States.

As I indicated earlier, country-of-origin labeling is a completely separate issue from the rules and regulations that we put into place to address animal health issues, and those are based on science. And we have a prescribed system that we put into place in those cases.

Mr. BACA. Is there a possibility that it could get through? Even though you are saying that there is an inspection to make sure it is safe, is there that possibility? Because we are talking about the consumers now that want to know the product, and if there is possibility. They read in the paper, they read about some kind of infection or others coming from that origin or a certain country, then it comes in. That possibility could exist though. Right?

Mr. LAMBERT. No, sir.

Mr. BACA. None at all?

Mr. LAMBERT. No.

Mr. BACA. Guaranteed. Right?

Mr. LAMBERT. Guaranteed.

Mr. BACA. You would bet your life on it, job on it. Right?

Mr. LAMBERT. Yes, sir.

Mr. BACA. OK. Can you answer the first portion of the question? Then you answered the second. Would the country-of-origin labeling help boost consumer confidence?

Mr. LAMBERT. As I said, country-of-origin labeling is a marketing issue that is at retail. And it is a system that we would be basically verifying, trace back through the system, and it is a completely different system than would be in place to address animal health type of issues.

Mr. BACA. Thank you.

The next question is for Ms. Bryson. National Fair and other groups have been using the case of mad cows in Canada to justify the need for a national animal identification system. Would you find such a proposal advisable? And do you believe that it could help eliminate confusion for producers in complying with COOL?

Ms. BRYSON. I am not sure that is really a legal question. I would look to APHIS for the decision on whether or not as a matter of protecting animal health mandatory identification programs would be required under the animal health statutes as a health measure.

Mr. BACA. OK. No further questions, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

The gentleman from Montana, Mr. Rehberg.

Mr. REHBERG. Thank you, Mr. Chairman.

You know, I can't be struck by the fact that the conversation around here is, if you are opposed to country-of-origin labeling, you don't want to see a connection between BSE and country-of-origin labeling. There is a connection. Any way you look at it, there is a

connection between healthy food, safe food, and the products that we bring in from foreign countries or this country.

Now, Dr. Lambert, can you deny that the FDA is a scientific label that exists on a product that gives us some assurance that it has been inspected or researched and developed in this country? It is the whole conversation about prescription drugs. Why can't we use the health certificates that follow the animals in from Canada or from Mexico? If we are so sure that they are coming in from other countries and we are so sure that they are safe and they have got that documentation, why can't you make that applicable to the country-of-origin labeling in livestock or fruit?

Mr. LAMBERT. Again, it goes to the definition as prescribed in the law.

Mr. REHBERG. So the administration will support it if we change the definition, so we can make it similar to some of the other labeling procedures?

Mr. LAMBERT. We will implement the law in accordance with the legislation. If the legislation changes, obviously we will modify our implementation strategies.

Mr. REHBERG. I just get the sense, Mr. Chairman. You know, I have been a rancher all my life and a farmer. But to make ends meet, I also had to do something called real estate. And one of the gimmicks we learned in the real estate business is, make something so complicated that the buyer can't do anything but hire a realtor to either list their home or sell their home.

You know, that is the feeling I am getting from the Department of Agriculture. Now, there is no question that the President opposes country-of-origin labeling, because I sat on the Air Force One and talked to him about it, and said, if you want it so badly, why don't you just do it voluntarily? I am not a proponent. And it seems like ever since we have attempted to, through legislation, to ask the administration to work with us on crafting those regulations, you have done everything possible to make it as complicated as possible so it will implode upon itself and not work. Now, how can it be that difficult when you know those livestock are labeled, whether it is a job brand coming in from Mexico, a health certificate coming in from Canada? How can it be that difficult to determine the origin of that livestock?

I would ask Ms. Bryson that.

Ms. BRYSON. I appreciate the view that you are expressing, Congressman. As I was pointing out in my statement, the law that we have to work with is the one that Congress passed. And the law defines the content of the claim, and it defines it for animals of U.S. origin as those meat products coming exclusively from animals exclusively born, raised, and slaughtered in the United States.

Mr. REHBERG. Do you deny that there is a process for determining what livestock come in from out of country?

Ms. BRYSON. I have no independent knowledge of that. I would look to Dr. Lambert for that.

Mr. REHBERG. Dr. Lambert.

Mr. LAMBERT. Yes. Those animals are ID'd as they come into the United States.

Mr. REHBERG. Well, there you go. Solved the problem. We already know which livestock are coming into the country. So from

that point forward, it would seem as if we could trace that livestock up.

Dr. Collins, clearly we are getting into a philosophical discussion of cheap food policy. Clearly, you have made the determination in your economic model that any cost adds to the cost, thereby making our product at a competitive disadvantage. Is that correct?

Mr. COLLINS. I think it is almost a fundamental economic principle that, when you add to marketing costs, those get paid somewhere in the system.

Mr. REHBERG. So it is supply and demand.

Mr. COLLINS. But I haven't concluded definitively yet because we haven't issued our cost-benefit analysis yet. But I think there are certainly risks to be faced here about who is going to pay these costs.

Mr. REHBERG. Dragging back to my old days in ag-econ at Washington State, if I remember correctly, it is supply and demand that really justifies or dictates the marketplace and price. In following your reasoning, you would suggest we vote against any trade packages that bring additional livestock into America because it diffuses the supply and all of a sudden, price goes down. And if we truly want to protect the price for our livestock producer, we should not let more supply into the marketplace.

Mr. COLLINS. That strikes me as a rather strained conclusion from anything I said, Mr. Rehberg. I didn't say anything about trade agreements.

Mr. REHBERG. No. But what I am saying is that you have got two ways of changing your price at the marketplace.

Mr. COLLINS. Right.

Mr. REHBERG. One is by branding, positioning.

Mr. COLLINS. Sure.

Mr. REHBERG. And the other is by affecting supply and demand. If you are not going to cooperate as an agency in developing regulations to allow this branding, the only conclusion I can make is the only place we can bring a higher price to our livestock producers is affect the supply.

The CHAIRMAN. The time of the gentleman has expired. We will allow Dr. Collins to respond.

Mr. COLLINS. Thank you.

I think you are wrong to state that we don't cooperate with branding. As you probably know, we have something on the order of 40 various process verification programs that permit an abundance of brands. Those have occurred where people can capture a return to the cost of the branding program. We certainly support that fundamentally. We think that is an important way to expand the demand for agricultural products. To go out and provide information to the consumer that the consumer will act on, absolutely. To arbitrarily restrict supplies and opposde trade agreements? No, I think that is a non sequitur from anything I had to say.

Thank you.

The CHAIRMAN. The gentleman from North Dakota, Mr. Pomeroy.

Mr. POMEROY. Dr. Collins, what I heard you say is, problems, problems, problems, problems, costs, costs, no demonstration the consumers care, no demonstration of increased market opportunities. You know, where the statute is drafted there is all kinds of

problems. Any suggestions? No, I offer no suggestions. That is a quote. I offer no suggestions.

Now, I just will be content to observe here for a moment. You know, you keep trying to look at where people are coming from on this issue based on, among other things, what their prior position has been. Those members of the Agriculture Committee that represent significant packer interests, well, the packers hate this. They love bringing in that imported beef, blending it all up and putting it out on the shelves so people can't tell what is U.S., what is not. And in light of packer concentration, just about three of them, with 80 percent of the market, they are not going to break ranks one with another and start a U.S. label on a voluntary basis. We have got plenty of years to demonstrate that pretty convincingly. And so packer interests are going to be against this.

On the other hand, those of us like Congressman Rehberg that represent ranchers, family, farmer ranchers, these guys are breaking their neck to produce a top quality product for the American consumer. They ship it off to the packer, it is blended in with who knows what from who knows where, ends up at the shelf. And all of their effort to put the top quality product out there on the shelf, the expense they go to, no more, because the consumer cannot distinguish on the grocery store shelf.

Some years ago, during a price slump, I wanted to have a an event in Bismarck to salute the North Dakota-produced product. All of the product, virtually all of the product through Bismarck then was supplied by IDP, and not a single vendor could tell me it was North Dakota or, for that matter, U.S.-grown.

You know, I am—so that is where the members are coming from. I think it is interesting to view USDA testimony today. But you can't view USDA testimony today in isolation. It is well-established that USDA under Secretary Veneman was dead against this provision coming into this farm bill, dead against. So I am not at all surprised you are finding all kinds of problems and expense in implementing it.

I would just ask, I think we all have a right to expect that Congress pass this thing, we expect a good-faith effort to implement it. In that regard, I want to know a little more about these listening sessions and the input that you receive from the broad perspective in the marketplace relative to putting a package together. And, if there are problems, do you contemplate a technical corrections package to bring something forward? Dr. Lambert?

Mr. LAMBERT. In the listening sessions, we have had, the wide range of comments that you will likely hear in the subsequent panels, Congressman. You know, concerns about the cost, questions about is USDA making this unduly complicated and we have answered that from a legal standpoint, that we intend to implement this and working to implement this to the best of our ability to minimize the cost to the participants. We are beginning the proposed real process, and we are taking all those concerns and comments into consideration and are moving forward in that process, taking all that input into consideration.

Mr. POMEROY. Well, I am happy to hear that. What I see is pretty carefully orchestrated effort where, the very week you have got the Agriculture Appropriations Subcommittee, barring any funding

for the implementation of this law. Did the U.S. Department of Agriculture comment on that action by the subcommittee?

Mr. LAMBERT. Not to the best of my knowledge.

Mr. POMEROY. No? No comment, no comment when they take their money away for you to do this. We then have a full committee hearing on this with what looks to me, just as one member, kind of an orchestrated effort to basically augment the action that has occurred in the Agriculture Appropriations Subcommittee.

What I find particularly curious about this isn't the orchestration to stop the Meat Labeling Bill that has been enacted, but the fact that this would happen even while we have an import ban with our major beef exporter into the United States, Canada, in light of the mad cow situation.

The CHAIRMAN. The time of the gentleman has expired.

Mr. POMEROY. To me, it seems just incredibly curious and unfortunate. I yield back.

The CHAIRMAN. I thank the gentleman.

The gentleman from Florida, Mr. Putnam.

Mr. PUTNAM. Thank you, Mr. Chairman.

Mr. Chairman, you opened your comments by asking rhetorically, "Has Congress done what the Congress intended to do?" I would modify that a little bit and ask: Has USDA done what Congress intended it to do? And I think, from my experience and observation of this process, they have not. They were against it from the beginning, they have deliberately and methodically set about ways to make it as complicated, as expensive, as burdensome as it possibly can be from the farm gate to the grocery store, and have created a situation where, while there are models for successful implementation in several different States, you have created a situation where I am embarrassed to go home to some of my largest employers and talk about this beast that we have created. And it is not the beast that was in the law, it is the beast that is coming out of USDA.

Now, we have labeling requirements for juice under the nutrition act. I have an empty bottle here of Tropicana orange juice. It says it contains concentrates from Brazil, Mexico, and the United States. Is that based on weight, the percentage content, or is that an alphabetical listing? Do any of you know?

Mr. COLLINS. No.

Mr. PUTNAM. But yet your voluntary guidelines for COOL would be a weight content, when I would imagine that this is probably alphabetical, Brazil, Mexico, and the United States. It is hard for me to believe that Mexico has more juice content in there than the United States.

Under this labeling provision, there is a presumption of truthfulness, the same that exists in the PACA legislation. Why does that same presumption of truthfulness not extend to the implementation of COOL?

Ms. BRYSON. I will try.

Mr. PUTNAM. Well, hurry. I only have 5 minutes.

Ms. BRYSON. Well, the bottle that you are reading from is labeled under the Federal Food Drug and Cosmetic Act under a program that is run by the Food and Drug Administration, and I don't know whether it has country-of-origin labeling requirements in it or not.

As we have said, what we are doing is implementing the words of the COOL statute that have been written. You are suggesting that there be a presumption?

Mr. PUTNAM. The same presumption that exists in the PACA. Retail grocers are legally entitled to rely on the honest declaration of country of origin by a produce vendor, eliminating the need for audits and independent verification. Is that not the case? We will hear testimony later that indicates that. Is that not the case with PACA as it exists today? Did you review PACA to serve as a model for the implementation of COOL legislation?

Ms. BRYSON. Yes, we did.

I think the best thing might be for us, if you would permit us, to answer your question in writing.

Mr. PUTNAM. Well, I look forward to that as well. But it would be helpful, since this is the place where we have these hearings, not 2 or 3 weeks later when I receive your written responses, to hash some of these things out and reflect the depth of investigation that USDA put into the research to develop these implementations.

Mr. COLLINS. Mr. Putnam, could I make a comment about what you are saying? It raises a general point, and that is that we have not issued the proposed rule yet. And I just don't want you to presume that what is in the voluntary guidelines will be the proposed rule. As part of issuing the voluntary guidelines, that was an information gathering exercise. And we have learned a lot from all the comments and specific estimates of how people are going to behave under this rule. One of the things you just mentioned was the ingredients in a product. What is the identity of the ingredients in a product when they are combined, say a blended product? And you suggested in the COOL voluntary guidelines those countries have to be identified by order of predominance. That is an excellent issue for us to discuss as we issue the proposed rules. And whether that is necessary or not——

Mr. PUTNAM. I hate to interrupt. I really do. I am glad you raised the point that you still in the exploration stage, because we passed it a year ago. And you guys did a great job of getting the grain checks out as quickly as possible, and you did a great job of getting the conservation, the high-profile environmental programs out there. And, in fact, against Congressional, or to some opinions against Congressional wishes, shifted some funds around to get those things going as quickly as possible. And now with COOL, we are getting dangerously close to the drop-dead point where grocers and retailers and distributors and wholesalers are going to have to make some serious capital spending decisions, but you all have waited until the last possible moment to do this. And your silence and inability to explain some of these things are terribly frustrating.

And there goes my time. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

The gentleman from California, Mr. Cardoza.

Mr. CARDOZA. I pass.

The CHAIRMAN. The gentleman from Georgia, Mr. Burns.

Mr. BURNS. Thank you, Mr. Chairman.

Thank you, Mr. Chairman. I appreciate the panel providing the input. I share some of the frustrations perhaps that you hear this

morning. I think my question is quite simple. We need a good faith effort on the part of USDA to implement the wishes of Congress and the statutes in such a way that it is not onerous to the producer or to the packer. COOL was a good idea; at least that is what folks led us to believe. And the implementation now has become a very frustrating experience.

How would you suggest we move forward with COOL? Let's stop the rhetoric and end the fingerpointing and say, folks, we want to implement this thing in a reasonable, viable way that is not onerous to any party. You know, let's do not create things that make no sense at all. Let's just do the right thing.

Mr. LAMBERT. As indicated, we are moving forward with the rulemaking process. We are taking into account all of the input that we have had.

Mr. BURNS. When do you anticipate the rules being available?

Mr. LAMBERT. We expect that the rule will be out some time by September 2003. And then the producers and the packers and the various entities that would be involved would then have an opportunity to respond to that?

Mr. LAMBERT. With an ample comment period. Included in that process will be the economic analysis of costs and benefits. And then the final rule would follow just as soon as possible after that process concludes.

Mr. BURNS. Good question. We are looking at the rules coming out in September 2003 and then a comment period. When do you anticipate they would be finalized so that folks who were involved would know what they are dealing with?

Mr. LAMBERT. I think, as I indicated in my comments and testimony, by sometime next spring, spring of 2004.

Mr. BURNS. So we are looking at the April time frame of 2004 with the mandatory implementation of?

Mr. LAMBERT. September 2004.

Mr. BURNS. That is a pretty short fuse.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania.

Mr. HOLDEN. I had several questions, but my staff told me that they were already asked and answered except one, and Mr. Burns just asked that, so I will yield back.

The CHAIRMAN. The gentleman from Indiana, Mr. Chocola.

Mr. CHOCOLA. Thank you, Mr. Chairman. I have got producers and processors and retailers all in my district, like I am sure most members do, and I have heard from all of them and they are all clearly confused and probably frightened about the unknown application of this and what it is going to do to their daily life. I heard you talk about the listening sessions. What is going to be the educational effort? What can I go home and tell them next week when I have got a lot of meetings, where they can go, how they can expect to be educated on what they need to do exactly to comply with this?

Mr. LAMBERT. I think part of the purpose of the listening session was a two-way to inform the participants and the attendees at those sessions about what was in the law, the interpretation of the law and the guidelines that have been published to date.

The next steps in that process as we go through rulemaking are to provide comments. We have information on the USDA Agricultural Marketing Service Web site where individuals and producers can go to gain a variety of information about the implementation of country of origin. As this proposed rule comes out there will be an opportunity to study and review that, and, as I said, to provide an ample period of time to provide questions and reaction to those proposed rules.

Mr. CHOCOLA. Will you have any regional education sessions, listening sessions? Do you anticipate that?

Mr. LAMBERT. The last of the 12 listening sessions that were scheduled was in Lancaster, Pennsylvania. Today, and at this date, there are no plans to have additional listening sessions or educational sessions as the proposed rule comes out. I will say the Department has to date responded to requests for information and to the degree that that is still allowed, we continue to respond to those requests.

Mr. CHOCOLA. Ms. Bryson, somebody mentioned possible audits. Is there going to be an audit mechanism? How would that work? Will there be a staff of people that will be required to conduct audits on the documentation and compliance?

Ms. BRYSON. That is something that the agency will determine when it issues the regulations. In general, what I said about the law is that the law says the Secretary has the authority to require an audit trail to demonstrate compliance with the law. And the examples that are given for how this might work are those that are in the other listed programs identified in the statute.

What we have done in the voluntary guidelines is make available the offer that USDA would, on a fee-for-service basis, evaluate people's audit programs and comment on them.

Mr. CHOCOLA. Thank you. I yield back, Mr. Chairman.

Mr. POMBO [presiding]. Mr. Scott.

Mr. SCOTT. Thank you very much, Mr. Chairman. And let me also commend you for having this hearing and for our panelists and their presentations.

I would like to ask a question following a line that was sort of established that we are working on here. I am concerned about the terrorist threat to our food chain. Our food supply. I would like to ask the Department what is the relationship between our country-of-origin labeling and food safety? And also do you see any potential within this law for shoring up the safety of our food system from terrorists' threats? And also as you answer that, I am particularly concerned about the weakness in—not just the labeling but the food inspection process. That is not as severe, it is not as good as ours. Is that a potential in view of food coming into our country? Because we are becoming, in my estimation, unfortunately, more and more dependent on our food chain from foreign sources.

And I often use the example of tomatoes that now 80 percent of which are coming from out of this country, and some of these countries do not have the standards of inspection and protection as we do. Could you address the possible threat to our food supply in terms of terrorist attacks and whether or not we can do something in this legislation to shore that up?

Mr. LAMBERT. Country-of-Origin labeling is a marketing label that just provides the information to consumers, Congressman. The safety and security of our food supply is dependent upon the border protections that we have, the inspection system that we have in place, and in the harmonization of our inspection system with other countries who we trade with.

If their standards do not meet up to ours, if they cannot assure the same consistency of safety as is provided by domestic product, then that product is not allowed to enter into the country.

Mr. SCOTT. So you do feel that the American people can breathe a sigh of relief and know that our food supply is safe; that there are no concerns from the Department of Agriculture that there could be any terrorist threat to our food supply?

Ms. BRYSON. I think those might be two different questions, Congressman. USDA is convinced that the American food supply is safe; and particularly with respect to meat, as Dr. Lambert indicated. Inspection is done on product that comes in from foreign countries in the same way that inspection is done here in order to assure that the meat products are safe.

We are working, and we have been working hard since September 11, to develop additional safeguards for the security of the food supply. It is something that is very much on our mind all the time, and we are working on it. We do not equate it with the country-of-origin labeling statute because of the nature of that statute, which says, here is a piece of information for consumers to distinguish between products of U.S. origin with all the specificity in the statute, but to distinguish based simply on country of origin and not on food safety.

Mr. COLLINS. And could I add to that another fact that demonstrates that this is not a food safety statute? It is that products sold from butcher shops, fish markets, and the whole food service industry, restaurants, are exempt from country-of-origin labeling.

Mr. SCOTT. Thank you.

Mr. POMBO. Mr. Neugebauer.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Some of my other colleagues were here during the debate that may—discussion that went on when this bill was passed. I was not, so pardon me if my question is a little simple, but as I was looking through this issue, basically the labeling begins on the birth of that animal. In other words, we are certifying that that animal was born in the United States, for example? So if I had a Canadian cow and a Mexican bull, but as long as that calf was born in the United States, then I could follow that animal through the chain and certify that that was American-raised beef; is that correct?

Mr. LAMBERT. That could be correct. The location where that animal is born determines the "born in."

Mr. NEUGEBAUER. It is not about the pedigree or the history of the parents of those animals, it is about where that animal was born; is that correct?

Mr. LAMBERT. That is correct.

Mr. NEUGEBAUER. So as you follow that animal through the chain to the auction barn to a feeder to a cow-calf operator—or from a cow-calf operator to the feeder to the processor to the wholesaler to the consumer, we create a fairly substantial chain along

the way, is that correct, of certifications that have to be passed on for each animal?

Mr. LAMBERT. That is correct. Go ahead. Keep in mind that the retailer is the one that certifies that all of those previous activities took place. So having access to that information and transferral of that information through the system is——

Mr. NEUGEBAUER. But they are relying on that.

Mr. LAMBERT. Exactly.

Mr. NEUGEBAUER. And I know that a lot of retailers now are preparing documents of indemnification, making everybody up the chain indemnify them that the representations are made. I think one of the things that concerns me about this process is two things when we talk about enforcement and litigation from a consumer group, for example. From the agency's standpoint as far as it goes to enforcement, we have a different enforcement standard for the retailer and a different enforcement standard for the rest of the chain, as I understand it; is that correct?

Ms. BRYSON. Yes, it is.

Mr. NEUGEBAUER. And so—but that is just from an enforcement standpoint. But from—let's say, a consumer group files a class action suit against a certain retailer because they found out that there has been contamination in the chain here. There is really not any indemnification for those other people in the food chain or in the chain of events there for protection against those lawsuits. In fact, you could sue the whole chain to a certain degree or back to the point of origin; is that correct?

Ms. BRYSON. There are other statutes which are implicated by the fact that Congress made COOL a mandatory claim. For example, in the Lanham Act, which the Federal Trade Commission enforces, and which prohibits unfair and deceptive trade practices, there is a section that defines false statements concerning country of origin as false and misleading claims. The courts have held that competitors have a right to take enforcement action based on false and misleading claims. So the retailer in this situation does face enforcement from USDA. But there is also the potential for these other sorts of actions in district court by competitors.

Mr. NEUGEBAUER. I think one of the things that concerns me is trying to keep track of all of those different transactions animal by animal is very onerous, it appears to me. And I am trying to, if the purpose of the bill—and I think it was made, the point a while ago, this is not a food safety bill. So we are keeping track—we are asking the Federal Government and we are asking producers to keep track of a lot of different transactions, assuming that the marketplace is going to recognize some benefit that this product was born in a certain country.

And I think the point I would make, and it was talked about, mad cow coming in from Canada. This process is not designed for certifying that the pedigree of that particular animal did not come from a pedigree of where there was mad cow disease; is that correct?

Ms. BRYSON. That is correct.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The gentleman from Minnesota, Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I think some of the questions and comments that I wanted to make have already been made.

But a quick statement. First of all, I was never a big fan of this idea. I want to put that on the record. And the research that I have seen, the evidence from people whose opinions I respect is that the folks who are really going to get hurt in this are the small producers.

If I am in the business of turning pork into quality products like Spam, I am going to be really concerned about where those hogs come from. And particularly if I am buying from a small producer who only brings in a small load of 10 hogs every 6 weeks. I think the people who are going to get hurt the most in this deal are small producers. If I am raising 50,000 pigs, this is not a big problem for me. But if I am raising 500, it is a big deal. So I am not a fan of this.

I want to make a point in this. I have a burr under my saddle, and it is going to stay there until this administration wakes up. Because we inspect food with two different agencies; one is the FDA and the other is the USDA. And we import thousands of tons of food every day. The last year we have numbers for, we imported 318,000 tons of plantains. I was surprised to learn that.

But here is where I have the burr under my saddle. This administration has built a wall a mile high for things like pharmaceuticals because of safety. And yet we import thousands of tons of food every day and we consume it, and very few people get sick. But worse than that, we know what the numbers are in the imported pharmaceuticals. It is an easy number to remember. How many people have died from taking imported pharmaceuticals? We keep records. It is a round number. It is zero.

And I want you to go back and tell your Secretary and other people in the administration, this issue is going to continue to fester until this administration gets its act together. You can't have one standard, FDA for drugs, and another standard for food. It is going to come back to bite you.

I yield back the balance of my time.

The CHAIRMAN. I thank the gentleman. The gentleman from California, Mr. Pombo.

Mr. POMBO. Thank you, Mr. Chairman.

Ms. Bryson, during the questions, Mr. Rehberg brought up the health certificate on animals coming out of Canada. And I had the staff grab one for me. And in looking at this, this does not meet the requirements on COOL. This does not have the information on it that is necessary to certify under the country-of-origin labeling. So how would you use this to certify that something came from Canada or anywhere else? Would it be possible?

Ms. BRYSON. I am going to go back to the requirements of the statute, which is all I really can answer about, the degree of substantiation that is required by the law is substantiation that the animal was born, raised, and slaughtered in the United States in order to qualify at the retail level for labels on meat products from that animal.

Mr. POMBO. But does the law also not require for something to be stamped Canadian, that it be born, raised and slaughtered?

Ms. BRYSON. The statute is much less specific on those sorts of things. It does not have the same words in it that are used to define U.S.——

Mr. POMBO. So what would qualify as coming from a certain country?

Ms. BRYSON. That is a question which is being interpreted in the regulations that are going to be issued. Is that correct, Dr. Lambert?

Mr. LAMBERT. That will be correct.

Ms. BRYSON. That is one of the areas where USDA has discretion to more broadly define the claim based on the definitions in the statute.

Mr. POMBO. So how would you—what are you going to do, how are you going to say something is from a different country if it has a different standard? If this is about the consumer's right to know or providing them with information as a mandatory program, how would you possibly put a requirement on that was different for coming from another country than it would be coming from the United States?

Mr. LAMBERT. Congressman, the participants in those systems will be the ones that determine the verification of the information that they require, and then USDA will be the enforcement or auditing agency that determines that those records are in place. But ultimately, the amount of records or the verification system that must be in place is determined by the participants in that supply chain.

Mr. POMBO. By the participants, you mean if we are getting beef shipped in from Canada, it would be up to Canada to certify that it is Canadian?

Mr. LAMBERT. If a retailer wanted to market product of Canada beef, they would present a proposal as to the records that they would have in place to verify and to document that that claim was, in fact, valid.

Mr. POMBO. And if they bought—would it be required that if they brought beef out of Canada that it be labeled?

Mr. LAMBERT. Yes. The existing law requires that.

Mr. POMBO. But it would be up to that foreign country to determine whether or not it was Canadian? I am just trying to understand the practical realities of this. Mr. Rehberg talks about being a rancher. I have been a rancher my whole life, too, and I am trying to figure out how this affects me. And to be real honest with you, a lot of my producers back home on the cattle side, on the livestock side, are scared to death of this thing because they do not know what it means to them. And there is a huge confusion over how are you going to do this without some kind of a mandatory identification system. Because there are animals coming through my place that I don't know where they came from. So how are we going to do this?

The CHAIRMAN. The time of the gentleman has expired. We will give you an opportunity to respond, Dr. Lambert.

Mr. LAMBERT. That is an excellent question and very indicative of the things that we are grappling with as we begin to go into the rulemaking process.

The CHAIRMAN. The gentleman from California, Mr. Dooley.

Mr. DOOLEY. Thank you, Mr. Chairman.

I would like you to be more clear in terms of what is the potential liability for various parties under this mandatory labeling? Ms. Bryson, I think maybe you can be best to address my concerns or my issues here. As I understand it, at the retail level, a failure to have a product, a meat product, labeled as to country of origin would pose liability and potential penalties for that retailer; is that correct?

Ms. BRYSON. That is correct.

Mr. DOOLEY. Now, the processor who provides that product to the retailer, are they subject to any—what liability would they be subject to?

Ms. BRYSON. The enforcement section of the law is incorporates by reference a section called section 253, that section provides that any packer that violates the requirements can be assessed a civil penalty of up to $10,000 per day per violation and also can be subject to cease and desist orders, with a notice and opportunity for comment and appeal from a decision issued.

Mr. DOOLEY. Now, the processor with that type of liability and with USDA prohibited from having any type of producer traceback, how is the—how do they protect themselves from liability with the animals or livestock that is going to be provided to them?

Ms. BRYSON. I believe that the statute leaves that as a matter that will be determined by the marketplace through contracts between the processors and their source of supply.

Mr. DOOLEY. So the processors most likely then will require a signed contract from the producer or whoever is supplying the livestock that these animals, in fact, meet the requirements of the statute which were born, raised, fed in the United States?

Ms. BRYSON. Correct.

Mr. DOOLEY. Now, what penalties, what liability does a producer have if they violate that contract? Would that then be a civil penalty? I mean a civil dispute?

Ms. BRYSON. Yes. USDA does not have jurisdiction to take enforcement action against producers.

Mr. DOOLEY. Say, though, that a processor was found to have labeled a product as born, raised, and fed based on a producer's basically signed contracts that it was in fact meeting that, but then it was found not to; what is going to happen in that situation?

Ms. BRYSON. Well, when the Government decides to take enforcement action, it does it because there is a fact pattern that is presented which demonstrates conduct which is illegal. In the situation that you describe, the provision in the statute that says we should issue guidelines that describe how people in the chain can rely on records and an audit trail to establish verification essentially is what creates the method of substantiation of the facts required for the claim.

A processor who had arranged through a contractual mechanism for verification from the producer as to the relevant requirements of the statute, born and raised in the United States, could rely on that process if it was the sort of independent audit trail that exists in the other statutes that are given to USDA to use as illustrations.

Mr. DOOLEY. Is there any potential for a third party to bring a legal action against a processor or retailer based on information that they might have gathered that a produce misrepresented the origin of their livestock that they supplied?

Ms. BRYSON. As I mentioned in response to one of the other questions earlier, there is an independent cause of action under the Lanham Act regarding false and deceptive unfair trade practices. A competitor of a retailer a have a cause of action against that retailer in which he might allege that false labeling which was false on his products was an unfair trade practice, and the litigation in that case would look at the evidence that was presented about the information the retailer relied on in making the claim that appears on the packages in his store.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from Michigan, Mr. Smith.

Mr. SMITH. Mr. Chairman, thank you.

Last month, I was a member of the interparliamentary meeting with Canadians, and this discussion came up of labeling and should we be putting identification on livestock and cattle from the very start and putting some kind of ear tag or whatever that might last. And so a combination of being able to track back an animal, where it came from in terms of if something ever happened as far as contaminated meat supply; also in terms of that kind of record-keeping as far as country-of-origin labeling. And of course with Michigan, quite often we buy the calves from Canada, raise that calf, and it very well might go to Mexico for meat. If that was the case, what would go on the label? Whose country of origin is it?

Mr. LAMBERT. As proposed in the guidelines, anyway, that calf that was born in Canada and fed in Michigan would be labeled product of livestock born in Canada, raised and processed in the United States.

Mr. SMITH. And how is that—right now, I think we have a $450 million balance of trade or something like that, as we buy a lot of feeder cattle from Mexico, the United States farmers do, and then they sell beef back to Mexico. How is the Mexican market going to react to this type of labeling in terms of affecting our trade with Mexico?

Mr. LAMBERT. I think, first of all, it is important to recognize that this is a U.S. retail labeling law only. So the product that we are talking about labeling is only that product that would be sold through U.S. retail outlets as defined in the law.

Mr. SMITH. Does Mexico do some of this labeling now on country of origin?

Mr. LAMBERT. Not necessarily.

Mr. SMITH. It is strictly voluntary? So you are saying no effect in terms of if it is the other way around; and I don't know how often that happens, but your guess is and, Dr. Collins, your guess is no effect on our balance of trade with Mexico or Canada, the labeling requirements that we might impose?

Mr. COLLINS. I do not have a guess on that yet. We have not heard from the Mexican Government on this. I don't believe they have commented during our comment period. So any effects that would occur I think probably would be either some kind of action

in Mexico, a policy action, or some response to market forces in the United States. And I do not know what that is at this point.

Mr. SMITH. Is USDA talking about evaluating, earmarking cattle from birth, to know where they came from and how they process through the industry?

Mr. LAMBERT. We have been working with a coalition of both State government officials and industry representatives to develop a national ID system. And that coalition has brought forward a plan. There are meetings as early as the 1st of July to discuss these plans and move forward with implementation. So that is a process, a system that is under way, Congressman.

Mr. SMITH. Is there a high-tech system that you can put some kind of a scanner ID under the skin of an animal and it is there for life?

Mr. LAMBERT. The committee, the steering committee that is working with this group have evaluated all the technologies. I know they have some recommendations for how we move forward with which technologies. And at this stage, that is about the extent of my knowledge of that program.

Mr. SMITH. Mr. Chairman, thank you.

The CHAIRMAN. I thank the gentleman. The gentleman from Oklahoma, Mr. Lucas.

Mr. LUCAS of Oklahoma. Thank you, Mr. Chairman.

Dr. Collins, you mentioned earlier part of the statute that points out that food service and restaurant products are exempted from these requirements. Could you or Dr. Lambert point out what percentage of the total U.S. food consumption is consumed, for curiosity's sake, in those food service establishments and restaurants?

Mr. COLLINS. On an expenditure basis, about 45 percent of household food expenditures are in food service, food away from home. About 37 percent of the volume of food is food away from home.

Mr. LUCAS of Oklahoma. So it is a substantial percentage, then. And would it tend to be the higher cuts of meat, for instance, that would be consumed in such establishments?

Mr. COLLINS. Food away from home? Yes, often it is.

Mr. LUCAS of Oklahoma. OK. And you also mentioned earlier that we had on the books prior to this a voluntary label program, a U.S. identification program. Can you tell the committee what kind of interest or activity that the industry showed at the time that that option was available?

Mr. COLLINS. We have had that option available for some time. We promoted it substantially in the late 1990's, early 2000. It was a joint effort of the Food Safety Inspection Service and AMS. And there has been no interest—no one has asked to participate in that program. We have had two companies inquire about it here recently; however, I think that obviously has been motivated by this legislation.

Mr. LUCAS OF Oklahoma. Fair enough, Doctor. I guess I would just like to cut to the chase and ask the panel the question that is being discussed back home in the coffee shops in the Third District of Oklahoma. There is a view out there among my constituents that the concept of identification is wonderful and that the language in the farm bill was probably something that was doable.

But there is a perception—and there are always perceptions back home among the real people about what goes on here in the Nation's Capital and in your agency in particular, sometimes they are fascinating. But there is a perception that the Department has consciously or unconsciously decided that it does not want to do this and that therefore you are working on rules that are so horrendous, so onerous, so ominous, so evil, that it is predetermined for failure. So for the benefit of my folks back home, how do you answer that?

Mr. LAMBERT. From our viewpoint, we are making an earnest, honest effort to implement this to the best of my ability, with the least cost implications back to the production processing chain. We are very aware of that perception out there. We have heard it repeatedly in the listening sessions that we are having around the country. I think both the opponents and proponents talk about the costs and the complexities of the law as passed. The question is where they lay the blame and we are very well aware that there are some individuals that have that claim.

But as Ms. Bryson testified earlier, we are restricted. This law is very prescriptive and restrictive in allowing us latitude in what we can and cannot do, and in many ways the perception that we are purposely doing something is not because we are doing that, but because the law—that is what forces us to do that.

Ms. BRYSON. I might add that the Department is doing a great deal to provide for public comment on how and what we should do with this law, given the legal constraints we have. We got an enormous number of comments on the voluntary guidelines. It is not typical that the Department would have as many listening sessions. We have to make sure we are hearing from everybody with a viewpoint on this. And all of that information is going to be considered when we issue the proposed rules, which will again have a public comment period and another opportunity for people to tell us what they think it is USDA ought to be doing or that is different than what we are doing.

Mr. LUCAS of Oklahoma. One of the challenges back home in the real world is explaining the nature of the legislative process, noting that we pass legislation on a variety of topics that we cannot put every comma and every period in every implementation process in every bill. That ultimately you, as fellow servants of the people, have to implement that language. So are you saying in effect to my constituents that this language is written in such a way that you are doing what you have to do, the guidelines that have to be followed?

Ms. BRYSON. I think that is the answer to the constituents. USDA is taking the law and implementing it as best we can. We are not permitted to require a mandatory identification system. We are required to enforce the law to make sure that the claims that are made at the retail level are truthful. The law requires that those claims be very specific for U.S. country of origin and demonstrate that the product is born, raised, and slaughtered in the United States; and that is because the Congress made the finding that it is that factual information that is important to consumers in making their purchasing decisions. Our job is to put out guidelines that say "here is a way to substantiate it."

The retailers and the producers may say there are additional ways they want to use to substantiate that. But that is our position about what we are doing.

Mr. LUCAS OF OKLAHOMA. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The gentleman from California, Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman.

Dr. Collins, have you done any analysis in terms of the practical implications of segregating product in the processing line?

Mr. COLLINS. We are doing that now. This statute which was just described by Ms. Bryson does require information to be provided by suppliers to retailers as to the origin of the product. We think that that is going to require, obviously, a verification and recordkeeping system that allows for the identity to be tracked through the system for those products. That identity preservation might require segregation. It might not require segregation.

In the comments that we have gotten from the different sectors in the chain, some have said that the only way I see myself being able to fill these requirements is through segregation. Others have said no, I think I can do identity preservation, but it is a system that is going to require me to put a sticker on every piece of food or whatever. So there are alternative ways to approach this. The approach we are taking at the moment is to try and look at each of the sectors—that is production, processing, distribution, and retailing—for each of the commodities, because the commodities are different, and then try and sort of engineer out how those market participants will be able to meet these informational requirements. And we are using some of the information that has been provided to us through the comment period from the different sectors in the chain. We are looking at that.

Now, if we find there are two approaches for one aspect of the chain of processing for some commodity and one is cheaper than the other, one involves identity preservation without segregation, that is the cost we will assume, the low-cost alternative.

Mr. OSE. Speaking of the costs, have you been able to make any judgments on what the necessary impact return to producers will be?

Mr. COLLINS. We haven't done that yet. There are a lot of other studies that have been done. There are 10 to 12 fairly detailed academic studies that have been done and they get different results. Some believe there will be positive returns for producers because they see consumers responding very positively to this program. Others believe that that is not going to be the case, that there will be little effect on the demand and there will be a high cost and therefore negative returns for producers. We are evaluating those and we are going to take the nuggets out of them and use it for our analysis.

Mr. OSE. I almost prefaced my remarks by recognizing the fact that you are listed as an economist. So the one hand/the other hand thing.

Mr. COLLINS. I am very, very careful.

Mr. OSE. If in fact segregation of product is required, there will be a significant capital cost involved in implementing that. And as

a result, the margin for the producer is going to narrow. And it seems like common logic to me.

Mr. COLLINS. I think that is absolutely correct. For example, we have heard from feed lots that handle both domestic and Canadian cattle that they mix them up now by grade, and they say they are not going to be able to do that. They will have to segregate these herds. That is a simple example of what we heard through the chain.

Mr. OSE. If the producers' margins narrow, what are they going go do? What is the market response if the processor, for instance, has a narrower margin than they had yesterday?

Mr. COLLINS. The market response is two things. Processors try to seek higher prices from those who buy their product and they try to pay lower prices to those who supply them with their inputs.

Mr. OSE. I appreciate that input.

Mr. Chairman I have a huge number of questions about this capital requirement. I do not have the time to get to it. I have to say that when I lay in bed at night wondering what I have done over the course of my career, one of the things that I am worried about is chickens and one of the things that I am trying to figure out, are the eggs of a chicken subject to country-of-origin labeling?

Mr. COLLINS. Poultry is exempt from the country of origin.

Mr. OSE. All poultry?

Mr. COLLINS. All poultry.

Mr. OSE. Whether chicken or turkey or anything like that?

Mr. COLLINS. Yes, sir.

Mr. OSE. OK. How about fish?

Mr. COLLINS. Fish are covered.

Mr. OSE. Fish are covered. So we have an aquaculture farm in my district and they have fingerlings. How are you going to track the fingerlings?

Mr. COLLINS. That is what the law says, they will have to be tracked, and that is where the marketplace—the market—participants will have to figure out how to keep records on that.

Mr. OSE. Will you have to brand all of those fingerlings or staple some tag to them?

Mr. COLLINS. You will need an awfully small brand. These are the difficulties. Fish are not unlike cattle, but fish are obviously a little bit different. But that is the issue. It is going to be easier for some people and it is going to be difficult for others. We have been accused here today of creating something that is going to impose huge costs on everybody. The costs are not going to be huge on some people. Some will already have records, the breeding records and feeding records and veterinary records, and it will not be that difficult for some cow-calf operators to comply. But for others, particularly as you go down the chain, it becomes more and more complicated. As these fingerlings grow out and get passed around through the chain, then it becomes more difficult because that identity has to be tracked through the system.

Mr. OSE. Mr. Chairman, I appreciate your generosity. I wanted to make sure that I understood Dr. Collins' testimony that the impact of reduced margins to processors is that they either have to raise the price for their end-use product or reduce what they pay to suppliers.

The CHAIRMAN. Mr. Janklow is recognized.

Mr. JANKLOW. Thank you, Mr. Chairman.

I come from as much cattle country as anybody and I am a supporter of the labeling. I am very concerned about marketing. The fact of the matter is we talk about Japan. It is not that the Japanese label their goods. It is that that they charge ours 30.5 percent duty to get into the country. That is the real way they keep American beef out of Japan.

But other countries have found ways and American merchants have found ways to peddle goods in America by using country of origin. They talk about South African lobster tails being the premium lobster tails. Or Danish hams or Polish hams or Russian caviar. Nova Scotia salmon, Atlantic salmon. Norwegian sardines. These are marketing gimmicks that are very successful in our country. I am really haunted by the fact that Canada produces good meat. I am concerned that once this is all implemented, the Canadians are going to send a lot of meat down here that is finished and packaged and it is going to say in their advertising campaigns on radio, television, and newspapers: Canadian beef, the finest, approved for import by the U.S. Department of Agriculture—or the U.S. Food and Drug Administration, whichever agency allows it to come into the country.

But something that really bothers me, really bothers me, is that there is not just a lack of enthusiasm, the word coming out of the USDA for the last year are all the reasons this will not work. Every comment that has ever been made has been negative. The rule of law is that Congress proposes and the Executive disposes with respect to the implementation of the laws.

Let me ask you, Mr. Lambert, have you been in any discussions ever over at USDA about the fact that you know there are problems with this law, but you are going to never suggest anything on how to fix it? Have you ever been in a discussion like that?

Mr. LAMBERT. No.

Mr. JANKLOW. How about you, Ms. Bryson?

Ms. BRYSON. No.

Mr. JANKLOW. How about you, Dr. Collins?

Mr. COLLINS. To the contrary.

Mr. JANKLOW. I wonder if you have been in a conversation like that.

Mr. COLLINS. No, absolutely not. I have been in opposite conversations.

Mr. JANKLOW. Is this the typical way to react when you have a law you do not like? You just kind of drag your feet on it? How long have you been working on these proposed rules?

Mr. LAMBERT. The guidelines were published in October and, as I said, the listening session—today is the last one. We are beginning now to go into the proposed rule process.

Mr. JANKLOW. And so you think they will become final when?

Mr. LAMBERT. The target objective is the spring of 2004.

Mr. JANKLOW. So what, about a year and a half?

Mr. LAMBERT. That is close.

Mr. JANKLOW. About the length of the Korean War—about half the length of the Korean War it is going to take to you get these rules promulgated. Is there any way you can speed them up? What

I am interested in is if there is something wrong with them, your proposed rule once it is announced, that is when you are really going to get input as to what it is going to take to make this work or not work. Isn't that really the case?

Mr. LAMBERT. We have, as I said, we have had over 1,500 comments in response to the guidelines and another 1,000 in response to the——

Mr. JANKLOW. That is the guidelines and another 1,000 in response to the—but what I am talking about, the proposed rule when it gets that specific, that is when you are going to really get the meat of what works and what does not, isn't it?

Mr. LAMBERT. There will be another comment period that accompanies the proposed rule.

Mr. JANKLOW. One last question. If the appropriations language stays in for beef, will you just stop promulgating rules that applies to red meat, to beef?

Mr. LAMBERT. I don't know that that determination has been made at this stage.

Mr. JANKLOW. Ms. Bryson?

Ms. BRYSON. I would say, given the assumption that the appropriations provision which prohibits USDA from spending any money on this program is passed into law, that the administration cannot spend any dollars.

Mr. JANKLOW. Would you just then stop promulgating the rules as it applies to meat?

Ms. BRYSON. We would have to defer that until we have appropriations. We can't spend dollars under Federal law on programs that we are not authorized to do.

Mr. JANKLOW. Is that a yes or a no?

Ms. BRYSON. Yes, we will stop.

Mr. JANKLOW. Thank you very much.

The CHAIRMAN. The time of the gentleman has expired. Mr. Hayes from North Carolina.

Mr. HAYES. Thank you, Mr. Chairman. It certainly has been an interesting discussion. Congressman Janklow and I spent a great time out in Nebraska with some others talking about similar issues, and the only clear answer is that there is no overwhelming consensus except that there are problems and we want to help try and fix them.

On the issue, Dr. Collins, if you would briefly just give us a snapshot of what the process is because I don't think it is clear how you all are evaluating the data in trying to help us reach a positive decision. If you could just run through that briefly and tell us how you are getting the data, when you are going to have it, and how you are going to evaluate it.

Mr. COLLINS. Very quickly, we are required under various laws and Executive orders to do a cost-benefit analysis. Much of what goes into that is proscribed. It involves assessing the costs and benefits of what we are going to propose as well as feasible alternatives. So we will be looking at feasible alternatives. On the cost side, as I said earlier, we are going to look at each of the commodities, we will look at each of the functional areas in the supply chain—production, processing, distribution, and retailing—and try

and assess the costs of meeting the information requirements of this statute.

We will also be trying to assess the benefits. Will there be an expansion in demand for the covered commodities? Also we will look at alternative commodities, uncovered commodities, will there be an effect on uncovered commodities? The demand side effects are complicated.

For example, I suspect that the cost of implementing this for fish is probably less than for beef. That might mean that what gets translated into prices in the marketplace would be less for fish than beef. Would that cause consumers to substitute fish for beef? Then we have to look at the covered commodities and the uncovered commodities such as poultry, and then we will look at the trade effects of this as well. We will array all of the costs and all of the benefits and we will try to calculate a quantifiable net benefit. There are some of these things that we will not be able to quantify, however.

Mr. HAYES. We look forward to hearing from you. The committee itself in its wisdom decided that COOL was not that good an idea when it came through the committee. It was later when we made that decision in the full House.

Ms. Bryson, is it possible for States to pass parallel laws with separate enforcement mechanisms and fines?

Ms. BRYSON. Yes.

Mr. HAYES. The law prohibits the USDA from establishing an ID and traceback system. It requires that there be aa verifiable audit trail. Are retailers and packers barred by the statute from developing their own verification requirements?

Ms. BRYSON. No, not at all.

Mr. HAYES. Under the statute, if a packer or processor refuses to accept the delivery from a hog or beef cattle producer because they have determined the producer has incomplete records, can GIPSA take enforcement action under the mandatory country-of-origin labeling law against the meat processor packer?

Ms. BRYSON. No.

Mr. HAYES. Are there additional problems that you see or anticipate being created by that sort of exchange of information?

Ms. BRYSON. I think the way the law is written, there could be a lot of issues that arise in a contractual form between the processor and the producer.

Mr. HAYES. I would yield to the chairman for a moment if he would like to clarify that particular question that I was working on.

The CHAIRMAN. Well, I am not quite sure what the gentleman is referring to, but if he would yield to me, I have a couple of points that might be worth clarifying here.

One, I know Mr. Dooley would like to know whether the legislation and, therefore, any regulations emanating from the legislation, contains a private right of action so that if an independent group or an individual had a complaint about a mislabeled product, could they bring a private action? Or is this something that would be enforced strictly by governmental entities?

Ms. BRYSON. The COOL provision which was passed by the House does not, itself, contain a private right of action, which

means if you just look within the four corners of the COOL statute, the Secretary of Agriculture and States under a memorandum of agreement are the ones that could enforce that. What I was describing, when I gave my earlier answer to Congressman Dooley, is the fact that, because what has been created by Congress is a labeling provision which is mandatory, it fits into a whole other realm of laws that relate to how claims are made and who can enforce them.

And as I indicated, the separate statute, the Lanham Act, also addresses false information about country of origin. It defines that information as a deceptive business practice. And the courts have held that competitors can bring private actions to enforce that provision.

Mr. DOOLEY. Will the gentleman yield?

The CHAIRMAN. I yield.

Mr. DOOLEY. I guess let's use a scenario, that PETA, which is motivated by a broader agenda, takes an action against a retailer in order to try to reduce the consumption of red meat. Now, would they have standing to file an action against USDA for failure to adequately enforce or would they have the ability to file an action against the retailer or the processor or potentially the producer for not providing adequate information? And, in fact, if they actually did an investigation where they found a producer did supply animals that were not within the country-of-origin definition, do they have a standing to take that action against USDA or take it, actually, against the processor, actually, clear back to the producer?

Ms. BRYSON. I will try to give you a simple, quick answer but it will be difficult. That is because the law in these causes of action is evolving. We are seeing much more aggressive use of the Administrative Procedure Act as the basis for a cause of action. We have a lot of cases on appeal, and some at the Supreme Court level that are looking at this question of how broad the scope of jurisdiction is under the Administrative Procedure Act to bring cases like this.

And the issue of whether one has standing is an important element of that question. So I can't give you a definitive answer on that.

On the Lanham Act issues that I was talking about, the case law so far has limited the private cause of action to competitors. There is a National Law Journal article that I will be happy to provide for the record that says, right now that right of action has not been extended to consumers. However, the language of the statute in the Lanham Act is, "any person".

The CHAIRMAN. Thank you. And one other area of clarification based on the question from the gentleman from South Dakota, Mr. Janklow, I think what he was trying at and I know Mr. Smith was interested in this too, the question if the language that is in the agriculture appropriations bill were to pass and become law and that deals only with cattle and pork, how would you treat that—in other words, you are in mid-process of writing regulations, and you are told to cease expending funds for beef and pork, what effect will that have on the regulations you are writing for fruits and vegetables, fish, peanuts, whatever else is in the statute?

Ms. BRYSON. Well, I think as a matter of law, we follow the direction of the Appropriations Committee as to what we can and

cannot spend our money on. And if the only thing we are prevented from spending our money on is implementing regulations for beef and pork, then we would proceed with the other aspects of the program.

I would like to point out because of the way the statute is written, the requirement on retailers to do country-of-origin labeling on September 30, 2004, is not really affected by the suspension of appropriations. We are not going to be writing our regulations. But if you look at the statute, our requirement to write regulations is separate and apart from the requirement that the retailers provide the information on September 30, 2004.

The CHAIRMAN. Thank you, and I think the point the gentleman from North Carolina was driving at was that if separate and apart from these regulations, because the statute imposes liability on the retailer and the packer to put forward country-of-origin labeling that is accurate, no matter what you do—and we certainly hope you write regulations that are as sensitive as possible to the compliance with the law, but also the ease with which producers and others involved in this process can comply with the law. That is certainly the congressional intent. But in addition to what you do, there may be other independent certification requirements to provide protection to retailers and packers, and there is nothing in the law that would prohibit them from having those additional requirements, whatever they might desire as a requirement of doing business with them, that a producer or other individual in the supply chain must comply with.

Ms. BRYSON. That is correct. So long as those requirements are fairly applied across the board to all of the suppliers. And I would like to add that it is definitely the intent of the department to do exactly what you just described, Mr. Chairman, and that is to implement this provision as best we can in a way that is user friendly and as easy as possible, but consistent with the requirements of the law, which is that the claim be supported by fact information as to "born, raised and slaughtered in the United States".

The CHAIRMAN. Thank you. Well, you have quite a challenge ahead of you. And so does the Congress as it continues to wrestle with very conflicting viewpoints about this issue. So we thank you all again for your very generous gift of about 3 hours of your time for what is just the first of several panels. And, again, thank you. And there were some questions posed to you, and if you would respond to those, in writing, within 10 days, the committee would be very appreciative.

We are now pleased to invite our second panel to the table. Thomas Stenzel, president and CEO of United Fresh Fruit Association; Dr. Alan Foltz, president of the Colorado Farm Bureau of Akron, Colorado; David Frederickson of the National Farmers Union, Washington, DC; Mr. Leo McDonnell, Jr., chairman of the board and cofounder, R-CALF USA, of Columbus, Montana; Mr. Jon Caspers, president of the National Pork Producers Council of Swaledale, Iowa; and Eric Davis, president of the National Cattlemen's Beef Association of Bruneau, Idaho.

I will remind all members of the panel that their full statement will be made a part of the record and ask that you limit your re-

marks to 5 minutes, and we will start with you Mr. Stenzel. We are pleased to have you with us. Welcome.

STATEMENT OF THOMAS E. STENZEL, PRESIDENT AND CEO, UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION

Mr. STENZEL. Thank you, Mr. Chairman. I have changed my introduction to "good afternoon." My name is Tom Stenzel, I represent over a thousand members of the fresh produce industry. We commend you for holding this oversight hearing.

I think you can tell, from the discussion this morning, there is a tremendous amount of uncertainty that is out in the industry right now. For the fresh produce industry, we believe the crux of this issue does come down to USDA's regulations to implement the statute. Will the Department continue on its current course outlined in the voluntary labeling guidelines which impose huge needless costs and radically alter our ability to deliver fresh produce to consumers, or will the USDA implement a simple country-of-origin labeling system for produce which has minimal impact on the industry while complying with the statute?

Consensus on this issue in my industry has never been easy, but our overall reading of the law is that USDA does have sufficient flexibility with regard to produce to implement a fair and practical system if they so choose. We provided an extensive regulatory road map to the Department, which is attached as part of my written testimony today. Let me briefly highlight four main principles where I believe USDA needs to focus.

First, USDA has the authority to develop regulations tailored to different commodities. I personally have no idea of the complexities with regard to the meat industry, but I am confident that a produce-specific labeling system can be much more simple and less intrusive than the guidelines proposed thus far.

Second, USDA needs to rely on existing law and regulations wherever possible. Congressman Putnam mentioned earlier the Perishable Agricultural Commodities Act, PACA. PACA requires all produce traders, buyers, and sellers to tell the truth in their processing. That means retail grocers must be legally entitled to rely upon the declaration of country of origin by a produce vendor. USDA regulations should specifically state that a retailer would face no liability under COOL for the accuracy of information provided to him by a produce seller since PACA already requires that information to be accurate.

Third, USDA should use its discretion to comply with the intent of the statute, not create needlessly punitive and disruptive regulations. I am glad we are not the only people who have that sense. We are concerned that the Department seems more intent on making the law as onerous as possible rather than practical. Let me give some examples. The voluntary guidelines have created a new concept of labeling blended products by order of weight in a container with specific items and countries identified. In a fruit cup, we would have to label cantaloupe from Guatemala, watermelon from Mexico and honeydew from Honduras and hope that we get the weight right and the order of the commodities right.

Instead, we urge USDA to propose a labeling system for blended products that allows use as language such as: Contains product of country X, country Y, and/or country Z.

This type of label would provide the flexibility to fresh produce processors who frequently must change the source of ingredients due to product quality and availability but would comply with the intent of the statute.

Further examples: Under the voluntary guidelines a retail sign "Washington apples" or "Idaho potatoes" would not be good enough to comply without the additional words "product of U.S.A." Maybe we need to do a better job with our geography lessons, but I think the intent of the statute was not to prohibit the use of a sign that says Washington apples from being sufficient disclosure.

A country name such as Costa Rica on a sticker on a banana would not comply with the voluntary guidelines proposed by the Department without the additional words "product of." this gives you a sense, Mr. Chairman, of some of the silliness that exists with those voluntary guidelines. I am looking forward to the proposed regulation when it does come out to see where some of these issues go. With those stickers, even if the stickers on the fruit were in compliance that says "product of Costa Rica" if a few of them fell off the bananas in transit, a retailer could still be fined $10,000 for putting those bananas out for sale. It just does not make sense.

Finally, let me talk about record keeping and verification. The voluntary guidelines impose a 2-year recordkeeping requirement for verification. At retail store level no less. It is absurd. There is only one moment in time when verification of country-of-origin labeling matters under the statute, and that is at the precise moment that the consumer is making the choice at point of sale. Is the sign or sticker they are tells me where the produce came from accurate? To verify the accuracy of that moment all you have to do, an inspector walks into the grocery store looks at the sign and says prove it. That is it.

The store manager should have a reasonable period of time to consult with his corporate staff, check the computer records, what produce was delivered to has store, and verify that indeed the sign that he has or the stickers match what was on the box. It is not that complicated.

Let me ask under what circumstances would you want an inspector to walk into a store and ask what countries the tomatoes were from 6 months ago? It is irrelevant. USDA should only require contemporaneous records necessary to verify the country of origin of products at the time of their retail sale.

In conclusion, I hope the committee can see our industry's dilemma we believe the statute could be implemented in a practical way, but the voluntary guidelines are about as impractical as possible. That is why we believe this oversight hearing is so important. At present, the mandatory date of September 30th is a sword of Damocles hanging over our heads. If we knew the final regulation would mirror the voluntary guidelines, we would be here today seeking repeal. But if the final regulations are fair and sensible, that step will not be necessary.

Our strong request to the committee is to urge the Department to proceed with great haste in publishing this proposed rule. And

with all due respect to Appropriations, cutting off the funding does not change the enforcement date of September 30, 2004. However, should the committee wish to pursue legislative fix to this bill, to this law at this time, we would look forward to working with you on specific provisions that we believe would help make this law more practical.

Thank you very much.

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

Mr. HAYES [presiding]. Thank you for your testimony.

I would remind the panelists to be as careful as you can with the time. And I might observe this is the Federal Government you are asking to move quickly and expeditiously in the way you want them to go.

Dr. Foutz.

STATEMENT OF ALAN FOUTZ, PRESIDENT, COLORADO FARM BUREAU, AKRON, CO

Mr. FOUTZ. Mr. Chairman, members of the committee, good afternoon. My name is Alan Foutz. I am the president of Colorado Farm Bureau and currently farm 1,800 acres of wheat, sun flowers and millet near Akron, Colorado. I am here on behalf of the American Farm Bureau Federation and appreciate the opportunity to provide comments to the committee on the country-of-origin labeling law.

The Farm Bureau supports mandatory country-of-origin labeling as passed in the 2002 farm bill, and we look forward to working with the United States Department of Agriculture on the implementation of the program.

Congress debated the country-of-origin labeling last year during the farm bill discussion and overwhelmingly voted in favor of mandatory labeling. Farm Bureau has participated in the USDA listening sessions and has been working with the Under Secretary and the Agricultural Marketing Service on implementation of the law. We believe the program can be implemented in a fair manner to all producers, without large costs and burdensome paperwork requirements.

Much of the debate of country-of-origin labeling seems to be focused on meat and meat products. Farm Bureau supports a verification system that livestock producers can use to prove claims made as to country of origin to the packers. We have included the program details in our written statement.

A traceback mechanism is not necessary to carry out the intent of the labeling law. The law specifically prohibits USDA from implementing a mandatory ID program. The law only requires that the country of origin be identified and labeled at the retail level. We do support a process verification system that all segments of the industry can utilize to carry out intent of the law. I think it is important to note that country-of-origin labeling is simply a labeling program to distinguish U.S. products. Our producers have a responsibility in working with all segments of the industry to carry out the labeling law.

The Farm Bureau will be presenting comments at the last listening session scheduled in Lancaster, Pennsylvania, in favor of man-

datory country-of-origin labeling. The USDA has had over 8 months to compile comments, and we urge the Department to issue a final rule before the end of the year.

The Farm Bureau supports the country-of-origin labeling law for the following reasons: Labeling allows consumers to clearly differentiate U.S. And foreign products. Most U.S. consumers support additional labeling information and recent studies and surveys of consumers indicate support of country-of-origin labeling. Our foreign customers support United States labeling because they know the U.S. products are the safest and the highest quality. For example, last week Japan asked for assurance that the product they were receiving from us was a U.S. product because they, as well as our domestic customers, trust U.S. labels and products.

Number 2, the labeling law passed in the farm bill can be implemented with little burden and additional costs to the producers. The Department has stated support for a process verification system that all segments of the industry can utilize to verify claims as to country of origin. Livestock producers with assembled herds of U.S., Canadian and/or Mexican stock will have to set up a system to segregate their animals in order to verify any claims they make. Obviously, these producers will have more work to do than a producer with all U.S.-born and raised animals; however, this is a reality of the law and our producers are willing to work with USDA to verify the origin of these animals.

Three, country-of-origin labeling allows U.S. agriculture producers to promote the excellent products they take great pride in providing. This committee has worked diligently on behalf of United States producers. You have debated numerous farm bill Programs with the goal of providing the American people with the most abundant, highest quality and safest food at the lowest cost to the consumer of any country in the world. The House Agriculture Committee should be proud and willing to support a law to label U.S. products.

Number 4, voluntary country-of-origin labeling will not work. Voluntary country-of-origin labeling will not work. There has been a voluntary meat-labeling regulation for almost a decade and very little U.S. product is labeled in the grocery stores today. A mandatory program is the only way to get all segments of the food chain industry coordinated to label products for our consumers. Mandatory nutritional labeling is an example of a successful informational program. There was a great resistance to label the nutritional value over a decade ago. Now, consumers expect nutritional labeling on all food items they purchase.

Five, the labeling law includes meat, fruits vegetables peanuts and fish. It is important to carry out the law as passed in the farm bill and not separate out commodities because it weakens the labeling program. All of the covered commodities in the law can be verified without great cost and recordkeeping requirements in cooperation between all segments of the industry.

The Farm Bureau supports mandatory country-of-origin labeling and will continue to work with the USDA to implement the program. We look forward to the rulemaking process and working with the Department to carry out the intent of the labeling law as passed in the 2002 farm bill. Thank you.

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

Mr. HAYES. Thank you. Mr. Frederickson.

STATEMENT OF STATEMENT OF DAVID J. FREDERICKSON, PRESIDENT, NATIONAL FARMERS UNION

Mr. FREDERICKSON. Thank you, Mr. Chairman for holding this hearing on an issue of utmost importance to the members of the National Farmers Union. I request that my full testimony be included in the record, and Mr. Chairman, I will try to hit the highlights.

Recent action in the House Appropriations Committee attempt to undermine the landmark legislation by blocking funding for further implementation of labeling on beef, lamb, and pork and fish. As many folks use the words unintended consequences, keep in mind unintended consequences go both ways. House Appropriators actions may have far greater unintended consequences than anyone can imagine. Consumer confidence in our meat products is essential to keeping our livestock industry healthy. Given the recent incident of mad cow disease in Canada, American consumers should be able to differentiate the food they eat and feed their families. The potential to lose our No. 1 and No. 3 beef export markets, as my colleague from the Farm Bureau has also indicated, is very real if we cannot meet the demands of Japan and Korea to differentiate our products from Canadian products.

These two circumstances could be the most devastating unintended consequences on American agriculture. Opponents suggest there is no consumer demand for mandatory country-of-origin labeling. On the contrary, numerous surveys and studies have indicated American consumers overwhelmingly support mandatory labeling and are even willing to pay a premium for that information. Currently, 3.2 billion pounds of beef are imported into this country and yet American consumers have no idea of where the meat comes from.

In fact, most consumers believe if a product carries a USDA inspection and grade designation sticker the product is of U.S. origin. The U.S. labeling law does not violate our trade commitments. The law doesn't impose any additional restrictions in the form of tariff rate quotas or nontariff barriers to imports. The requirements apply to both the domestic and imported commodities enumerated in the statute. National Farmers Union has always supported mandatory labeling as a promotional tool for our domestic producers to promote the superiority of their products. We produce the best products and we want consumers to know what they are buying. This is no different than the retail production differentiation sought by processors and retailers when they label a brand products as a means to gain acceptance, loyalty and increase their share of the market.

A recent decision by the WTO to uphold U.S. laws on determining country of origin on textile and apparel products was characterized as a, quote, victory for the American textile trade, by U.S. Trade Representative Zoellick. I would hope the administration officials and certainly Congress would regard the agricultural industry in the same manner. While debate over the law continues both

here and in the countryside, mandatory country of labeling for beef, pork, lamb, fruits vegetables peanuts and fish was approved by Congress and signed into law by President Bush. It is the law of the land. Preempting the rulemaking process at this time I believe is premature. No one knows how burdensome or costly implementation will be because USDA has not written the final rules. We should all be focused on the development of rules and regulations that allow implementation to be the most efficient and least burdensome for consumers, producers, processors and retailers.

The National Farmers Union believes the implementation challenges can most easily be met by, No. 1, utilizing the models of existing USDA labeling programs; two, expand and extend the country of origin information already collected on imported agricultural products throughout processing distribution and marketing system; and three to allow maximum flexibility in adapting existing record-keeping and verification information and new information requirements to the audit provisions of the law.

Finally, I urge the members of this committee to not dismantle the new farm bill before it has even had a chance to work. Changing the farm bill now before it is implemented is a slippery slope that could jeopardize many farm programs including providing an opportunity for farm program critics to scale back funding of these vital programs. The unintended consequences of the Appropriations Committee would have an overwhelming negative impact on American agriculture. It is the hope of the National Farmers Union that you disregard the misinformation being circulated about mandatory labeling and work with USDA to implement the law as quickly and efficiently as possible.

I would ask also consent to submit into the record a letter signed by 133 agricultural and consumer groups sent to the House appropriators in support of COOL.

Thank you very much, Mr. Chairman, for the opportunity to testify this morning, and I welcome an opportunity to answer any questions.

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

Mr. HAYES. Thank you, sir. Mr. McDonnell.

STATEMENT OF LEO MCDONNELL, JR., CHAIRMAN OF THE BOARD AND COFOUNDER, R-CALF USA, COLUMBUS, MT

Mr. MCDONNELL. Mr. Goodlatte, Mr. Stenholm and members of the committee, thank you for inviting me here to testify on behalf of the U.S. cattle industry. I am Leo McDonnell, president of R-CALF USA, the United Stock Growers of America.

My wife and I own and operate Midland Bull Test, which is the largest bull genetic evaluation center in North America, and we provide genetics worldwide. We also ranch in both Montana and North Dakota.

Making change is never easy, and the landmark reform embodied within mandatory country-of-origin labeling is no exception. Maybe the problem is that packers and retailers stand to lose the economic benefits they have long enjoyed by not disclosing the origin of beef, along with the ability unmarked imports have given them to distort consumer demand signals to U.S. producers.

If one is not allowed to differentiate their product, then how do they compete in a market, and how do they maintain consumer confidence in their product if defective imported product comes into this country? You cannot. You cannot maintain consumer confidence. Packers claim that that tracking beef derived from livestock of various origins is difficult if not an impossible task. However, packers presently participate in various labeling programs, many of which are more complicated than maintaining country-of-origin labeling. Among these is Certified Angus Beef, a program that we participate in. Here packers have considerable experience in maintaining the identity of every carcass originating from black-hided cattle without requiring traceback to the farm.

Maintaining the origin and identity of covered commodities throughout the packing-retailing-processing chain is simple, cost-effective, it has been done for a long time and consistent with present industry practices. Presumption of origin for COOL at the packer-slaughter level exposes the packer to no more liability than they already have under programs such as CAB.

USDA claims it cannot implement COOL without a complex, auditable recordkeeping trail to confirm the origin claims of livestock. That is not true. However, USDA is confirming origin claims for beef every day under its USDA purchase programs without imposing a single cost on producers, without requiring a single record from producers, without requiring a single self-certification from producers, and without requiring a mandatory ID system or violating either trade or domestic laws. It is also important to note that USDA now requires that Uruguayan beef coming into the United States be solely born, raised and slaughtered in Uruguay. Why does USDA feel they need to individually trace back cattle to producers but not the individual peanut, the tomato, the head of lettuce, or even Uruguayan beef from the recently FMB-infected country?

To substantiate an origin claim, the USDA already employs a combined marketing system and a presumption of domestic origin. This enables USDA to identify all products that do not meet the definition of domestic-only product and by this process of elimination to identify all products that do meet the definition. This is simple, it has good historical performance. It identifies beef products marked with a foreign marking which is already required. It identifies cattle imported directly for slaughter. And under COOL, all imported cattle, feeder cattle, which I would imagine under Homeland Security is going to be required to be marked anyway. And it also considers that all that other products then would be products of the United States. It does not cost the producers anything. It minimizes regulation.

By the way, it was also recommended in the law that USDA use these types of presumptions. I believe that Congress would be of considerable assistance to USDA if it would initiate a request to the Treasury Secretary asking that livestock be delisted from the J-List requiring better marks on imported livestock. And if you can do that, you will take away all cost risks to your producers. Thank you.

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

Mr. HAYES. Thank you, sir. Mr. Caspers.

STATEMENT OF JOHN CASPERS, PRESIDENT NATIONAL PORK PRODUCERS COUNCIL, SWALEDALE, IA

Mr. CASPERS. Mr. Chairman, Mr. Stenholm and members of the committee, I am John Caspers, president of the National Pork Producers Council, and a pork producer from Swaledale, Iowa. I operate a nursery-to-finish operation marketing 18,000 hogs a year. I would like to thank the chairman for holding this hearing and ask that my complete written statement being submitted for the record.

It has become clear that the issue of mandatory country-of-origin labeling is far more complicated than simply identifying live animals at the U.S. border or affixing a label to a package of pork chops in the grocer's retail meat case. We believe that the mandatory country-of-origin labeling provision in the 2002 farm bill offers little value for either U.S. pork producers or for U.S. consumers.

The law will not result in long-term higher hog prices for U.S. pork producers. It will not provide additional food safety assurances for U.S. consumers. It will not provide adequate traceback to handle a foreign animal disease. But it will reduce U.S. pork exports by creating advantages for our export competitors and place U.S. pork producer in a financial peril because of the need to indemnify their customers against damages that a producer error might cause. It will favor vertically-integrated pork production systems at the expense of small independent producers, and it will impose onerous requirements and additional costs on U.S. pork producers if the label is to be at all credible for U.S. consumers. And finally, it will create a permanent cost advantage for poultry.

All of these issues will limit the long-term economic health and growth of the U.S. pork industry.

I would like to highlight a number of these issues and supply why the National Pork Producers Council is urging Congress to replace the mandatory labeling provision with a workable voluntary program for hogs and pork. A workable voluntary program is one that producers, processors, and retailers will choose to participate in, and one that rewards entrepreneurial pork producers. It should include all pork, not just retail pork. USDA must ensure, as they currently do with other successful programs such as the Organic and Certified Angus Beef Programs, a dependable and legitimate label for U.S. consumers.

First, regarding food safety, and I quote, "I must stress at the outset that country-of-origin labeling is a marketing issue and not a food safety issue." Those words were spoken by Dan Glickman, former Secretary of Agriculture, in a Senate Agriculture Committee hearing on May 26, 1999. The mandatory country-of-origin law is not a food safety law. It is a trade protectionist law designed to restrict access to U.S. retail meat cases. The law will not enhance the U.S. Government's ability to address food safety emergencies or foreign animal disease outbreaks, such as BSE, nor will it provide additional food safety assurances for U.S. consumers.

The law allows consumers to determine the country of origin for fresh fork only in retail meat cases, not for pork that is either sold by food service establishments or further processed. This excludes over 50 percent of the pork consumed in the U.S. today.

The information required by this law is not sufficient to find the State, let alone the county or the farm of origin in order to respond to food safety emergency or for an animal disease outbreak. In fact, it actually prohibits the Secretary from requiring animal identification.

If this law is intended to ensure the safety of U.S. meat supply, why prohibit an animal identification system? Why do we exempt the ribs—these ribs that we eat in a restaurant—while only covering those pork ribs like these purchased in a grocery store? Do these products not pose an equal potential food safety or animal disease risk? Those that argue that mandatory country-of-origin labeling guarantees a safer U.S. meat supply are distorting the facts.

My second point is that the law fails miserably regarding the consumers's right to know. U.S. consumers indicate they are concerned about the price, convenience, nutrition, freshness and flavor of pork and pork products, and only after these factors do consumers mention the origin of food. Today, U.S. pork producers are currently capable of delivering such an origin-labeled product report, but not one buyer has requested this product. Again, maybe we should heed the advice of former Secretary of Agriculture Glickman, and I quote, "I also think it is important to consider fully the implications of basing the mandatory labeling requirement on the theory of a consumer's right to know. As the committee is well aware, the European Union believes its consumers have a right to know if food products contain genetically modified organisms. It is possible that imposing country-of-origin labeling in the United States could weaken our ability to object to other labels requirements sought by our trading partners."

My third point addresses the long-term impacts on North American hog and pork production in prices. The law will raise North American hog and pork production and drive prices down. Why? Because Canadian feeder pigs will be discounted in our marketplace and Canadian pigs will be kept north of the border and fed Canadian feed and processed in Canada. U.S. hog finishing buildings will stand empty leaving U.S. producers to increase their production. Increased hog supplies in North America lowers prices.

My final point regarding exports is that low- or no-cost certification and audit systems for producers will not eliminate the law's negative impact on U.S. pork producers. I have a chart that explains our economist's projections. The top line is the base line projection of the Food and Agricultural Policy Research Institute, their projections into the year 2011. The middle line shows what would happen if country-of-origin labeling—their projections—if it was implemented using a full traceback system which traces each individual animal to individual retail package, which is a very high-cost system and certainly a system that because of the cost, we do not expect it is likely this program will be implemented that way. But more likely we will have a certification with audit system, which is lower cost and more likely to be implemented. And with that that is the bottom line which projects that by the year 2011 our exports out of this country will be half what they would have been without the implementation of this law.

In conclusion, the National Pork Producers Council urges Congress to repeal mandatory country-of-origin labeling and replace it with a workable voluntary program.

Thank you, Mr. Chairman and members of the committee for the opportunity to present this testimony.

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

The CHAIRMAN [presiding]. Thank you, Mr. Caspers.

Mr. Davis, welcome.

STATEMENT OF ERIC DAVIS, PRESIDENT, NATIONAL CATTLEMEN'S BEEF ASSOCIATION, BRUNEAU, ID

Mr. DAVIS. Thank you, Mr. Chairman, Mr. Stenholm, members of the committee. Perhaps no issue in recent memory has stirred the passions of beef producers more than the country-of-origin labeling issue, and that is for good reason.

We are a proud lot and a lot proud of the beef we produce. Therefore, labeling and promoting our product, especially U.S. beef, is an easy argument to win when talking to ranchers. If labeling product is so popular, then why all this discord? Members of the committee, the ongoing debate of the country-of-origin labeling is not about the merits of labeling, but rather how to provide country-of-origin labeling information to the consumer in a way that does not cause producers pain.

Since the day NCBA first adopted policies supporting country-of-origin labeling, many have struggled with it. Our policy has evolved over time from one brief statement of support for labeling to a finely detailed description. We have tried to strike a balance between the demands of producers and the reality of cattle and beef production marketing and distribution.

My predecessors have sat before this committee and received in-depth questions about country-of-origin labeling. Sometimes they were praised by members of the committee and occasionally we were excoriated. The record on this issue demonstrates that a recordkeeping component would be part of any mandatory labeling law. A congressional hearing to review labels NCBA and those other organizations in attendance were urged to develop a voluntary consensus approach to the country-of-origin labeling idea. We did that.

The National Cattlemen's Beef Association and other groups negotiated way voluntary program which was submitted to USDA. Unfortunately, the Clinton administration did not act on the petition and the Bush administration's actions were quickly overtaken by the events of the farm bill. During the markup of the House version of the farm bill in July of 2001, this committee endured a 6-hour debate on the topic. Fully 25 percent of the markup record is related to this topic alone. During this markup USDA attested that the law would be records intensive, complex and that it would entail being able to trace records because to the level of production.

Members of the committee during the 107th Congress well remember that markup. I recommend that new members of this committee avail themselves to that markup record to better understand the total record on this issue. During the farm bill conference in the spring of 2002, House conferees worked to answer significant

questions about country-of-origin labeling before the law passed, but many of the difficult questions remained unanswered in the conference. Statements by Senate conferees intentionally left many difficult issues to the Department. And judging from the outcome of the conference proceedings and the fact that we are here today, the only clear intent of Congress was to leave many of the difficult questions to USDA.

The current country-of-origin labeling law was never fully analyzed and no hearing was held on the impact or interpretation of its provisions. The last Congress held many hearings and investigations on country-of-origin labeling generally, and this record suggests that that law is turning out as many predicted: Problematic.

The provisions of the current law simply ignore many years of collective knowledge and debate on the subject. As a result the USDA has had to make some tough decisions that may appear arbitrary. These decisions and the implementation guidelines that USDA has released are creating concern for producers. Several issues of concern include the self certification issue, documentation, information requirements, and USDA's interpretation of the statute.

The committee has heard testimony this morning from USDA outlining the country-of-origin labeling program and the reasons that the Department is taking the approach they have chosen. There are clearly easier and less costly ways to implement a country-of-origin labeling program other than what is contained in the statute.

The challenge for USDA and this committee is to determine if an alternative method of implementation are allows under the current statute. If the current statute allows alternatives then we are committed through rulemaking to working with USDA to implement the law in a less burdensome manner. If, however, the statute does not allow other alternatives, then we must either change the law or live with its consequences. Clearly, the testimony given today and the frustration felt by all producers on USDA's current thinking demonstrates that living with the law as outlined by USDA is not acceptable.

The petition submitted to USDA and this committee in September 2000 still represents a manner that could be employed to implement a country-of-origin labeling program that could benefit producers and consumers. National Cattlemen's Beef Association supports country-of-origin labeling. We want producers to be able to market and promote U.S. beef. But after all the hearings, all the discussion, all the debate, all the acrimony, all the USDA listening sessions, we believe our approach of a voluntary producer-led and market-driven effort offers the greatest opportunity to benefit producers because it avoids the costly mandates of the current law.

Thank you, Mr. Chairman, and I will stand for questions at the appropriate time.

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

The CHAIRMAN. Thank you Mr. Davis.

Mr. Stenzel, I understand that bagged salad is the second fastest selling item in U.S. grocery stores, and it is estimated to be a $2 billion a year business. Can you give us a detailed example of how

the country-of-origin labeling law would work for these very popular bagged lettuces? Have you heard any concerns from your members who are engaged in this sector of the fruit and vegetable industry, and if so, what are those concerns?

Mr. STENZEL. You are exactly right. It is one of the great success stories in the fresh produce industry now. Under the proposed guidelines, we would be faced with exorbitant, costly system and really put a stop on the growth of a lot of those types of product. The Department has proposed for blended products under COOL requiring labeling of each individual item according to which country it came from, and also maintaining that in order of predominance of weight. So for one of those bagged salads that might have two or three snowpeas inside the overall bag of different lettuces, those snowpeas may come from Guatemala or Peru or different countries, and yet we would have to constantly, as we are changing the contents—because of availability of the product from different countries—still comply with that order of predominance.

What we have suggested to the Department is that they have much more discretion than that. Simply to comply with the law, to have a product label on that bagged salad contains product of, Mexico, Peru and/or the United States would be sufficient.

For those individuals who are proposing mandatory labeling so that consumers can buy American, as long as the country name is on there—may contain product of Mexico—they have the ability to make a choice. We believe the Department has flexibility to implement that type of regulation.

The CHAIRMAN. What if Wal-Mart were to say, great, but our reading of the law is a little different and our concern about our liability is a little different, so we want to make sure that all of that information is on there, and that if you have got three snowpeas, we want to make sure they are all from Guatemala and not one from Guatemala and one from Mexico and one from the United States?

Mr. STENZEL. The implementation of this law is critical to everyone in the distribution chain, grower or retailer, and we are committed to making sure that the law is implemented to meet Wal-Mart's needs or a small independent grocer's needs or a producer's need.

What has got to happen, Mr. Chairman, is for the Department to go back and look at existing law. Right now, the supplier of produce under the PACA is required to present truthful and honest information. So the issue in terms of the retailer needing a separate verification system or audit system, under present law they should be allowed to rely upon the declaration of the produce salesperson. That is something that needs to be specified, however, in the final regulation.

The CHAIRMAN. Thank you. Mr. Davis, Mexico is the No. 1 market for U.S. beef. The U.S. buys 1 million head of feeder cattle from Mexico and the balance of trade, considering both of these points is $450 million positive for the United States, how should we expect to see Mexico react to this situation for cattle? Is this worth the risk?

Mr. DAVIS. I suspect that there will be a certain amount of consternation south of the border with the implementation of this law.

I don't know exactly what route that will take employ we do know that there is currently a petition before their Government asking for—what is the proper term—safeguards against U.S. beef being imported into that country. This issue, I think, plays into that thinking. But to specifically put a number on what is related to country-of-origin labeling, and what is related to other issues with them, I can't put a number on it, but I would anticipate it would have a negative impact.

The CHAIRMAN. Mr. Stenholm.

Mr. STENHOLM. A moment ago Secretary Glickman was quoted as saying, country-of-origin labeling is not a food safety question but a marketing question. Each of you, do you agree or disagree with that statement?

Mr. STENZEL. Mr. Stenholm, we would definitely agree with that statement.

Mr. FOUTZ. The American Farm Bureau would agree with that statement.

Mr. FREDERICKSON. Mr. Stenholm, I think I referenced it also in my testimony, but I agree with the statement.

Mr. MCDONNELL. I would agree with the statement except that in the event that imported product coming into the United States is contaminated and domestic producers are not able to differentiate their product, if the safety of that food supply becomes an issue with consumers, then obviously it is going to affect their confidence.

Mr. STENHOLM. With all due respect, that is not what I am asking now. There can be exceptions, but I am asking with the statement—I will get to a second question in just a moment you would agree with the statement?

Mr. MCDONNELL. With the statement, yes.

Mr. CASPERS. I agree, sir.

Mr. DAVIS. Yes, sir.

Mr. STENHOLM. The next question, and I will phrase this to you, Mr. McDonnell, but others I would like to ask also. Do you believe that we should import any cattle from Mexico or Canada or any other country?

Mr. MCDONNELL. Yes, we do personally.

Mr. STENHOLM. So you believe we should import?

Mr. MCDONNELL. Yes, there is no problem with me. We haven't satisfied domestic demand with U.S. production since 1952.

Mr. STENHOLM. Anyone disagree with Mr. McDonnell that we should import cattle from Mexico and Canada and any other country which we can do so safely?

Mr. FREDERICKSON. Mr. Chairman, Congressman Stenholm, I believe the opportunity ought to be there.

Mr. STENHOLM. Then that—I am glad you answered that way, but that is what I was getting at. If this is a marketing issue, food safety is a separate question and one in which we must do as good a job as humanly possible to preserve the safety of the food supply, whether it is domestically produced or imported there should be no question about that. But I happen to agree with the basic context of Mr. Davis that we are mixing apples and oranges in this debate. And I think it is critical that we begin to understand that country-of-origin labeling is not a food safety question. The question is

whether or not our rules and regulations on the import and the inspection of the product is such that it will provide a safe consumable product.

Mr. McDonnell, I know of many, many, many producers of beef who are beginning to market proudly with a label on it their individual product. That is the way I think we should go. The concern that I have with the implementation and the language—and reference has been made that the language of this law left a lot to be desired. We did not do the job we should have done regarding how we implement this in the passage of the farm bill. Period.

And I would hope that as we pursue this now, we are going to have country-of-origin labeling. It is going to happen. It is going to be there. The question is under what circumstances will it be there and will it be helpful or harmful? That is a legitimate question for all of our industries to ask and have asked and that is what we are attempting to do with the hearings today.

Now, what the appropriators have done is said to USDA no more funds can be utilized in the administration of this act. I am not sure that that is exactly what we need to do. Because I think, as I said in my opening statement, that we need to take a good look at this whole question of country-of-origin labeling, take the time and get it to where it does not punish us.

From a beef standpoint, can you imagine for just a second that if that one BSE cow in Canada had showed up in Montana first, what we would be doing and saying today? And it could have happened. We do not know what is causing BSE conclusively. It can happen and now we are being asked by countries like Japan to certify under country-of-origin labeling that the beef we are sending them is from the United States and not from Canada.

Now, that is potentially very damaging to an industry in which I still participate along with all of you. And it is something that we really need to think through. But I am very happy to hear the answers you gave because I think that is significant to begin getting the message out to producers, this is not a food safety issue. It is a marketing issue. And U.S. producers are perfectly willing to play by the rules that are established in world trade by how and what we sell and how we label it. Remember the arguments we have been making on beef on hormones, remember the biotech, remember the WMO, all of the arguments that we are making.

Now, if we are really ready to go down that road, and we really believe that an industry of agriculture like the United States that exports more than we import and the growth potential for the future of our country and our producers, if it is really going to be turning inward, then so be it. But if it is going to be saying, let's do it the way most of you have testified to today, let's accept we are going to have competition, let's accept that we want it to be safe because that is in our best interest, but let's get away from this idea that country-of-origin labeling is a food safety issue, it is a marketing issue. And it is one in which we will continue to look, and I will be very active and interested, as I know all members of this committee will be, and I hope that maybe we will find a way to reach a consensus that will not do the harm to our industry that we could if we have a literal interpretation of the law as passed

by the Congress. That is what USDA has been attempting to implement.

I get sick and tired of lawyers as much as anybody else, but I understand the law, and I understand the way in which it can be interpreted. I think we can do some cleanup which will accomplish what each of you has testified for in a slightly different way today. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Nebraska, Mr. Osborne.

Mr. OSBORNE. Thank you, Mr. Chairman. As I listened to you, it seemed like there was a slip, 5 to 1 in agreement with some type of country-of-origin labeling, maybe one opposed sounds like there is a fair amount of frustration with the way the regulations are coming down and frustration on the part of the committee as well that maybe USDA is not do doing a good job or all it can to implement some simple, understandable regulations that would not put an undue burden on the producers, at least that is what I think I am hearing.

And I understand that. I represent a district with the overwhelming majority of cattlemen at least would say that country-of-origin labeling is something that they want, something that is workable, something that can be done. I think also the pork producers are probably less convinced.

I guess my question is, is it reasonable that we might have a two-track system? We right now exempt poultry. Does it seem reasonable to you that the cattle industry and the pork industry possibly would come out of two different places in terms of country-of-origin labeling? Or is that unrealistic?

Mr. CASPERS. Well, Congressman, I will answer on behalf of the pork industry. Certainly, we have had a long-standing position in opposition to country-of-origin labeling because of the cost and the little benefit to consumers, and we certainly would like to see pork withdrawn from the mandatory provisions of the law.

Mr. DAVIS. From the National Cattlemen's Beef Association standpoint would suggest that we would be opposed to that bifurcations for the very reasons that Mr. Caspers stated in his testimony, that then we become at a cost disadvantage, depending on how the final implementation comes down to one of our competitive proteins, as well as one that is already left out. And so I would hope we could go down this road together, as we have tried to in the past, and work with the committee and with the Department in rulemaking, if it is voluntary or mandatory, and come up with a system that works. That is what we need. I agree with Mr. Stenholm that we are going to have it. Let's just do it right.

Mr. OSBORNE. It currently is the law that pork is included, but it does seem like there is a general split nationally, less acceptance from the pork industry than the cattle industry.

I have a question for Mr. McDonnell. You mentioned that you would like to see cattle delisted from the J-List and you lost me there. Can you explain what that means and what the implications might be?

Mr. MCDONNELL. The J-List is a list of imported products that are not required to carry country-of-origin marks, and that is done at the discretion of the Treasury. Although our imported cattle right now do carry tags, or in the case like Mexican cattle carry

an M-Brand, so they can trace them back for health reasons that is more for TB. We are asking that Congress ask the Treasury to take cattle off the J-List and that they carry a mark of origin or in the case of Canada or in the case of Canada say "Canada" on the tag. That would make it much easier more packers to implement presumption of origin, and it is already being done on 90 percent of the products coming into the United States, and I believe Homeland Security will require it anyway. Just simplify the process.

Mr. OSBORNE. I think I understand better. This is a general question. I have heard it said many times that we really need some type of an animal identification system in the United States. And do any of you feel that this would in some way alleviate the need for country-of-origin labeling?

Mr. CASPERS. As the prior panel testified, APHIS has a group meeting starting January 1 in Kansas City, and I will be participating in that group. That group is going to take a look and make recommendations to upgrading the animal identification and traceback abilities in this country for livestock.

Sir, we've had a mandatory identification program on pigs in force since 1988, and so we have a virtual 100 percent trace-back ability today on the market hogs.

Now, there are some things that we can do to upgrade that system. There are some things that we can do today to speed traceback because with the threat of bioterrorism and things like that I think certainly there are other dangers that exist today that really weren't as apparent back when that rule was written.

So we will be trying to upgrade that, and there will be other livestock sectors participating in that.

Mr. FREDERICKSON. Mr. Chairman, I—on two points that you made, Mr. Chairman and Mr. Osborne: On the issue of dual tracking earlier on, you asked the question; and from a National Farmers Union perspective, we are a 100-year-old general farm organization, and so we would not be in favor certainly of a split process where one is out and the other is in. And we have consistently supported all products, chicken included.

And the second issue, I don't believe that it is an either/or situation. I think that we probably have our heads in the sand if we are considering that there is no need at some point in time for some kind of a tracking system.

I know that Congressman Peterson has a serious interest in this issue, and I think that the one enhances the other. And so I think that it is not an either/or. I think it is probably both at some times.

Mr. HAYES. The time of the gentleman has expired.

The gentleman from Minnesota, Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. I will follow up on that. I think I heard the pork producers and the Farmers Union, but for the rest of you, do you support mandatory, Government-sanctioned animal ID with trace-back?

Mr. FOUTZ. Mr. Chairman, if I might respond to that, the Farm Bureau has supported for many years a voluntary ID program for—particularly for APHIS to follow animals in terms of health and disease problems. And so I think that is the direction that we would like to see that go right now. I don't know if we would nec-

essarily support a mandatory program, but certainly at least a program whereby producers could voluntarily get involved to make sure that there is some—that their animals can be traced in terms of diseases and so forth.

One of the questions that I think was asked a second ago was, if that—if there were mandatory program through APHIS for animal health would that eliminate the need for COOL, and I guess I would respond that they are two different issues. The country of origin labeling, as we are seeing, as presented here and as in law, is an informational labeling system just to inform the customer where the product is from and nothing more than that. And so I don't see the two related, and I don't see one obviating the other or requiring or not requiring the other to happen in that instance.

Mr. DAVIS. May I respond as well?

Mr. HAYES. Sure.

Mr. DAVIS. I think it is important to draw the distinction between the marketing tool of country of origin labeling and the MID tool. But with that said, animal ID has been an important part of ensuring animal health and food safety and other regulatory programs for a long time, but it must be used in conjunction with a science-based health and food safety infrastructure to ensure that food is safe and animals are healthy and free of disease.

Mandatory or voluntary animal ID must not be used in a—must be used in addition to a science-based infrastructure and not in lieu of it.

Mr. HAYES. Mr. McDonnell.

Mr. MCDONNELL. Yes, sir. An organization that I belong to, R-CALF USA, does not support a mandatory ID. But we are involved in this coalition of industry groups helping to develop national standards, performance standards to use it. Personally, on our answer and in our feedlot, we are already doing it. You know, I think it is going to happen down the road.

Mr. PETERSON. All right. I am concerned that, whatever we do here, we don't hurt producers, and people are going to actually make more money and not less money.

Every year I go to the Canadian-American interparliamentary meeting with the members of the Canadian parliament, and I talked to some of their agriculture people this time that are on the Agriculture Committee. They claim to have market research polling that indicates that Americans think that Canadian beef and pork is superior to American beef and pork, and that they think that if you label our products it is actually going to give them an ability to increase market share.

Do you have anything to dispute that, those of you that support this, as a way to increase consumption or sales and therefore profits to your producers, do you have anything that would say that is not true?

Have you done meat market research or—I am concerned about it. I mean, they seem to be very convinced, and I have a publication off of their Web site where they basically say that they—they say the same thing in this Web site that they put out. So I—do you have any comments?

Mr. FREDERICKSON. Well, Mr. Chairman, Congressman Peterson, I guess the question would be then, why aren't they doing it pres-

ently on a voluntary basis if they believe firmly that they could have a leg up?

Mr. PETERSON. Well, they are on some products, voluntary. But the Government—I mean, I asked them that, and they haven't wanted to go through the hassle, the process of getting this in place and the expense and so forth, but they think if we did it, that would then give them the ability to do this without having to put anything on their folks.

Mr. FREDERICKSON. Good. I don't know, Mr. Chairman and Congressman Peterson, but we, to answer your question specifically, no, we do not have, from an NFU perspective, any kind of research that indicates one way or the.

Mr. PETERSON. How about you, Mr. McDonnell, do you?

Mr. MCDONNELL. Well, I am kind of a competitive guy, so I welcome the challenge. I think it would have to be handled in the right way, though.

Obviously, there has been some studies out about barley-fed cattle versus corn-fed cattle and the incidence of some problems; and this was done in the State of Washington and was released last winter. And Canada is a heavy user of barley, and they found some real problems with barley-fed cattle. So we also have a stronger predominance of British breeds here in the northern part, the northern States, which is definitely higher-quality beef.

Mr. PETERSON. Well, I used to feed my steers barley, and I had the grand champion steer 4 years in a row when I was in 4–H.

Mr. MCDONNELL. I have, too, but it is an interesting study.

Mr. DAVIS. Mr. Chairman, may I respond?

Mr. HAYES. Yes, sir.

Mr. DAVIS. Mr. Peterson, I—we all agreed here a minute ago that we see country of origin labeling as a marketing issue; and therefore, I think it would only be prudent of the Canadians to look at it the same way and use it as a marketing tool if they see an advantage to it.

I hope that their consumer surveys are wrong.

Mr. CASPERS. Mr. Chairman, if I could respond. I guess I have not seen that data, sir, but that has been a concern of ours. When you take a look at the pork industry, 89 or 90 percent of the product that is available, that is sold, is going to be strictly product of the United States, and so even if we have a high percentage, 50 or 75 percent, of consumers that say that they want to buy U.S. product, we are oversupplying that market; and so what is going to be differentiated in the market is foreign products. And I think that is a concern, that we are handing them the ability to promote their own product.

And I would say that we do know that Canada is the No. 1 exporter of pork around the world, and so they are very competitive, and I would expect them to pursue that market aggressively.

Mr. HAYES. Thank you.

I have a question specifically directed to Mr. Foutz, Mr. Frederickson and Mr. Leo McDonnell. If you will think back a minute to Dr. Collins' testimony, it pointed out the importance, for consumer confidence, in the labeling as an incentive for them to pay for it. It seems logical that for there to be accurate labeling

claims a verifiable recordkeeping system is required from the producer to the retailers.

And in Ms. Bryson's testimony, she says the statute is clear that self-certification by producers would not provide an adequate basis in proving the truthfulness of the information.

So why is there an insistence that self-certification should be sufficient? You are the ones who want the law to work. So why aren't you, one, willing to provide the information; two, can't really provide the information; or three, is it impractical and too expensive to do that, remembering this is the Federal Government in Washington?

Whoever would like to take a first crack at it.

Mr. MCDONNELL. I'll start.

I don't know if I can remember everything you asked in there. But I guess the main reason is, why do we want self-certification and why do we want to provide more of an audit trail such as mandatory ID or whatever? And obviously, the bill was introduced for country-of-origin labeling.

One of the things that bothers me, we also have a mandatory price reporting system where the packers report the prices, and we allow them to use self-certification on that. The Uruguayan beef being—the foot-and-mouth disease being lifted, and we are —USDA is allowing Uruguayan beef in. And USDA has said it has to strictly be born and raised and slaughtered from USDA—or from Uruguay; and in that case, USDA is allowing self-certification by the Government itself, by the Government vets.

So why do we have to tax U.S. producers with more responsibility than you require of other segments or other countries?

Presumption of origin has worked very well, sir, and would produce no cost to the U.S. producers and the same end result, and that is a credible country-of-origin program.

Mr. FREDERICKSON. Mr. Chairman, I could take a shot at that also.

The issue of self-certification, I think, to the rank-and-file producers across the country, is an issue of—I mean, it is not an issue. They very easily could step up to the plate and certify one way or the other whether the product is born, raised and slaughtered in the United States or born and raised.

I was just thinking back to the number of times that we all have to self-certify. It wasn't too long ago, when you went to the airport, you had to self-certify whether you packed your own bags; and we trusted that. And so all of a sudden the whole concept of self-certification becomes questionable as to whether or not folks are telling the truth. And I think the fact that it is—the law is silent, and it has now become an issue at USDA; and of course, when you get two USDA lawyers working it over, you are probably going to get three opinions——

Mr. HAYES. Mr. McDonnell?

Mr. MCDONNELL. I believe I already answered that, sir.

Mr. HAYES. OK. I am sorry.

Let's see, who am I missing? I had three here.

Mr. Foutz.

Mr. FOUTZ. Yes, I think, Mr. Chairman, if you would look at the talking points that we have provided with the testimony that—we

talked about that just a little bit. And it is our belief that if we have three options really here.

You have a producer who produces his own beef, he grows his own beef. And obviously, with that, he should be able then, as he sells that, to verify that that beef is his own. I mean he's grown it; he has got the records to prove that.

You have on the other side of that issue, one who purchases only foreign beef and that obviously can be verified, and so that should be very easy for them to do. The issue is going to be for those producers who use both foreign beef, foreign-born beef and those that they raise born in their own—on their own farms, and they are going to have to be a little more careful how they segregate and deal with the issue.

But simply by saying and signing a paper and going through a process—it may be through the State or some agency that would say, I only raise beef born on my farm or in this State or in this country—then that should be sufficient without having to have an individual tracking system for each individual animal.

Mr. HAYES. Thank you, sir.

Just in conclusion, in listening to your earlier testimony, in Washington, if we say too little in legislation, the lawyers fill in the blanks. If we say more, they turn around and tell us what we said.

So with that in mind, next time you come to Washington for help, think of that.

Mr. David Scott is next and then, Mark, you are next; and then, Gil, you would be next.

Mr. SCOTT. Thank you very much, Mr. Chairman.

I would like to talk for a few minutes and get your responses on some issues that are of particular concern to my constituents in Georgia, particularly the country-of-origin labeling effects on beef producers, especially Georgia beef producers. There are a number of concerns that I would like for you to respond to.

The first concern we have is the timing of the current law. It could create several inequities for Georgia cattle producers having to come under the mandatory provisions by September of 2004.

Second, the final regulations are not required to be published until September of 2004, which are simultaneous with their implementation, which allows very little time for understanding them.

And third, there are still numerous concerns about how the audit trail would be verified or certified and how that process would be paid for and controlled.

Those are the three major concerns, and while my Georgia cattlemen support country-of-origin labeling, I would like to see the bill amended to make the transactions equitable across all sectors of the industry. I would like to see the program remain voluntary, as our Georgia cattle producers would, because for them, a U.S. beef brand is a major, major selling point. They want to put that on their product. But they need to be free to do it in the most cost-effective manner possible.

So if you could respond to that—again, the timing issue, with October 1, 2004 bearing down on us, and give us a real sense of how to address the inequities of the law, the implementation.

The other factor, with the final regulations of the country-of-origin labeling are not required to be published again until 2004 Sep-

tember and doesn't give little time for understanding that. Very serious concerns for my cattle producers in Georgia, and I would like to get your response. And certainly we would love to hear from you on that, Mr. Davis, as the head of the cattle producers.

Mr. DAVIS. Thank you, Mr. Scott.

Mr. Chairman, the consternation that your producers in Georgia are having over what needs to be done now to be ready by September of 2004 is not unique to your constituency. We are all having that quandary in our mind. That is why our organization had asked for the listening sessions and asked for congressional hearings because we have got people asking right now, what do we do to be ready? And we do not have the answers today.

The implementation part of it, yes, it must have sounded OK in the beginning when it was passed, but when the timing for the final rules coincides with the implementation of the program, that certainly adds to the consternation, especially when you consider the biological requirements of the time it takes to raise a calf to—and processing.

If we had our druthers—and our policy states it very clearly—the mandatory provision in this law would be dropped and it would be voluntary. We would agree with you on that.

I will refer you again to my testimony, that we believe that the petition that was submitted to USDA and to this committee in September 2000 still represents a manner in which a voluntary system could be implemented while these questions and consternations are addressed.

Mr. SCOTT. Thank you, sir.

Mr. FOUTZ. Mr. Chairman, Mr. Scott, your question, I think, is very pertinent.

The effects of the timing right now are very critical to the producers. We are setting out here and we don't have—we don't even have any proposed regulations, so we have to go through proposal of regulations, the hearing periods, the final rule to be established. We just heard that that probably would be done sometime in the spring.

It is interesting that when we look at this timing process, the cattle, the calves that are going to be born in January, February and March that are going to be—that the effect is going to be taken on in August is overlapping here. So all of our producers who are in the process of trying to figure out what they are going to do with the animals that are born in this January-February-March-April time frame and what is going to happen in August is very critical. And for that reason, I think we made a comment that the rules need to be proposed immediately, so that we can, as an industry, look at them and see where that places us. I think that is a real issue.

Concerning the audit trail, we don't think that you need to have an audit trail for each individual animal. We really do think that the buyers, the producers can verify that they produce either domestic beef or they have foreign beef, and if they have a mixture, that they have a mixture; and how they segregate those—that is what is necessary—and that we don't have to have an audit trail on each individual animal to comply with the COOL law.

Mr. SCOTT. Mr. Davis, let me go back to you for a moment. If the law is implemented without any changes, just currently as it is written, what changes can we expect in the way the U.S. beef industry operates?

Mr. HAYES. I am going to have to cut you short there. I am sorry; we are out of time, David.

Mr. Udall.

And I might just caution members that we have got some very patient third panel members sitting there who are suffering from fatigue, I suspect; so if you can carry on with that in mind——

Mr. UDALL. Thank you, Mr. Chairman.

I want to welcome the panel and thank you for your testimony. I wanted to begin by associating myself with the other remarks of Ranking Member Stenholm. As always, he seems to have an excess of common sense, and I think he really put his finger on the challenges.

But the opportunity that we face—I also want to thank my colleague, Congressman Osborne, from the great State of Nebraska; I also wanted to commend him for his perspective. And in particular, we are always, in Colorado, looking to gain a little bit of favor with Nebraskans because as Dr. Foutz, now we tend to try and keep their water. Or they think that is what we are trying to do. But we have sent a little bit of good moisture their way this week, so that is some good news.

I wanted to acknowledge a fellow Coloradan, Dr. Foutz, and your important testimony and ask you again just to talk about your point of view on whether voluntary country-of-origin labeling would work and whether or not you support that approach.

Mr. FOUTZ. Mr. Chairman, Mr. Udall, American Farm Bureau supports the mandatory program that is in place now in the 2002 farm bill. There has been a voluntary program in place for a period of years. As of today, there is very little, if any, product that is labeled and sold through the markets in terms of meat and meat products; and therefore, we don't see that working. And in order for the labeling, informational labeling program to work, we do think it needs to be mandatory rather than voluntary.

Mr. UDALL. Dr. Foutz and other members of the panel, would you briefly outline the costs that you think are attached to implementing this provision and how they might be amortized over time, if, in fact, that is the path down which we travel?

Mr. FOUTZ. Mr. Udall, there has been a lot of discussion on cost this afternoon, and I am not sure how those numbers were derived because we don't have any idea of what the proposed regulation would even look like. And so I am not sure that a discussion of cost is even—we can do that today, because we don't know what USDA is going to make this regulation look like.

My guess is that we can look at some programs that are fairly low in cost, such as I have just talked about here, where we have some verification, you don't have to follow an animal with individual identification all the way up to the point where you ear-tag each animal and they are followed through a very complicated procedure.

Now, we have—my neighbor is now doing that right now, and I just happened to talk to him Tuesday as I left Colorado, and that is costing him $4 an animal. So there is going to be a cost involved.

But we don't think—American Farm Bureau doesn't think you have to go to that high cost—individual labeling of an ear-tag, followed with identification systems and so on—to make this informational labeling system work. It can be done on at much less cost.

However, that is the consternation that our growers and producers are dealing with, because they don't know and they don't understand and there haven't been any proposed rules put out there so we can make definitive estimates on what these costs might be. And that is part of why there is—that is—part of why the consternation and the unsettledness in the country with our producers is simply because we don't know what is going to be there.

Mr. UDALL. Mr. Davis, in the interest of fair play—and I know that you mentioned being excoriated, and I can tell you, all the members up here on the panel, we have been excoriated a few times.

So would you like to give your perspective?

Mr. DAVIS. Thank you, Mr. Udall, yes.

I guess—not to appear flippant, but I have yet to see an estimate that says it is going to be cost free. I don't know what the total cost will be either to an individual producer or through the whole system, but we know there is going to be some cost involved.

Mr. UDALL. One of the arguments that I find compelling is that if we all join hands and do this together, and we look where we are going, we are not actually stepping off a cliff, but we are actually creating more opportunity for ourselves.

But I take note of your concerns. If I could just make one final comment——

Mr. DAVIS. Excuse me.

Mr. UDALL. Yes, sir, go ahead.

Mr. DAVIS. That is why our policy calls for a market-driven approach, and there is a program, a voluntary program in California now that is being used, and that is market driven.

Mr. UDALL. Duly noted.

Mr. Chairman, just one final, quick comment. I think—as a layperson, I am interested in hearing the talk today about marketing versus safety issues, and I do think we have an educational opportunity, but also a challenge, because I think a lot of consumers are going to think this is a safety seal of approval. And that may be a positive thing, but we ought to go into this with our eyes open.

Again, I want to thank the panel and thank you, Mr. Chairman.

Mr. HAYES. I thank the gentleman.

The gentleman from Minnesota, Mr. Gutknecht.

Mr. GUTKNECHT. Mr. Chairman, I will try to keep it brief.

And, first of all, let me say to the panel, thank you for coming, and we apologize. Every day around here is busy, but this is probably one the busiest days of the year we have ever had, and so Members are coming in and out. And we appreciate your coming, many of you from very long distances, to be with us to talk about this issue. It is very important.

I raised the issue earlier about what I think will be one of the profound impacts, and that is on smaller ranchers and producers. I wonder if you might comment on that.

And then, second, if you might each just talk about the issue of self-certification. It seems to me, that doesn't—well, I would like the interaction again, because I am not really clear if, ultimately, the producers have to satisfy the packers and the packers have to satisfy the retailers. I am not sure how that—it is sort of, "the neck bone's connected to the backbone, the backbone's connected"—I mean, somewhere along the line, ultimately, the retailer has got to be satisfied, or the whole thing starts to fall apart, doesn't it? That is one question.

And the second question is, do you think there is a legitimate concern about what this will do to smaller producers that may or may not be able to provide the packers with the kind of certification or documentation that they want?

Mr. Stenzel, maybe you want to start?

Mr. STENZEL. Well, Mr. Gutknecht, I do feel a little bit the odd man out here in the fresh produce industry, so I won't deal with the specifics of the meat issue. But given the platform, I will answer a couple of questions.

We are very concerned about impact on the small producer, small grocers, everyone in the distribution chain. It is yet another reason why the Department has got to use its utmost flexibility in developing its regulations.

Earlier, there was a question asked, should pork and beef be separated, and while I can't weigh in on that issue, I do suggest that if Mr. Stenholm is correct and there needs to be a cleaning up of this legislation, that produce be a part of that as well. I just don't think it is appropriate at this point in time to start divvying up the legislation and putting different categories that are currently under the law into separate camps; so we would like to be a part of that process as well.

And then Mr. Scott's last question, just so I make the rounds, about implementation date. The same issues are holding forth in the produce industry in terms that these proposed regulations are not forthcoming in adequate time to prepare. So as the legislative fix is being contemplated, an extension of that implementation date, even if mandatory goes forward, would be in order.

Mr. FOUTZ. I think—to respond to that question, Congressman—obviously, we are concerned with the issues around the small rancher and farmer in this. Otherwise, we wouldn't be concerned about what the cost might be. Because it is the cost issue that is going to create the problem there, and so we are concerned about that.

And if we get into some of these verification programs, they get very expensive and quite voluminous, then obviously it is going to have a negative impact on the small producer in the process. And, again, that is why we are suggesting there are possibilities for reducing that cost and still working under the mandatory system. And that is—coming back to the verification that is in our—that we have given in our testimony whereby simply saying that you are a producer, which could be verified, of only domestic product—for example, which could be verified by your state department of

agriculture through your own records and so forth, then that ought to be sufficient to carry through the line. If, in fact, there is a willful violation of that, then I think, from what I heard from USDA, there are methods by which that can be taken care of in the system.

So I don't think we have to be overly burdensome in how we verify these things, because everybody along the line has some penalty associated with a willful violation; and I think we need to be aware of that, too.

Mr. FREDERICKSON. Mr. Chairman, Congressman Gutknecht, I don't know if I can add much more to what has already been said.

I assumed that as this debate and discussion went on that the issue of small farmers was front and center during the process and that there was never an intent to cause undue fiscal harm for small- and medium-sized producers across the country. And it seems to me that the debate as to how much trouble is going to be caused right now happens to be with USDA, and in the rule-making process that is ongoing.

So I guess the responsibility there, or the responsibility is to really focus attention on the rule-making process to make sure that that doesn't occur.

Mr. GUTKNECHT. Dave, with all due respect, everything we have tried to do over the last 40 years has not—the intent was not to hurt small producers.

The CHAIRMAN [presiding]. The time of the gentleman has expired.

The gentleman from California, Mr. Dooley.

Mr. DOOLEY. Thank you.

And, Dr. Foutz, you spent a lot of time in your testimony where you gave references to a number of the other panelists that one of the most compelling arguments for this mandatory country-of-origin labeling is because consumers have a preference and would like to know this information. If the American Farm Bureau buys into that type of policy, then how are you going to make a compelling argument against a consumer interest when they might want to have the right to know whether or not a commodity was genetically modified?

Mr. FOUTZ. Well, Congressman Dooley, the bill that we are talking about here is simply an informational issue relating to letting the consumers know where this product is grown. It is not a right-to-know issue.

Mr. DOOLEY. Precisely. You are making the argument and the contention that the consumers have an interest and need the information on where a product was grown.

So why would that be any different if those same groups of consumers, which you have polled, if they wanted to know whether or not a product was genetically modified, is the American Farm Bureau going to endorse that policy? And how do you make an intellectual distinction between a consumer's interest in wanting to know where a product was produced versus whether or not a product was genetically modified?

Mr. FOUTZ. Well, I guess there would be a real philosophical disagreement here maybe. But in terms of what we are talking about, we are talking about a generic—in a sense, a generic statement

that we are making that this product happens to be grown in the United States. Well, when we begin to talk about genetics, biotechnology, all of those issues, those are individual decisions that an individual grower makes; and to separate those out and to specifically identify an issue which might be used——

Mr. DOOLEY. What is the scientific basis for where a product is grown in terms of—you also made allusion to where mandates on the nutritional contents of various products that are out there—you are a plant geneticist, I understand, have a degree in agronomy. All the labeling that we have that we require now by a mandate has an impact in terms of the nutritional content or the safety of a product. I mean, that is scientifically based.

Now, country-of-origin labeling, when we are embracing the policy that you are trying to, that the American Farm Bureau is embracing, as well as the National Farmers Union, you are opening up Pandora's box. We are having to fight with the EU right now in terms of how we should label products that are generically modified.

We have the American Farm Bureau supporting the administration's decision to take on the EU through the WTO, based on their labeling issues that they are having out there. And then you are coming before this Congress and you are asking us to embrace a labeling regime, a mandatory labeling regime that has no basis in science.

At least the action we are trying to promulgate with the WTO and the EU is science-based. I mean, what is the science behind a country-of-origin label?

Mr. FOUTZ. Mr. Chairman, just a couple of comments.

Number 1, I am really not a geneticist. I am a physiologist, so—I mean, I don't want to get into the genetics because that is really not my field.

But, what we are talking about here—and I think—in my mind, there is a distinction. What we are talking about here is simply an informational label; and that is different than a label which specifies some food safety or food quality requirement that we are talking about.

We are not talking about a food safety issue. We are simply saying this material or this product is grown in the United States. Now, that doesn't, at least to my mind, quantify any kind of quality or safety.

Mr. DOOLEY. Obviously we have an intellectual and a philosophical difference, and I think I am being more intellectually consistent than I think the Farm Bureau is being on this.

Mr. McDonnell, do you have any concern about the exposure to increased liability that a lot of your members are going to have if we now have a mandatory approach here that has fines and penalties associated with it; that we can now have PETA and other animal rights organizations that are interested in advancing their social agenda—and part of that is to reduce the consumption of red meat—and now we are giving them an opportunity to initiate a private right of action, exposing retailers, processors and even producers to increased legal liability.

Do you have any concerns whatsoever in terms of how that might pose increased jeopardy to your members?

Mr. MCDONNELL. I don't see how that will happen as we expand country-of-origin labeling for cattle and meat to the consumer. I don't see the relation between PETA and COOL for the consumer.

Mr. DOOLEY. Well, if you have PETA that is going to be able to make a case against a retailer that they weren't—didn't have the adequate information to guarantee that that produce or that livestock was actually raised and grown—raised and processed in the United States, what is going to preclude them from taking an action against USDA for failure to enforce their regulations?

The CHAIRMAN. The time of the gentleman has expired. We will give the witness an opportunity to respond.

Mr. MCDONNELL. I would say if that is the case, they already could be doing it under presumption of origin with our school lunch programs, which we presume to be U.S. Product.

Mr. DOOLEY. Is this not an expansion of the way——

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Oklahoma, Mr. Lucas.

Mr. LUCAS. Thank you, Mr. Chairman, and I would offer the observation to this panel that I offered to the previous panel, that is, that there is a sincere belief back home in my part of Oklahoma that the Department of Agriculture chooses not implement this and that by creating a set of rules that are so onerous, so complicated, so horrendous, that would inflict so much pain that they will compel a response from this Congress to do something. Now, that is the belief back home in the field.

I would also offer you this observation, having worked now with USDA to address how conservation funds are allocated, which I thought was very clearly laid out in the 2002 farm bill, but thanks to actions of appropriators and thanks to actions of the other body and thanks to rulings from Justice and the USDA's own lawyers, now put us in a position where the conservation title, at least the technical assistance costs are being implemented rather dramatically different, was intended in the farm bill.

Now, I offer you that thought because I have been a part of a crusade with a number of my colleagues here for some months to try and turn the ship, the USDA, in a different direction and to put them back on focus with what was called for in the 2002 farm bill. We have not been able to do that.

So my question to the whole panel is—and I'd love your response—if we can't clean up something as simple as the way technical assistance issues have been botched, and if my constituents back home are correct that USDA consciously or unconsciously doesn't want to do this and, therefore, is creating a set of rules that are horrendous, how do we protect those folks back home who have to live with this stuff? Do we let this become, in effect, law by the rule-making process and then subject all of our people to this and attempt in future years to correct it? Do we slow the process down?

Tell me, guys, how do we protect our people from this Pandora's box that was added in the final days of the conference committee report on the farm bill?

Mr. STENZEL. Mr. Lucas, on behalf of the fresh fruit and vegetable industry, I share your concern. Whether it is intentional or naive, the Department guidelines thus far clearly are not fulfilling the intent of the law in the way that they could. What gives us any

hope that they will? In the proposed final regulation, I don't know; I'm not a betting man that way.

We do believe we have provided a road map of specific regulatory options that the Department could follow that would make its implementation much more acceptable to everyone in the produce distribution chain, all the way through. It is not just about protecting U.S. produce growers. We want to make sure that it is fair and equitable for importers of fresh produce, whom we depend on for healthy, fresh produce in the United States, as well as for our retail partners.

But your question is, what is your role as the Congress. I believe if you see law being implemented through regulation, with all due respect, I think you will have to trump that with your own action.

Mr. LUCAS. Clearly, in response to my question, the esteemed people on the first panel responded that they were following the rules. I believe that is an indication that they will continue down this present course in the rule-making process, and we are going to wind up with something amazing in September. And ironically, of course, the intent in the 2002 farm bill was to do something good and positive, not only for the consumers, but the producers.

But the process of turning good concepts into law and ultimately into real regulations that implement that spirit sometimes run awry. So I am just curious, any——

Mr. FREDERICKSON. Mr. Chairman, Congressman Lucas, I don't know who has the biggest hammer. I guess you do. And I do know that—Congressman Gutknecht indicated that everything we do here has the best of intentions for small- and medium-sized producers across the country. I don't disagree with that and I compliment you and commend you for that. I know you have done that all your career. But I don't know how to correct this thing. And I guess that you have the biggest hammer.

I sat in the other room and listened to their testimony this morning, and they all started out by saying they didn't like the law. They didn't particularly care for it. Well, OK, having said that, how do we go ahead and force them to comply with the intentions of Congress? And I guess that becomes more your responsibility, I am sorry, than ours.

Mr. LUCAS. You are exactly right. And our constituents ultimately expect us to not only do the right thing, but to protect them from what they perceive as the Federal Government also. And if, in some instances, it becomes clear as a result of this hearing that it is necessary to bring this whole process to a stop and start over, then we have to—we have to work in the best interests of those folks back home who depend on you, their representative organizations, and us, their representative members.

I wish it had not worked out this way is what I guess I am saying.

Mr. FREDERICKSON. Mr. Chairman, as long as "stop" is defined as just a stop on the side of the road as opposed to a permanent stop, I would think.

Mr. CASPERS. Congressman, if I could respond, I would suggest it is probably a lot simpler in that we believe that really the problem is the law and not how USDA is implementing it.

I think the perception, indeed, is out there, and I think it is out there because the proponents of this legislation have said that it is USDA's fault. Any time we hear anything that goes wrong or a turn that takes the wrong—takes us down the wrong path, it is USDA's fault. I don't think that is the case. I think—and that is why we are proposing that we stop this and that we take pork and beef off of the—out the mandatory portion of this law.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from California, Mr. Cardoza.

Mr. CARDOZA. Thank you, Mr. Chairman.

I am interested in the panel's telling me exactly—I know I may have missed some of it prior, while I wasn't here; I apologize for that. But I am a huge supporter of country-of-origin label in general. I am not pleased with the fact that administration folks this morning said that they are not in favor of the law. I believe it is their job to implement the law.

Having said that, I also think that there should be things that we can do to correct the problems for the pork and cattlemen's associations to correct the problems that we will hear in the third panel from some of the frozen food packagers who have different kinds of mixes that come through their lines at different times and have huge packaging issues that we are going to have to deal with somehow and that should be able to be dealt with under the law. Or we should be able to be talking about small fixing rather than having to jettison the whole concept, which I think is one that both the consumers want, that benefits a vast majority of our agriculture interests and is good public policy.

So, with that, I will just throw it open to the committee and see if anyone would like to respond, if there is anything within the purview of what I have outlined that can be done.

Mr. DAVIS. I think there is. I think the committee has the purview, and I think we are at the first step here today in fixing what, for whatever reasons and by whoever's interpretation, what needs to be fixed. I think Mr. Stenholm alluded to that in his remarks, that it would have been nice to have the answers to these questions before the bill was passed.

The fact that we are still asking those questions today indicates that whether you agree with USDA's interpretation or someone else's, I think it is a clear indication that there is great disagreement, and I commend this body for having this hearing and trying to get to the bottom of it. And as I said in my testimony, we would stand ready to help through a voluntary program, as is our policy, producer-led, market-driven program, but we stand willing to work with the committee and the USDA in either a legislative role or a rule-making role to make the thing work.

Mr. CASPERS. We would agree that we also need to move to a voluntary program, market-driven, that producers if they can find a market, if there is a demonstrated benefit, that they can go after that. This law doesn't accomplish that.

Mr. MCDONNELL. Voluntary always reminds me of telling a group of preschoolers they can go to the bathroom wherever they want. So it is kind of a spooky deal. And I think as you look at what is going on and, hopefully, what comes out of this committee

with the extension of time, you are going to have to hold USDA's feet to the fire.

If you look at the voluntary rules and the fact that they have put in there they want audit trails on producers, which they weren't allowed under the law, the fact that they have excluded cooked meat, which is a preparation to consume that beef, just like prewashing fruits and vegetables, I think it is clearly the intent of USDA to undermine this legislation.

I can tell you, as a voter from Montana, I hope you elected officials can make them do the right thing.

Mr. FREDERICKSON. Mr. Chairman, Congressman Cardoza, the three points I made in my initial testimony, and those were to utilize the model of existing USDA programs, so in other words, don't reinvent it; expand and extend the country-of-origin information already collected on imported products; and No. three, to just plain allow maximum flexibility, i.e. self-certification.

Mr. FOUTZ. Mr. Cardoza, I think one of the concerns that I have is the fact that we are sitting here debating amongst ourselves on a lot of issues that we don't even know yet are going to be proposed in the rule-making process. And I think one of the gentlemen this morning made the point that the voluntary guidelines may not be anywhere near what the proposed rules would be. We are talking about issues that we have concerns about, as organizations.

But until we really see what the proposed rules are, it is very difficult to sit here and make specific requirements or make specific suggestions on how we might change some of these things. And I think all of us have in our testimony, in our written testimony, given some ideas on how we might see the projects, see the labeling regulations written; but until we see that, until we see some of that initial writing, it is going to be very difficult to make any comments.

Mr. STENZEL. I would agree with that, Mr. Cardoza, that we really have just got to get these proposed regulations out as quickly as possible. Our interpretation is different from USDA's general counsel on several issues, and we—if they are going to go forward and propose the regulation, then let's have at it; and if some of that needs to be cleaned up legislatively, as proposed, for the regulatory process, that is when we will have to do it.

The CHAIRMAN. I thank the gentleman. The gentleman's time has expired, and I want to thank all the members of the panel.

I would take note of the fact that not only did the administration witnesses state that—quite honestly, that the administration did not support this concept prior to its becoming a part of the farm bill, but they also stated that they would make every effort to enforce the law in the manner in which it is drafted and in a manner that is as friendly as it possibly can be to producers and to everybody else in the food chain process to provide the most useful information to consumers.

And I think that the examination here needs to be in the law itself, because I think—some of the assumptions here about how much flexibility the administration has, I think, may be mistaken.

I understand the gentleman from Georgia had asked a question and there was not an opportunity afforded to answer that question. And I think it was directed to Mr. Davis. And the question was,

if the law is imposed as currently written, what changes can we expect in the way the U.S. beef industry operates? And will that change be beneficial or will the costs outweigh the benefits?

Is that correct, Mr. Scott?

Mr. SCOTT. Yes.

The CHAIRMAN. Let's give Mr. Davis an opportunity to answer that question.

Mr. DAVIS. Do you wish me to answer it now or take the time——

The CHAIRMAN. Yes. You can answer it now and all of you can supplement it later with a written answer.

Mr. DAVIS. OK.

It gets back—and you might have to bring me back to the question because there are a lot of parts in it, but it gets back to some of the other things that we have talked about, the changes that it will drive in the opinions of a lot of our producers of why we, over the years, as our policy evolved, at one time we supported mandatory, and we backed up to voluntary because of the very concerns that are raised here today as to, do the benefits outweigh the costs and what does it do to small producers?

The average herd size in this country is just under 50 head, so we are pretty much talking about everybody. What the end result will be is unforeseen in my eyes, but I will stick my neck out here and say that it won't be what a lot of us have envisioned when you consider that we are not covering all of the product in the first place, what are we actually doing here and how much are we affecting; and it is—there are just many, many more questions to be answered.

The CHAIRMAN. I thank the gentleman.

I believe the gentleman from Texas had a closing comment he wanted to make.

Mr. STENHOLM. Mr. Chairman, just kind of a summation of what I have attempted to say and what I think I have heard today.

You know, go back to when we marked up the farm bill in this committee. The majority of this committee opposed mandatory labeling, country of origin. I did very strongly for the reasons that have been articulated today.

Mandatory country-of-origin labeling with absolute requirements of trace-back to those that ultimately are responsible for certifying that it is grown in the United States is a problem. And I don't make a habit of defending this administration, but I think that they are interpreting the law as it was written. And as it was written on the House floor, you remember, only fruits and vegetables. Some of us are opposed to this for the same reasons because whether we are talking about meat or fruits and vegetables, you are talking about the same problems that have to be dealt with.

And then we got to the conference and the Senate insisted on their language, their language, which I trust was never vetted at the type of a hearing that we have had today; and that we will have additional hearings as we attempt to work out a solution.

Now, I am for country-of-origin labeling. It is marketing. It makes good sense. If you have got a product that consumers want and is better than your competition's, they are going to buy it. That is called marketing. We have agreed today, everyone agreed that

this is not a food safety issue. You have got to separate the food safety from marketing, and we have agreed.

Mr. Dooley—I won't repeat it. He says it so much better than I. I hope all of you here at this table and all others interested in this listen carefully to what Mr. Dooley was saying, because there was a certain ring of consistency that we had better be prepared to have others interpret the marketing of their product exactly like some of us are attempting to mandatorily say with country-of-origin labeling.

If you believe that it won't come back to haunt you in the world market as the pork producers have been the ones most clear on this all the way through, then I am wrong and you are right.

So I think this has been an excellent hearing. I think the panel, the questions, the manner in which you have answered them, I think all of us have learned something today. And I hope as we proceed now—remember what the appropriators have done. Legislating on an appropriations bill has precluded the administration from working out a solution, as Mr. Lucas was talking a moment ago—can't do anything, can't spend any money solving a problem, which means that you like it just like it is.

Now, that is going to be the debate we have on the floor after July 7. I hope and I expect that this committee might be able to come up with something that will be helpful, that will please every one of you at this table almost unanimously, but maybe not totally. Thank you.

The CHAIRMAN. I will say amen to the remarks of the gentleman from Texas and amen to this panel. I want to thank you for your valuable contribution today. We have a series of votes on the floor. So the committee will stand in recess and take up with the third panel as soon as the third vote is concluded.

And we will stand in recess.

[Recess.]

The CHAIRMAN. The committee will reconvene. And we welcome our third and final panel to the table. Ms. Deborah White, associate general counsel for regulatory affairs of the Food Marketing Institute; Mr. Ken Bull, of Wichita, Kansas, vice president for cattle procurement of the Excel Corporation; Mr. Bruce Peterson, of Bentonville, Arkansas, senior vice president and general merchandise manager of perishable foods for Wal-Mart Stores; Mr. Ray Walker of Clovis, California, CEO of Patterson Frozen Foods; Mr. Jay Campbell, Jr., of Baton Rouge, Louisiana, president and CEO of Associated Grocers, Incorporated; and Mr. Gary Ray of Austin, Minnesota, executive vice president of Refrigerated Foods of Hormel Foods Corporation.

Ladies and gentlemen, we are delighted to have you with us this afternoon. We remind you that your full statement will be made a part of the record. We would ask that you limit your remarks to 5 minutes so we get done during daylight hours. And we will start with Ms. White. Welcome.

STATEMENT OF DEBORAH R. WHITE, ASSOCIATE GENERAL COUNSEL, REGULATORY AFFAIRS, FOOD MARKETING INSTITUTE

Ms. WHITE. Thank you very much.

Good morning, Mr. Chairman, Mr. Stenholm, and members of the committee. My name is Deborah White. I am associate general counsel of the Food Marketing Institute. Thank you for including FMI in this important hearing on the implications of section 10816 of the 2002 farm bill. I am going to read my statement, but I really look forward to the questions and answers afterwards.

We believe that many of the inevitable and far reaching consequences of this relatively brief provision were never intended by Congress. This hearing represents an important step toward understanding the law and its full ramifications, many which stem from the actions that retailers will be forced to take to comply with section 10816. We may disagree with the law's premise and foresee its negative consequences, but there is a law in the books and American grocery stores must take those steps necessary to ensure that they will be able to offer food to consumers in compliance with the law on September 30, 2004.

In order for retailers to achieve compliance, however, growers, cattlemen, packers, and distributors of covered commodities will have to change the way they do business. The law will prohibit retailers from partnering with suppliers who are unwilling to make those changes. Today, retailers voluntarily engage in a wide variety of State and country awards and labeling programs, programs that work well for producers, retailers, and consumers alike.

Section 10816 is different though. The market drivers built into this brief amendment to the Agricultural Marketing Act are powerful and will have a profound impact on the dynamics of the entire food and production distribution system, especially on smaller less-competitive producers for the following reasons:

First and foremost, the law places the responsibility for informing consumers of the country of origin of all covered commodities, imported and domestic, on the retailer, the one link in the distribution chain that has no firsthand knowledge of or control over this information. Under the much more thoroughly-debated and carefully-crafted Nutrition Labeling and Education Act, the manufacturer is responsible for identifying the relevant information about the food and placing it on the label. The retailer sells the fully-labeled finished food product. The same is true for other country-of-origin labeling laws. Reference was made earlier today about clothing and how many articles of clothing have the country of origin specified. Well, Hanes is responsible for making the determination of the country of origin for their underwear. The department store sells it fully-labeled, but the department store isn't the one that is responsible for that information. The manufacturer or the importer of record is responsible for the labeling because only they know the facts about the product. Section 10816 stands this traditional common sense approach for labeling on its head. Further, retailers are subject to Federal and State enforcement and penalties of up to $10,000 for willful violation, for failing to meet their legal responsibilities.

Second, the law covers an extremely wide range of products, beef, pork, lamb, fresh and frozen seafood, fresh and frozen fruits and vegetables, and peanuts, and necessitates information on the entire life cycle of each and every one, and in the case of seafoods, the food's method of production. We heard today from a number of

folks who represent individual segments of that chain, we are responsible for them all.

None of this information is self-evident to the retailer. A retailer can't look at a hand of bananas and know whether it is properly labeled product of Guatemala or whether it is actually from Honduras. A retailer cannot look at a filet of salmon and know which flag flew on the vessel that caught it or whether it was actually raised on a farm in Asia. A retailer can't look at a chub of hamburger and know whether one of the cows from whence it came ever sojourned in Mexico or Canada. The only way that retailers can fulfill their obligations to consumers under this law is to ensure to the greatest extent possible that they receive accurate information from their suppliers. Silence is not sufficient. We were asked or several people discussed the issue of self-certification or presumption of domestic origin in the absence, so that domestic producers wouldn't have to actually state that the product was produced in the United States. Retailers are responsible for informing consumers of the country of origin of all products under this law, both domestic and imported. We can't rely on silence.

Toward this end, our members are beginning to execute broad and far-reaching changes in their supplier relationships. Although the programs vary, most retailers are requiring their suppliers to do the following: First, sticker or label each individual food item with the required country of origin.

Second, sign contracts to indemnify retailers and ensure that suppliers are keeping verifiable audit trails. In some cases, such as in produce and the produce industry, parties have been doing business on a handshake basis for decades. They are now going to have to enter into written contracts.

Third, undergo third audits. Retailers will be liable for the accuracy of the information that their suppliers provide to them. Retailers have no choice but to require their suppliers to provide them with objective third-party documentation that the information is trustworthy. This model is not without precedent. The Organic Food Production Act requires third-party certification for organic production claims which are also marketing claims. And to this point, I would later like to have the opportunity to address the issues that Congressman Putnam raised with respect to PACA.

A typical grocery store easily sells 1,000 different commodities, comprised of hundreds of thousands of individual food items, received from thousands of suppliers several times each week over the course of the year. The law forces retailers to put this type of system in place to control the large amount of information attendant to this volume of food, and it will force retailers to make difficult marketplace choices to minimize their liability and maximize their compliance with the law. For example, retailers will source cover commodities only from those who can afford the systems to document country of origin to the extent required by the law. Smaller suppliers will have a difficult time affording these costs. Vertically integrated producers are virtually ready to comply now. So, despite the fact that section 10816 was intended to assist small independent producers, the law is actually a strong driver toward concentration of vertical integration.

Retailers will also limit the countries from which they source product, sometimes to the detriment of U.S. producers. For example, at least one significant member has concluded that the domestic salmon industry cannot supply a sufficient amount of fish all year long to meet their needs, but that other countries such as Canada, Norway, or Chili can.

Third, they will reduce or eliminate U.S. product source during the short seasons.

Fourth, the participation and State of origin promotional programs will be limited.

In short, we believe that section 10816 is fundamentally flawed. Mandatory country-of-origin labeling, particularly as prescribed by section 10816, will inevitably result in less consumer choice and higher production costs that far outweigh any potential benefits to consumers and producers.

Thank you for your time. I look forward to your questions.

[The prepared statement of Ms. White appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Ms. White.

Mr. Bull, welcome.

STATEMENT OF KEN BULL, VICE PRESIDENT, CATTLE PROCUREMENT, EXCEL CORPORATION, WICHITA, KS

Mr. BULL. Thank you. Thank you, Mr. Chairman, for giving me the opportunity to discuss what I believe is a well-intentioned, yet severely-flawed law.

The COOL law represents unmistakable harm to the U.S. beef and pork industry. At a time when we have finally reversed the long downward trend in beef demand, Government is implementing an initiative that will add tremendous cost and complexity to the segments of the beef and pork production chain.

Supporters of COOL generally rally around one of several points. Food safety, and I think that one got discussed at length this morning. It is clearly not about food safety. Consumers right to know, but this can't be about right to know, because the law exempts all of food service, not to mention poultry, cheese, almost the rest of the grocery store. Protecting the American market. Many supporters are more motivated by trying to block cattle and hogs from coming in from Canada and Mexico.

Protection of sentiments does not hold water in light of the fact that Mexico is now the No. one market for U.S. beef where we currently enjoy a $450 million trade surplus. Supporters must realize that striking out against one of our most important buyers, stands to have consequences.

As the committee knows, this is a retail labeling law that mandates there must be a verifiable audit trail to prove that the labels on products are true and accurate. AMS staff in Washington has ensured that our read of the law is right. A verifiable audit trail means that we must be able to provide documents that back up the claims made on the meat we market to our retail customers. We have no choice but to require all producers from whom we buy to certify that they are maintaining records that prove identification and traceability of their livestock. Additionally, we may choose to audit records on a spot basis to further ensure that labeling will

stand up under regulator scrutiny. We and other major processors have been notified by retailers that if we intend to sell them meat after October 1, 2004, we will have to assume liability for any misrepresentation of their labels.

Another concern to us is the Meat Inspection Act administered by FSIS which covers labeling. To apply a false label to a product is to ship misbranded product. This is punishable as a felony, and the product involved is likely subject to recall. Our interpretation of the Meat Act was confirmed when I met with the Deputy Administrator of FSIS and the Chief of the Labeling Branch.

The branding we do today is based on attributes that reflect the market niche a retailer wants to uniquely fill. These brands rely on factors that are within our control and importantly, are cost effective. The COOL brand relies on factors from the birth of the animal, following it through our plants, then into distribution, on to retail, all at significant costs. These are costs that we do not believe are recoverable in the marketplace, and we and livestock producers will have to absorb them. There is much speculation on the cost of COOL, and I certainly have my own ideas, but, frankly, I believe that true cost is that there stands to be significant change in the cattle and hog industries as a result of this law. We have done cost estimates that quickly led us to conclude that we are not going to make the investments it would take to build and run our plants the way we do today. To create the kind of identity preservation systems of this law would cost would be unimaginable. A more likely scenario is that packers would call only on feeders that we know have the best, most reliable audit-proof systems. I met with the Deputy Administrator of USDA Packers and Stockyards to ensure that this was consistent with P&S law, and I have ensured that such steps are entirely within the scope of the law.

We believe one probable outcome of the law is that packers would most likely dedicate plants as U.S. only or mixed origin and then segregate production. This move would eliminate marketing alternatives for producers. We fear an unexpected outcome of the law is that the market would move to one that differentiates price, not just on the basis of quality, but on two new factors, reliability of records and origin status of cattle. Each with these kind of changes, we estimate we would have to invest a minimum of $20 to $25 million per plant to ensure compliance. Of particular concern is something we learned from AMS. There is zero tolerance for error. In our meeting with AMS, we painted a hypothetical scenario. Say we process a group of cattle, and in reviewing the records in an audit found that a mistake was made and an animal of Mexican origin was in the batch of 1,500 head of U.S. born, raised, and slaughtered. We then learned in that scenario all 1,500 head would be in violation of the law. We would then have to notify retailers that we have misbranded product and would assume that product would be recalled.

Another huge concern for us is the impact on the cow-calf operators in the dairy industry. We buy many of these cold cows at auction. We do not believe they have the proper kind of documentation necessary under this law. Under this law, because producers cannot guarantee the animal's birth and residence of its entire life-

span, this beef would be relegated to food service as its only market.

I want to leave you with one final point. In the past 15 years, our firm has had only two requests for labeled country of origin from U.S. retailers. They were both for Australian beef.

I would be happy to answer any questions you have later.

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

Mr. LUCAS of Oklahoma [presiding]. Thank you, sir. Mr. Peterson.

STATEMENT OF BRUCE T. PETERSON, JR., SENIOR VICE PRESIDENT, GENERAL MERCHANDISE MANAGER, PERISHABLE FOODS, WAL-MART STORES, INC., BENTONVILLE, AR

Mr. BRUCE PETERSON. Thank you, Mr. Chairman. And good afternoon to you and the other members of the committee.

My name is Bruce Peterson, and I am the senior vice president, general merchandise manager of perishables for Wal-Mart Stores, Inc., based in Bentonville, Arkansas.

Wal-Mart is the Nation's and world's largest retailer, with facilities in all 50 States and 10 countries. The company operates more than 2,870 discount stores, super centers, neighborhood markets, and more than 520 Sams Clubs in the United States.

Mr. Chairman, I would like to ask that my full, written testimony be submitted into the record, but in the interest of time, I will just touch on the highlights of that testimony.

As a major portion of our business focuses on the marketing of food, I would like to share Wal-Mart's perspective regarding country-of-origin labeling. This law requires retailers to inform consumers of the country of origin of all covered commodities, both domestic and imported, as of September 30, 2004.

Wal-Mart believes that marketing high-quality, affordable food made in the USA is essential to our customers's needs. However, despite the law's best intentions, it is fundamentally flawed inasmuch as it diverts retailers from marketing, and places the onus on product labeling information validation. We believe that there is a better method to promote U.S. agriculture than implementing a flawed law with unduly burdensome regulations.

With respect to our suppliers in the food industry, Wal-Mart has been reported as the Nation's largest grocer, with 1,333 super centers and 52 neighborhood markets.

We highly respect the relationships that we have built with the agricultural communities who supply our stores. Over the years, we have also established strong partnerships with State departments of agriculture to market key State products. We also maintain well over 1,000 relationships with local growers in order to bring hometown produce to local Wal-Mart outlets. Because of our near symbiotic relationship, the continued financial health and success of our suppliers is directly linked to our ability to provide everyday low-priced food products to our consumers. Any overzealous regulations or laws which unduly burden our suppliers, many of whom are small and medium-sized enterprises, ultimately provides a disservice to our customers.

Because customer trust is our top priority in providing quality, safe, affordable food products, we felt that it was necessary to take steps to ensure that the country of origin information provided by our suppliers for each of the covered commodities is accurate and verifiable. After all, with 500 products in 1,300 stores in produce alone, we have over 650,000 opportunities to make a mistake every day, not to mention those in the supply chain. Simply put, if someone inadvertently hangs the wrong sign, the result is that the consumer is misled, not informed, making execution of the program untenable.

In our written remarks, Mr. Chairman, there was reference this morning to some options that retailers may take to have other requirements of our suppliers, and those requirements are detailed in my written remarks.

Specifically, we are concerned about our small suppliers who may not be able to comply with those requirements that enable us to implement the program. The law simply does not distinguish between large and small operations, and could force further consolidation. Wal-Mart would rather promote local products than lose suppliers.

Next, we are concerned about the implementation for our suppliers. While the meat industry, except poultry, is required to demonstrate origin on the front end, the produce industry must be cautious on the back through signing and an ever changing perishable market. For example, under this law, one fruit bowl could require 25 different labels depending upon the time of year. This is particularly worrisome for American produce growers who have international interest in marketing their product year-round through off-season supplements of foreign markets.

In summary, we share the view that it is vitally important for Congress to revisit this law in order to allow the marketplace, not the USA, to implement a successful voluntary marketing program that works. This will help everyone in the supply chain satisfy our customers, and support rather than hinder our suppliers, especially those on the farm and ranch. We would also stress that this solution should be applied to all covered commodities on an equal basis to avoid any further inconsistencies that fail to deliver a quality marketing program.

Wal-Mart is an excellent example of how success in the grocery industry directly supports agriculture and agricultural jobs in the United States. We are proud that our relationships with State departments of agriculture and local producers to market and produce U.S. agriculture products will only continue to strengthen. As we increase our number of stores overseas, we will continue to provide additional markets for U.S. products sold in our international operations. We look forward to continuing to work with our suppliers on a voluntary basis, so that we may continue to bring high-quality, low-cost, safe food products to our customers, our top priority.

On behalf of Wal-Mart Stores, I thank you for the opportunity to testify here today.

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

Mr. LUCAS of Oklahoma. Thank you, sir.

Mr.Walker, when you are ready.

STATEMENT OF ARTHUR "RAY" WALKER, CEO, PATTERSON FROZEN FOODS, CLOVIS, CA

Mr. WALKER. Thank you, Mr. Chairman, and members of the committee.

I am Ray Walker, president and CEO of Patterson Frozen Foods, a processor and grower of frozen produce located in Patterson, California. I also serve on the Board of Directors of the American Frozen Food Institute. I appreciate the opportunity to appear before the committee today to discuss country-of-origin marking requirements for food products, specifically the frozen produce commodities covered under the 2002 farm bill.

I have in my career seen the logic of both sides in this issue. As a member of AFFI's board, I have participated in many, many discussions on country-of-origin labeling. And I must admit, there are those, including me, who have advocated vociferously for ways to mandate the promotion of U.S. produce. However, the members of AFFI's board of directors are unanimously opposed to this concept as it was legislated in the 2002 farm bill.

While I am here to testify specifically about the products my company processes, I do want to mention some additional concerns with country-of-origin labeling that AFFI raised in comments submitted to USDA jointly with the Grocery Manufacturers of America, the National Food Processors Association, and the National Fisheries Institute. The concerns centered on the USDA guidelines for implementation which prescribed country-of-origin labeling rules for products already required to display such labeling, creating the prospect of duplicative, confusing, and even conflicting regulations.

Among the processed foods we believe to be outside the scope of the farm bill requirements that will nevertheless be required to bear labeling if the current voluntary guidelines become permanent are, processed peanuts, mixed-processed foods including mixed-processed produce, and frozen seafood products. More detailed testimonies on these and other issues concerning processed foods are being submitted by the other organizations for the hearing record.

Unfortunately, if the USDA guidelines issued last fall become mandatory, they will have significant unintended consequences on members of the frozen food industry who grow, process, and distribute frozen produce in a blended form. They will be incentivized to increase sourcing of products from abroad and limit sourcing of domestic products and to relocate domestic manufacturing facilities to locations abroad. This outcome is ironic, given that the intent of the new labeling regulation was to aid U.S. agriculture. These unintended consequences are anticipated because of the ambiguity of the processed food exemption as it relates to frozen produce. Congress wisely excluded ingredients in processed products from coverage under the act. At the same time, by using PACA as the framework for the produce provisions, it appears Congress inadvertently included frozen produce in the new labeling scheme. USDA has interpreted the legislation to include frozen, yet the complexity in labeling is no less for blended frozen produce than for other processed product.

For my industry, this issue is not one of tracking or segregation. We currently know not only a product's lot number and plant of repackaging, but also the country of origin and the portion of the grower's field from which the product was harvested. It is extremely more difficult and considerably more costly, however, for U.S. processors to implement the legislation as written for blended-produce products which does not apply to foreign competitors. Frozen produce of foreign origin already is required to bear a country-of-origin marking under section 304 of Tariff Act of 1930. For example, frozen okra grown in Mexico and frozen in Texas must be marked product of Mexico. For a product that contains produce from multiple countries of origin, each of these must be listed on the package. Therefore, right now in any supermarket in America a consumer who wishes to know whether the frozen broccoli he or she is about to purchase came from outside the United States need only to read the product's label. The USDA guidelines will complicate substantially the country-of-origin labeling scheme for blended frozen produce. For example, a product such as a frozen mixed fruit salad or a frozen vegetable stir fry will be subject to different labeling requirements depending upon the location of the processing. If any processing occurs in the United States, the label must identify all source countries in the order of predominance by weight as well as the fact that the processing occurred in the United States.

To demonstrate my concerns, let us look at the poster showing a label for a typical domestically-processed vegetable stir fry as it would have to appear under in the legislation. As you can see, this product contains seven ingredients, and each of these, along with this country of origin and location of processing, would have to be displayed. Unfortunately, there are several complicating factors. As you can see on the next poster, there are variations in raw material sources. The seven ingredients can be sourced over time from 9 different countries including the United States. This means there are 216 possible declaration combinations for this example. Clearly, it would be impractical to preprint this label because of sourcing changes due to seasonal and other conditions.

Currently, processors use an ink jet machine to comply with the country of origin requirements under section 304. However, under the duplicative country-of-origin regulations now proposed by USDA, this would not be possible. The current ink jet coding capabilities of industry only allow a maximum of two lines and up to 25 characters. As a result, the labeling required in this example is not possible under existing technology.

In fact, if the blending occurred in Mexico and produce from the United States were excluded, the product could be shipped in bulk to the United States for repackaging. USDA would regard the product as having retained the country of origin as determined for Customs. As you see, the label is much simpler and can be printed using the current technology.

The disparity between the complex scheme of country-of-origin labeling required for the product blended in the United States and much more simplified labeling for the bulk or retail-packed import product reveals that the new labeling scheme creates a major disincentive to blend in the United States and use U.S. produce. Large

and medium-sized processors that have overseas blending operations will divert blended value-added processing to those facilities. Small- and medium-sized firms who do not have an overseas operation will be inclined to confine their production to lower-value, single-ingredient products.

Some might argue that by using only U.S. produce, you could preprint the package and thus comply. Unfortunately, there are a variety of reasons this is not practical. Some commodities are not available in the United States on a consistent year-round basis; others are not available in the United States at all. In addition, it is clear that a frozen food processor's belief the simple Made-in-the-USA mark would provide a marketing advantage, more processors would produce and market such a product. Current law allows for voluntary use of Made-in-the-USA labeling, assuming the product qualifies for such designation.

In conclusion, I would like to report that there is good news in the world of produce. Due to the increased awareness of the importance of fitness and nutrition, consumption of frozen produce has increased, and I am hopeful that trend will continue. The blended products I have described are leading the way in providing a nutritious, convenient, and value-added choice to consumers in the produce category. It would be a shame, however, if, due to good intentions, U.S. farmers were not able to participate in this growth.

The unintended consequences for regulating our products twice are a good reason why this type of Government-mandated market intervention, however well-meaning, should be avoided.

Thank you for the opportunity to present my views. I would appreciate to answer any questions you may have.

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

Mr. LUCAS of Oklahoma. Thank you, Mr. Walker. Mr. Campbell, when you are ready.

STATEMENT OF J.H. "JAY" CAMPBELL, JR., PRESIDENT AND CEO, ASSOCIATED GROCERS, INC., BATON ROUGE, LA

Mr. CAMPBELL. Thank you, Mr. Chairman. My name is Jay Campbell. I am the president of Associated Grocers in Baton Rouge, Louisiana. Our company is a retailer-owned company and services 245 independent community-based and community-focused independent grocers in four States: Texas, Louisiana, Arkansas, and Mississippi.

I want to thank the Committee on Agriculture and Chairman Goodlatte and Mr. Stenholm for allowing us to be here today to represent their interests. I would also request that our written comments be placed into the record as well.

I have been very interested in listening to the testimony on the other two panels, as well as my copanelists on the third panel, and it is quite obvious that the purpose of the country-of-origin labeling is very much in doubt. Was it food safety? Was it food security? Was it consumer information or marketing? Or was it truly just protectionism to ensure that American producers and processors could compete with foreign competition?

The debate over country-of-origin labeling has gone on for approximately a decade, and I think we are at a crossroads today to

determine what type of public policy we want to present in the United States as it relates to the origin of food products. Do we want to have a public policy where only selected products available in selected retail outlets are subject to costly, burdensome, and useless labeling on certain products to protect certain domestic providers, producers, and processors, and truthfully place the burden and risk—financial risk, I might add, on retailers and distributors who have no firsthand knowledge of where the country of origin of the product was?

Or, do we want to promote a type of public policy that adequately funds USDA and FDA, and provides more efficient and effective food inspection efforts at the borders of the United States?

I have heard testimony earlier today where USDA was footed with the blame for all that has occurred in this process, when in truth and fact, the audit trails and the penalties and the fines were all legislatively placed into the laws which they are mandated to enforce.

I think we would be better off with a public policy which promotes current domestic producers to voluntarily label their products and use their domestic origin as a marketing advantage with consumers, no different than Florida does with oranges, Nebraska does with beef, Idaho does with potatoes, and I can assure you Louisiana does it with crawfish.

If safety and security were the issues, then why were food service, convenience stores, grocery stores below a certain volume level, airlines, passenger trains, hospitals, restaurants, and nursing homes, retirement homes, school cafeterias, and fast-food outlets exempt? Do we not want to protect them as well, the young, the elderly, the infirmed, the ill, the travelers, the retired, and obviously the general restaurant-going public?

What difference does it make where the banana came from if it is bought in a grocery store or it is actually provided in a restaurant, a school, a nursing home, an airline, a retirement home, or a hospital? The difference is marked in this law, where, one you would have to though its country of origin, the other you would not. Those same questions could be asked of beef, pork, lamb, seafood, fish, and produce items.

The time limit today will not permit me to go into the extraordinary recordkeeping and retention requirements and the fines and penalties associated with that, but I can assure you that the maintenance of 2 years worth of records is untenable, is unbearable, and is almost unbelievable to comprehend, and yet that is in the law and there are significant financial penalties and sanctions for failure to do so.

In closing, I think our better course of action is that we should ensure, with proper legislation, safety of products for consumption. And we should do that at the borders in our country, and we should ensure that USDA and FDA are funded properly and that they follow process and procedures that are objectively and consistently applied to ensure the safety and security of the American product. But we should also encourage our domestic producers and processors to state that their products voluntarily are domestically raised and produced, and take advantage on a marketing basis that the peaches came from Georgia or the strawberries from California

or the oranges came from Plaquemines Parish in Louisiana or the gulf waters of our Gulf of Mexico.

We enjoy the greatest variety, selection, and choices of food products for the American consumer each and every day. We should preserve that free marketplace and never be afraid of the diversity of choice we enjoy, but strive for continued food safety and security regardless of the source of the product's origin.

The Made-in-America label or the domestically-produced label should be a badge of honor, and the availability of imports should never, ever be viewed as a threat to our American producers and consumers.

I would honor the opportunity to answer any questions to you, and thank you for the opportunity to be with you today.

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

The CHAIRMAN [presiding]. Thank you, Mr. Campbell. Mr. Ray, welcome.

STATEMENT OF GARY RAY, EXECUTIVE VICE PRESIDENT, REFRIGERATED FOODS, HORMEL FOODS CORPORATION, AUSTIN, MN

Mr. RAY. Thank you, Mr. Chairman. My name is Gary Ray, the executive vice president of the Hormel Foods Corporation based in Austin, Minnesota. I am speaking here today on behalf of the Hormel Foods Corporation and also Jenny-O Turkey Store, one of our subsidiaries based in Wilmer, Minnesota. We would like to share with you our thoughts on the country-of-origin labeling law that has been enacted.

Hormel Foods slaughters and processes hogs raised by producers located basically in the Midwest, many of whom purchase piglets born in Canada that are shipped to the United States after 18 to 21 days of birth. The law requires country-of-origin labeling for livestock born, raised, or slaughtered in a foreign country. The country-of-origin labeling, if enacted, would require Hormel Foods to implement several hog procurement practices in order to comply with the requirements of the law. Under the current language, this would put a vast majority of the requirements back on our 3,000 hog producers that are required under the country-of-origin labeling to maintain up-to-date recordkeeping systems. Hormel Foods, per the country-of-origin law, would require from our producers' third-party verified documentation and audit trail providing where the animals were purchased and where they were born and raised. The producer will be required to sign a legal affidavit with each load of hogs stating there is a third-party verified audit trail in place which identifies the origins of the hogs of each load delivered to our plants each day. Hormel Foods will also be required to perform random producer audits, verifying that the accuracy audit trail is in place so that we can comply with the country of origin. This must be approved by the USDA certified third-party. If Hormel Foods is issued a fine or a penalty resulting from a producer noncompliance, that fine will be assessed to the party responsible.

Because of the large variety of items, over 3,500, that Hormel Foods manufacturers, tracking packages that are both U.S. and Ca-

nadian origin will be extremely difficult. It will require keeping the Canadian hogs separate in the holding pens, keeping raw materials separate in the coolers, across the cutting floors, and all the way through the processes into a proper labeled package. It will require a substantial capital investment on Hormel's part.

You were all aware of the categories covered within the country-of-origin labeling. What is perplexing is the inconsistency in which the law was written. First, poultry, one of the highest consumed products of proteins in the United States, is not included. Second, the law exempts products sold through the food service via restaurants, channels where billions of pounds of these categories are consumed annually. Finally, it does not include products that are further processed which use many of the same meats that are under the other provisions.

If this is a right-to-know issue, why were these categories excluded? Other food products today carry labeling identifying only the location of the final manufacturing. Wheaties doesn't identify the origin of the wheat, Minute Rice doesn't identify the origin of the rice. Meat shouldn't be any different.

We are certainly not proponents of adding additional categories. Rather, this is to point out that these are all contradictions that are confusing to the manufacturer, producer, and consumers alike. If the purpose of country-of-origin labeling is to provide the consumer with the right to know, we question the bill.

Despite the law's applicability in only a relatively small percentage of our company's pork products, we must out of necessity know the origin, where every pig was born for every pig that Hormel Foods slaughters, because different parts of that same pig wind up in processed foods which is exempt, food service channels, which is exempt, and fresh and refrigerated, which is nonexempt. Requiring so much information for so little doesn't make a lot of sense. There is a lack of depth and quantifiable consumer preference that perceive need for country-of-origin labeling. Studies have been referred to——

The CHAIRMAN. Mr. Ray, we have a vote on the floor. Can you wrap up?

Mr. RAY. Sure. Studies have shown that the Colorado University and Nebraska University conducted studies of 273 random people, and on country-of-origin labeling it ranked 8 out of 17 of importance, much more behind food safety and freshness of the product.

So, in closing, I would just like to say—and I would like to have all my testimony put into place. But we would support a volunteer program for country-of-origin labeling. Hormel Foods thinks it is very viable that we serve our customers, must continue to stay in contact with our customers, and, even more importantly, listen to our customers. The customers are not asking for this information on the label, and we would like your cooperation in working with you to undo some of the burden that will be put on many small producers.

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

The CHAIRMAN. Thank you, Mr. Ray. And we will stand in recess and come back for questions in a minute.

[Recess]

The CHAIRMAN. The committee will come to order.

Ms. White, a new concern has recently arisen about the implications of this mandatory country-of-origin labeling law. It has been asserted that misrepresentation of country of origin may also give rise to third-party civil actions by competitors for injunctive relief and monetary damages. I appreciate that your organization may not have had an opportunity to fully evaluate this threat, but would you like to offer any observations about this potential problem for the companies that your organization represents?

Ms. WHITE. I would. Thank you very much, Mr. Chairman, for the question.

Indeed, we do perceive that retailers could be subject to additional liability because of the country of origin claims that they are going to be forced to put on their products and the products that they sell in their stores as a result of the information they receive from suppliers, if that information is inaccurate, or if it is perceived to be inaccurate. Ms. Bryson this morning spoke about the potential liability under the Lanham Act. We believe that this is a concern. Certainly there are State laws that give consumers the right to sue for violation of other laws, of Federal laws. So that even though there isn't a private right of action that is specifically specified in section 10816, we do perceive that the claims that are made could subject retailers to liability under State laws, under the Federal Meat Inspection Act, under the Food, Drug, and Cosmetic Act, under the Lanham Act, and indeed under the Federal Trade Commission Act as well.

The CHAIRMAN. Very good.

Mr. Bull, many are concerned that a country-of-origin labeling requirement will add cost to the processing and marketing of meat products. The USDA has produced a figure of $1.9 billion. What do you think of that figure, No. 1. And, No. 2, what mechanisms would prevent these costs from being shifted to producers who are traditionally the price-takers in livestock markets?

Mr. BULL. Thank you, Mr. Chairman. First of all, I think the cost estimates that I have seen out of the USDA reflect their estimate of all covered commodity and recordkeeping costs alone. We have tended to try and look more at the studies that look within a segment for the total cost, which would include redoing our businesses to comply with the law as well as recordkeeping and other nuances to the law. Those costs for the beef industry generally range from $1.5 billion to $3 billion. And I think those are real costs. Within our business, clearly, we are going to have to retool and change the way we do business. We are going to have to figure out how to attach a label from an animal coming in our door to a box going out. That is going to require some major changes within our plant operations, and those are not cheap.

So I believe that costs are clearly there. And all of us that are middle-players in this type of system, whether you are a feed lot operator or a packer processor, we are operating on thin margins. And additional cost, whether they are added to our business or whether they are added to the retailer or whether they are added to the feed lot in compliance will then get spread to the industry. If it is not going to be covered by a consumer by paying higher

costs, then it will have to be moved back to the initial point of production.

The CHAIRMAN. Is it going to be cheaper for you to buy foreign-produced beef?

Mr. BULL. I think, if the question is, do I see price differentials coming in different origin of animals? I clearly see that happening. And that will really be more a function of the nuances, I think, that were addressed by some of the retailers in handling multiple-origin animals. The early responses we have had back from retailers is that it is much simpler in this type of system to deal with one or two origins of animals rather than multiple origins. And so as we see that ripple back through the industry, there will be price responses paid for multiple origins only on the basis of nuances rather than the quality of meat.

The CHAIRMAN. Thank you.

Mr. Peterson, how much correlation is there between what consumers say they would prefer and what they actually buy and consume? Do you have any data to tell us whether their purchase habits parallel some of the surveys that have been cited by some to justify COOL?

Mr. BRUCE PETERSON. We do, Mr. Chairman. It depends a lot upon how the question is phrased to the consumer. For example, if you were to ask the consumer: Would you like to see the country of origin marked on a package? almost universally they will say yes. If you frame the question: What are the decisions that you go through in selecting a product or item at the point of purchase? country of origin doesn't even show up. What most customers are looking for is quality, price, appearance, and those types of things. So a lot depends on how the question is framed. But if you were to look, for example, in the organic industry, if you were to ask the question of consumers: Do you feel that organically grown food is healthier or safer, almost universally customers will say yes. But that represents less than 1 percent of the total purchases within our various commodity businesses.

So there is a very definite disparity between oftentimes what consumers say in a survey and their actual behavior in purchase patterns.

Mr. OSBORNE [presiding]. Thank you very much. My time has expired. The gentleman from Texas, Mr. Stenholm.

Mr. STENHOLM. I think today we have seen a consensus develop that COOL is not a food safety program, it is a marketing program. It is a marking issue. Now, the supporters of COOL, even though they admit to that, also imply that the consumers will be reassured about safety if they know where their food came from. Now, you just commented on that. From the standpoint of consumers. From the identification of where it comes from. The obvious conclusion on the food safety, and this is my question to you, do you believe that traceability and identity preservation will become a necessity in the marking system of food in the near future? All of you.

Ms. WHITE. Well, I would be happy to address a couple of points that you raised. First, I agree, FMI certainly agrees that food safety and food marketing are two entirely different things, and I think a number of very good points were made today by yourself included regarding food safety and country of origin.

To that I would add on the meat side that all meat that is processed in the United States is processed under continuous FSIS, USDA inspection, so regardless of where that cow was born, regardless of where it was fed, it is all governed by the same standards once it come to processing. Do I think trace-back is an inevitable consequence in our food supply? Possibly, but maybe if you need a—if it is decided that it is necessary for food safety or food security or animal health or animal welfare, this is a marketing law as has been pointed out and we believe that there are serious flaws in that marketing law. So to try to shoe-horn in a trace-back system into a flawed marketing law we think is doomed to failure.

Mr. STENHOLM. Anyone else wish to comment?

Mr. WALKER. Mr. Stenholm, in my industry the frozen fruit and vegetable industry, we have the ability to trace back currently. We can trace product back to the not only the country of origin but the field of harvest. And we have—we keep records, have our providers, whether they be growers or outside bulk providers, keep records as to every chemical that's been applied to that product during the growing process and so that we can, at any time, know literally everything there is to know about that product.

Mr. STENHOLM. I think that will be sufficient. Anyone else wishes to comment on the record. And in my remaining time, I wish to just ask for your help. I think there is a consensus that the law we are talking about is flawed badly. We have now got a situation in which we have told or could be telling the USDA don't fix it. I am not sure that's a good solution. But if we are going to fix it, we need to have folks help us to fix it. So I would ask you to consider and then provide for the record and even a little quicker than that to this committee, suggestions of how we can take the law and fix it so that it accomplishes what we need to accomplish regarding country of origin without doing the damage that the current law will do if enforced as we wrote the bill.

Not as it's being interpreted, but as we wrote the bill. So that is the challenge that this committee has and we will appreciate the help, if you have got any from each of you, to help us do that in a way that will solve the overall political problem which can very fast become an economic problem for the very producers that are advocating it as strongly as they advocate it today which is certainly something that I am interested in, very much so. And so if you can help us on that, we would appreciate it.

Mr. OSBORNE. Thank you, Mr. Stenholm. I certainly would echo Mr. Stenholm's remarks that this is not a matter anymore of debating whether it is a good idea or not. It is something that's going to happen and therefore we certainly need to be as proactive as we can be. I have just two or three questions I'd like to ask. First of all, it is my understanding that there are roughly 60 countries that require country of origin labeling right now.

Apparently this has not been so burdensome that they have not initiated it and stayed with it. So I wonder if any of you would care to comment on how effective this has been, why you see country of origin labeling practiced in other countries where apparently as an industry, the packers and processors are so much against it here today. And you are obviously in the arena you get a chance

to see this played out, and so any thoughts that you have, I would appreciate it on this issue.

Mr. BULL. I will give it a shot. You know, I am not familiar with all of the different nuances of country of origin labeling in different countries. We know that some were in response to different thing that occurred in their country. I think it was more of a trace-back system that was built in some countries to deal with an outbreak of BSE or foot and mouth as a trace-back system, rather than more of a country of origin labeling. Some have initiated country of origin labeling for those particular reasons. I doubt if they are anywhere near as burdensome as this is, and particularly because I doubt if other countries have the nuances in agriculture that we face here today.

Mr. OSBORNE. OK. Thank you.

Mr. Campbell.

Mr. CAMPBELL. I would just add that I don't think you would find in another country where they are so penal and challenge and hold accountable the retailer or the distributor who has no control over where the item in question came from in the first place.

Mr. WHITE. I would echo what Mr. Campbell said. I was going to make the same point. I would also add that people have suggested that applying the system that is used in Florida might be one way to make this country of origin labeling law the Federal law work for smoothly. But I would suggest to you that the Florida law is entirely different in the way it is written and the way it is structured than the Federal law. The Florida law only requires—first of all, it only applies to imported food products. It only applies to fresh produce, bee pollen and honey. And it only requires that the food products imported products be marked. And then the only prohibited act under that statute that is for the retailer is to remove the labeling.

So you have got a very different structure from which to work, and so although some and particular in the produce industry have said well just use the Florida model, I would suggest that that really isn't applicable in this case, since the laws are structured so very differently.

Mr. WALKER. Mr. Chairman, I might comment that in our industry, the frozen food and fruit and vegetable industry we already label with country of origin under the section 304 of the Tariff Act of 1930. And our comment simply is we don't need to be mandated a second time. We are already doing it. It is already there. The consumer has the information available to them. Why do it twice?

Mr. BRUCE PETERSON. Congressman, my comments were going to mirror much the same as Ms. White's comments were, except I was going to use Canada as a reference. And very recently I have traveled quite a bit around Canada to see how they implement the law which they have enacted and apparently that has been there for about 30 years. And what I find most interesting, particularly in the produce area, is that more often than not, the signing that is placed there is more misleading than accurate. Because of the quick-changing of produce that comes in and out of their departments a sign, for example, may say the bananas are from Colombia when the little sticker on the banana says it is from Ecuador. And I see that more often than not.

So unfortunately, the customers there are being misled almost as often as they are being informed.

Mr. OSBORNE. Well, thank you. I think you can sense the frustration on the part of many producers because what they thought was going to happen doesn't seem to be what's going to be implemented. And I know I can sense your frustration as well. And so we have got a little bit of a dilemma here and we are going to have to figure out how to get a way out of it. And with that, I would yield to Mr. Gutknecht.

Mr. GUTKNECHT. Well, Mr. Chairman, I don't have the way out of that dilemma, but I do have a couple of questions or comments and I would like to address my first, I guess, comment and or question to Ms. White, Mr. Peterson and Mr. Campbell. You talk to consumers every day. You and/or your organizations talk to consumers every day. Is it your assumption, or is it your belief that consumers really don't want this because the advocates say the consumers do? And I heard a little bit of what Mr. Peterson said earlier and programs you can just—what is your assessment in terms of what consumers want?

Ms. WHITE. I will start. Consumers want, first and foremost, they want high quality reasonably priced food. They want it all year long. They want to be able to walk into the store and regardless of whether it is October or it was a bad rainy season in Mexico or the growing season hasn't started yet in the United States. They want to be able to pick up a fresh bag of good tasting grapes or beautiful strawberries. That is what they really want. Our members have looked at some of these issues. A 64 store high end privately held retailer went back and they received 38,000 customer communications in 2002. 332 of those were about labeling. None was about country of origin. They had 92 million customers in that store during that time.

Consumer data that was presented this year, United Fresh Fruit and Vegetables conference showed that 59 percent of consumers when asked said they don't look for country of origin labeling at all. Another 27 percent said they sometimes look but it is not a major concern. That's 86 percent. The Umberger study that was cited earlier today, even though it is only of a handful of consumers, when they were asked to rank things that they might find of interest, country of origin came in 8 or 9 well behind freshness quality price and a number of other characteristics.

So while we certainly wouldn't say that consumers aren't interested in country of origin, we think they place a premium on quality, fresh products that are reasonably priced.

Mr. BRUCE PETERSON. Congressman, we have over 40 million customers a week shopping in our stores for food. I have never had a single request caller or otherwise a consumer asking about the country of origin of a given product they shopped in the stores. What the customers are looking for when they shop into our stores is fresh, wholesome products that look great that is priced right and that they can rely on that the retailer working with their suppliers have insured the safety of, and we are fortunate that our Federal regulatory bodies ensure that whether it be domestic or imported so the customer is really looking for that value proposition every single time they shop and country of origin frankly

doesn't even register into that decision process unaided when they make that purchase.

Mr. CAMPBELL. I would echo exactly what my counterparts have just said about that. I might just add the only time we have found people are interested in a country of origin or a country of location issue is to differentiate an item they want as opposed to one they do not want. In other words, if they are looking for Norwegian salmon, they want to see it is Norwegian salmon. And they will go for that. Or they want Louisiana crawfish, which is, by far, the best as opposed to something that comes from an imported item. But they want to know that that particular item may be that way, but it is from a differentiation standpoint.

It is never a question that they are curious about it. When you put bananas on the rack they truly do not know if they are coming from Costa Rica or coming from Honduras or Ecuador or any of the producing countries, and they really don't care. They are just looking for a wholesome item that they can have to get the vitamins and nutritious ingredients that they are looking for.

Mr. BRUCE PETERSON. Congressman, may I add one other thing to what my colleagues have suggested?

Mr. GUTKNECHT. Sure.

Mr. BRUCE PETERSON. That when you think about it a retailer is the closest entity to the consumer. Day in, day out they are shopping in our stores. And it would almost appear rational that if there was an outcry from the public for country of origin labeling, retailers would have already done it. We wouldn't be waiting for legislation or regulatory activity to cause that to happen because every day we listen to our customers' concerns. And if we are not responsive to that, the customers won't shop our stores.

Mr. GUTKNECHT. Markets work, right?

Mr. BRUCE PETERSON. Markets work.

Mr. GUTKNECHT. Let me go back to Mr. Bull and Mr. Ray, because I raised the issue earlier about what potentially the impact could be to the smaller producer, particularly of livestock. What's your general assessment of that? I mean, if you have to be—if these folks begin to push back on you and you begin to push back on the farmers and ranchers, who gets hurt in the deal?

Mr. BULL. Well, I think you have hit on the point that is concerning for the small producer. We have some alliance systems that could more easily adopt and already have some sort of trace system of their animals. The producers that don't are generally the smaller ones that haven't adopted those type of systems, and so as we are putting pressure on us by AMS and the regulatory fashion or by our retail partners to guarantee that we can stand up to these audits, we are going to be looking to producers that could also stand up to audits and give us the information we need and so anybody that's not able to do it is going to be in peril.

Mr. RAY. I think another point with small producers is that, let's say that they might have 20 feeder pigs from Canada mixed in with a hundred pigs from the United States. To keep them separate in, say, one building, they are going to have to construct walls put up pens. It is much more difficult for a small producer versus a large produce are that might have numerous buildings that he can actually separate the hogs versus the small producer.

Mr. GUTKNECHT. Thank you.

The CHAIRMAN [presiding]. The gentleman from Michigan, Mr. Smith.

Mr. SMITH. I am going to ask you a question that isn't a subject of the hearing. But we have had legislation introduced that says we should have labeling to tell whether or not the food product contained any genetically modified foods. And going back to the market, have you experienced any demand in the marketplace from Greenpeace or others trying to insist that the store make an effort to label biotech derived products?

Mr. WHITE. I would be happy to start with that as a representative of FMI. We have not seen a huge outcry from consumers. In fact the situation is somewhat parallel. If you ask consumers do you want to know whether the food has been genetically modified, consumers may say, yes, sure, what the heck. But if you ask them just generally what are you looking for in food products? Again, that's not likely to come up very often. There was a more of a public interest a couple of years ago when it was big in the press, but since then, we really haven't seen very much focus on the issue.

Mr. SMITH. Mr. Peterson.

Mr. Bruce PETERSON. Congressman, we have heard from some fringe groups asking us to label genetically modified organisms. We are not hearing that from consumers at all. I think inherent in the American psyche is the belief that the American food supply is, in fact, safe and so there is a dependency upon our regulatory bodies as well as the retailers and suppliers working together to ensure that to be true. But from a consumer standpoint, we are not hearing it. There are some fringe groups that have been talking about it a little bit.

Mr. SMITH. OK. Back to country of origin. Even if we had a perfect bill, I have always been a little nervous that you might start using it as a marketing tool. Buy U.S. beef or buy U.S., produced wholesome health products produced under more regulations than any other country in the world or something. So you start advertising "buy U.S." And what should make us nervous is other countries saying look, don't buy U.S. They have got genetically modified foods and they—so I am a little nervous considering the fact that we export overall one-third of our agricultural products that you get into a war of what country you should buy from. Is that a real possible concern or not?

Mr. WHITE. I believe so. And I believe it goes back to the very good point that Congressman Dooley made earlier as well. How can we stand up and say in trade negotiations with the European union, how do we say on the one hand there is no sound science behind requiring biotech labeling, but, oh, yes, we want everybody to label for country of origin, and we have to put in place this very complex intensive costly system. I think it is hard to say that that's not a trade barrier, but what the EU is doing as well. And I think the same argument goes for you know if you ask consumers what do they want to know, if you ask them if they want to know what pesticides were applied to their apples or whether or not growth hormones were applied to beef. You ask a consumer if they want information, they are going to say yes.

Mr. SMITH. So can I, for the record, can I briefly get the comments of anybody that wants to comment that they think this is a real potential that might develop into some kind of a trade war that might end up being to our disadvantage?

Mr. Bruce PETERSON. I concur with what Ms. White said 100 percent. I think that is an absolute possibility.

Mr. SMITH. Anybody else?

Mr. RAY. I would also concur. I think the Canadians, in talking to them, they are very much looking for this because they feel that there will be a marketing advantage on their pork into the United States.

Mr. BULL. I think there is the other angle on the trade war is with the Mexicans. There's no doubt that in my mind, they are not going to allow us to continue to ship the amount of meat products into Mexico we do today without some sort of retaliation, given that we are going to be putting some labeling laws out that could limit their market access up here as well.

Mr. SMITH. Yes. That was one of my earlier questions and I sure agree. In fact I just finished meeting with the Canadian Wheat Board, and it evolved into this question of—because I am from Michigan and we buy some calves from Canada that are 3 or 4 weeks old. We feed them out to 600 pounds and sometimes they go back to Canada for finishing and just would be tremendously difficult at a time that we are trying to work for greater cooperation and greater free trade in Canada.

Mr. Chairman, that's all I have. Thank you. Gentlemen, thank you. And Mrs. White.

The CHAIRMAN. I thank the gentleman. I believe the gentleman from Texas wants to introduce something into the record.

Mr. STENHOLM. Yes. It is a little reminder in this morning's Washington Post of the thin ice that we are walking on with mandates and trade areas going back to Mr. Dooley's question. It says here fearing a "Buy American" law, U.S. defense firms expect foreign backlash. A vote passed in the House in which we said you have got to buy more stuff American. And we are for that.

It is hard not to be for that. But when you put it into the law, other countries will retaliate under the same law. As I implored you a moment ago to help come up with a solution, our producers are kind of struggling right now, and many of you with the market buying power that you have got a little advantage over individual producers, and you use it to your advantage, which is what the market is all about. That creates a backlash.

And as we look for a solution to this, it will be very helpful if more and more of those of us who are, or you who are the customers of those of us who produce can show a little bit more evidence of being sensitive to the question of competitiveness, and whether other governments are interfering with the marketplace that are allowing you to buy a product cheaper because other governments policy are making this cheaper.

So we have got a little problem with Boeing with airplanes in which air bus is subsidized, and yet we keep talking about the market and we ignore what other governments are doing, and there is just a little bit of that in this whole question of country of origin labeling because as you know, not every country plays by

the same rules we do. And that becomes a real problem, and one of which we have got to do a better job, a better sensitive job of addressing that or otherwise our producers are going to continue to feel as they do towards many of you. And they will be right.

I know in the cotton industry, forever I have been told we have got to produce better quality cotton. There was a big article out just in the last 2 weeks that I saw that showed that the better quality cotton that we produce, the lower the price. Price is what is sensitive. And I will never forget my first day on the—well, first year on the cotton incorporated board back way before Congress in which, at that time, we cotton farmers thought we ought to mandate that the American housewife buy all cotton shirts. And I thought it was a real good idea as a cotton farmer until I went home and tried to explain to my wife Cindy why she had to buy a cotton shirt and iron it, when a synthetic blend was non iron.

I lost that argument and we changed our mind. And then we found, lo and behold, that by blends and producing what the consumer wanted we sold more cotton. And we got a little problem in that area also. But as I asked you a while ago, this is an area in which we need to really come up with a constructive middle ground solution to this one. And you all can help with that, I do believe, and we will appreciate it if you will. Otherwise we have got to do it ourselves. And that gets dangerous.

The CHAIRMAN. Well, I thank the gentleman for his comments. And I want to thank all the members of this panel. You have made a very important contribution today. You know, when Congress passes legislation, sometimes we can't see all the way down the road to what the ultimate outcome is. And I know the gentleman from Texas and others had concerns with this from the outset and didn't want to go down that road, but the majority and the Congress approved the provision as it was contained in the farm bill.

And that's where we are right now. But as we move closer to that reality, we are getting a clearer and clearer picture of what the consequences of that action taken a year ago are. It is also true that you, who have had to look ahead and think about how this is going to impact those of you who are in the retail business, your customers, those of you in the supply chain, the people you are going to be selling to, and your participation here today, has helped to paint that picture a little more clearly for us.

And I am very concerned. I am concerned about the ramifications of a system that may wind up costing U.S. producers more than their foreign competition. I am concerned about a system that places liability on folks who very understandably are going to take a whole host of different actions to protect themselves and assure that they don't run a foul of the law. And in doing so, they may add even additional burdens that the Department of Agriculture, no matter how hard they work, to write regulations that are friendly to the consumer and friendly to the producer will still have to, the way this law is written, acknowledge the fact that other entities can take measures to require certification. I think that this is going to create not just a cost difference, but a convenience difference that will make it more attractive to use foreign produced goods. Exactly the opposite intent of I think well intentioned people who have promoted this effort.

I am also very, very concerned that we are going to run afoul, as the gentleman from Texas noted, of some trading relationships as a result of this and to very little benefit. We are going to find that we will see retaliation in ways that we didn't intend, and we will find competition in ways that we didn't intend.

So it is my hope that we will have the opportunity to find that middle ground that allows us to voluntarily promote the purchase by American citizens of American grown and produced products. That is something that everybody on this committee strongly supports, I strongly support, and we would like to see that happen. But, we need to find a different course of action in order to accomplish it. And slowing down the direction of where we are heading, I think, is a very good start.

So I thank you all again for your participation. Somewhere here in all this, I have some language that I need to share with you. Without objection the record of today's hearing will remain open for 10 days to receive additional material and supplemental written responses from witnesses to any question posed by a member of the panel. This hearing of the House Committee on Agriculture is adjourned.

[Whereupon, at 4:30 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF CHARLES LAMBERT

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today to discuss the farm bill's mandatory country of origin labeling provision and, more specifically, what USDA is doing to implement this farm bill mandate. I am Chuck Lambert, Deputy Under Secretary for Marketing and Regulatory Programs at the U.S. Department of Agriculture.

Section 10816 of the 2002 farm bill requires the Secretary of Agriculture to implement a mandatory country of origin labeling program at the final point of retail sale for beef, lamb, pork, fish, shellfish, perishable agricultural commodities, and peanuts after a 2-year voluntary program. Congress provided clarification for dealing with wild fish in the fiscal year 2002 Supplemental Appropriations Act, signed into law on August 2, 2002.

Mr. Chairman, as you may know, the Office of Management and Budget's Statement of Administration Policy on S. 1731, the Agriculture, Conservation, and Rural Enhancement Act of 2001, found the provision requiring mandatory country of origin labeling highly objectionable. The administration's position and the reasons for that position have not changed. We feel these new requirements will not have a positive effect overall and that the unintended consequences on producers and the distribution chain could be significant. At the same time, let me be clear that we do not oppose consumers having adequate information to make informed purchasing decisions. We do have concerns, however, about the approach that this law takes.

Notwithstanding the administration's view and the narrow parameters Congress adopted for this very prescriptive piece of legislation, USDA is fully committed and working diligently to implement this provision of the farm bill.

Implementation of this program began on October 11, 2002, when USDA published its "Guidelines for the Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts' in the Federal Register. The voluntary guidelines, effective upon publication, may be used by retailers who wish to notify their customers of the country of origin of covered commodities offered for retail sale prior to the implementation of mandatory labeling on September 30, 2004.

Significant efforts have been made in the development of the voluntary guidelines and in our initiation of the rulemaking process for mandatory labeling to consult with interested parties, including the public, industry groups, consumer groups, trade associations, foreign governments, and Congress. USDA met with over 40 different groups and associations in formulating the voluntary guidelines; we have received well over 1,500 comments since their release. In preparation for rulemaking on mandatory country of origin labeling, Secretary Veneman announced on March

5, 2003, that USDA would hold a series of listening and education sessions in 12 States across the country to gain more public input and provide interested parties more information about the new country of origin labeling law. Today, the last of those listening sessions is being held in Lancaster, Pennsylvania. Over the past few months, USDA also has provided numerous additional presentations and briefings. More than 1000 written and oral comments have been received thus far on the mandatory program. Throughout the listening sessions, other presentations, and comments received, proponents and opponents of country of origin labeling alike expressed concerns regarding the complexities and costs associated with implementing this legislation.

The law requires retailers to label, at the final point of sale, beef, lamb, and pork—both muscle cuts and ground fish, shellfish, perishable agricultural commodities, and peanuts as to their country of origin and further label fish as either wild or farm-raised. The law defines retailer according to the Perishable Agricultural Commodities Act as a business that sells fresh or frozen fruit and vegetables with an annual invoice value of more than $230,000. Approximately 4,200 PACA retail licensees operating some 31,000 retail outlets fit within this definition. By using this definition, Congress has exempted butcher shops, fish markets, and small retailers, in addition to the restaurants and other food service establishments the bill specifically exempts from the labeling requirements.

The farm bill defines the criteria for a covered commodity to be labeled as "U.S. Country of Origin." To receive this label, beef, lamb, and pork must be derived exclusively from animals born, raised, and slaughtered in the United States. There is an exception for beef from cattle born and raised in Alaska or Hawaii and transported through Canada for not longer than 60 days before slaughter in the United States. Wild fish and shellfish must be derived exclusively from fish or shellfish harvested in U.S. waters or aboard a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. Farm-raised fish and shellfish must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States. Fresh and frozen fruit and vegetables, as well as peanuts, must be exclusively produced in the United States.

The Act says "covered commodities" must be labeled unless they are an "ingredient in a processed food item." USDA believes there are some covered commodities that, while they undergo slight processing, still retain the original identity of the commodity. Examples include solution-enhanced and seasoned pork loins, frozen peas and carrots, frozen ground beef patties, and bagged salads. A "processed food item," as we defined it in the Voluntary Guidelines, would be a materially changed covered commodity or an item that has a combination of ingredients that include the covered commodity but the identity of the food item is different from that of the covered commodity. Examples of such items would include ready-to-cook Beef Wellington, ground beef in a meal mix, fish in sushi, apple slices in a pie, or peanuts in a candy bar. Other processed food items include cooked, cured or smoked meats and fish, and fruit juice.

The farm bill requires that all covered commodities be labeled at retail as to their country of origin and, as already noted, provides a very specific definition for "U.S. Country of Origin." For imported, mixed, or blended products, less statutory guidance is provided. Imported products, of course, are already subject to existing labeling laws and regulations. For some products, however, such as imported sides of beef, original country of origin labels currently do not have to be maintained through to the retail level once those products enter a U.S. plant for further processing.

Products with an origin that includes production or processing steps that occur in the United States and in another country create a labeling challenge. For example, fruit produced in another country and processed in the United States or meat from animals born in another country and raised and slaughtered in the United States clearly do not meet the statutory definition of U.S. origin.

Blended products provide a related challenge. These are products with covered commodity components that can be distinguished, such as salad mix, or indistinguishable product components, such as ground beef that are of different origins but combined together for retail sale.

We recognize that a number of State and regional labeling programs already exist. While farm bill country of origin labeling requirements do not preclude the use of these labels, they do not meet the criteria of an actual country of origin label designation. First, the law says country of origin, not a State or region of origin. Second, the labeling requirements for the existing certification programs, such as Iowa Pork, do not meet the labeling requirements of the Federal law. And third, if this sort of substitution were to be accepted for domestic product, similar treat-

ment would likely be required for imported product, allowing State, Provincial, or other regional labels U.S. consumers might not equate to particular countries.

Consumer notification as to the country of origin of covered commodities can occur in a variety of ways. Many fruit and vegetables already have country of origin labels directly on the product. Some beef, lamb, and pork have labels on their package, too. The farm bill language provides scope for these labels, as well as signs on a display or bin, or other forms of notification.

The law requires any person in the business of supplying a covered commodity to a retailer to provide to the retailer information indicating the country of origin of the covered commodity. It further provides the authority to require persons in the distribution chain to maintain a verifiable recordkeeping audit trail to verify compliance. However, the law does not specify what records are acceptable to verify country of origin claims and it prohibits the Secretary from establishing a mandatory identification system to verify the county of origin of a covered commodity. Thus, retailers and their suppliers must determine which records will be retained to verify the country of origin of covered commodities.

With the 12 listening sessions that USDA has been holding around the country, the process of developing a mandatory country of origin labeling program has begun. We expect to publish a proposed rule this fall with ample opportunity for public comment. A final rule will be published as soon thereafter as possible.

Due to the significant nature of the mandatory country of origin regulation, a comprehensive economic impact analysis will be prepared as part of the rulemaking to evaluate the costs and benefits associated with implementing this rule. The costs of product segregation, inventory management, and all other costs throughout the supply chain will be considered. This analysis will be important because with food handlers and retailers tending to operate on margins, we are concerned that America's farmers and ranchers will bear the ultimate costs.

As you know, USDA has experience in supporting industry's use of various marketing claims. We have quite a number of programs under which industry is already making credible, verifiable claims in the marketplace. These programs have several points in common. They are voluntary and market-driven reflecting focused marketing opportunities where consumers are willing to pay for the information provided. They do not cover all products to all consumers. They operate under standardized program protocols and records requirements. And, being market-driven, the incentives for compliance stem from increased sales, not the threat of punitive fines.

Mr. Chairman, the Congress has tasked USDA with the responsibility of implementing a country of origin labeling program for a wide range of food products. As I have already noted, we take this mandate seriously and will do our utmost to implement a program that meets the requirements of the law and minimizes the burdens on all concerned. I will be happy to answer any questions from you or the other committee memebrs. Thank you.

STATEMENT OF KEITH COLLINS

Mr. Chairman and members of the committee, thank you for the invitation to this hearing to provide information on section 10816 of the 2002 farm bill, the mandatory country of origin labeling provision for meats, fish, perishable commodities and peanuts. My comments focus on the economic analysis the Department of Agriculture must conduct in support of the proposed rule that is expected to be promulgated this year.

Analysis Requirements. Various laws, orders, and regulations prescribe the analyses that have to be conducted as part of a rule making process. USDA will provide an in-depth economic analysis to accompany the proposed and final rules for mandatory country of origin labeling. USDA and the Office of Management and Budget have determined that the rule for mandatory country of origin labeling is economically significant under section 3 (f) (1) of Executive Order 12866 (Order). This means that the rule is likely to result in an annual effect on the economy of $100 million or more or have other material effects, such as on a sector of the economy or on competition or other factors. Under this classification, the Order requires that USDA must provide an assessment of the benefits and costs of the planned action and of potentially effective and reasonably feasible alternatives to the planned action.

A cost-benefit analysis generally estimates the consequences of the changes in behavior of those affected by the regulation. The consequences are presented in monetary terms to the extent possible. Data, models, assumptions and uncertainties should be identified. Although a range of options should be examined for any rule, that range may be limited by the legislation.

The Agricultural Marketing Service (AMS) is responsible for ensuring that adequate economic analyses support the mandatory country of origin rule, and it is drawing on a team of experts from around USDA to conduct the cost-benefit analysis. The team is using the best available information on the costs and benefits of labeling as well as information provided to AMS through the three public comment periods it has held to date and from the education and listening sessions held around the country since March.

While the cost-benefit analysis to accompany the proposed rule is now underway, USDA staff and others have previously conducted analyses on the economic effects of mandatory country of origin labeling. That work is the basis for USDA concerns that have been raised about the expected net benefits of the rule. I want to illustrate these concerns by discussing several factors affecting the benefits and costs identified by these analyses.

General Observations on Benefits. Starting with the benefit side of mandatory country of origin labeling, some suggest that expected benefits stem from consumers preferring to have the label information so that they can choose to buy products by country of origin. Some claim that if consumers prefer to buy products of domestic origin over those that are not labeled or are labeled as originating in a foreign country, then there would be increased quantities demanded of retail domestic products and the likelihood of increased prices of retail domestic products. These higher prices and quantities at retail would generate higher prices and production through the system back to the farm. Consumers would benefit by having the information they need to make the choices they want, and those supplying the products would benefit by selling more at a higher price. USDA's cost-benefit analysis will assess whether these benefits occur.

For consumers to believe the label information, the program must be enforced to ensure against false claims. Some have proposed self-certification or raised questions about the level of recordkeeping that may be required. A general point is that if recordkeeping is inadequate to ensure the integrity of the program, consumers will not believe the label information and no benefits are likely. Trust requires verification and verification comes at some cost.

There is compelling evidence that the strength of consumer preference for domestic products is weak. This evidence is the lack of active voluntary programs that provide products labeled as domestic origin. Several years ago, USDA's Food Safety and Inspection Service in conjunction with AMS began offering the opportunity for a U.S.-origin meat labeling program for processors and others. FSIS would permit product to be labeled as domestic, and AMS would provide the process verification program to verify the label claim. No firms or organizations have participated in the program. Assuming that there are at least some U.S. processors who could implement a process verification program at reasonable cost, this lack of participation suggests that retailers and their suppliers believe consumer demand for domestic product compared with imported product is not strong.

If consumers do distinguish goods depending on their country of origin, strong incentives exist for industries to act without government intervention, that is, on a voluntary basis. A similar example to the preference for buying products by country of origin is the demonstrated preference by some consumers for organic foods. Like the attribute U.S. origin, the attribute organic generally cannot be discerned by taste or smell. Under various voluntary certification schemes, consumers can express their preferences and are willing to pay a premium, which is sufficient to cover the additional costs incurred by organic producers and sellers. This market-driven outcome is preferable to mandating that all food be organic or that all food be labeled according to method of production. While the market has given us the evidence that consumers are willing to pay for organic, it has not done so for U.S. origin.

Although some have argued that there is a benefit to a consumer's right to know that should be considered even if there is no demand effect of labeling, that benefit is not quantifiable.

We do not know of studies that have measured through actual market transactions the effect of country of origin labeling on consumer demand and concluded that the effect is large or that it will persist. One approach to gauging the preference of consumers for country of origin labeling comes from comments USDA received on the voluntary guidelines. A food retailer with five stores in the mid-Atlantic region noted that it received 38,000 customer communications last year, and none were about country of origin labeling. Similarly, another food retailer with 100 stores in the Midwest and South indicated that it received 22,000 customer calls last year. Only nine calls pertained to country of origin, and only one of those dealt with a covered commodity.

To measure the strength of consumer preference in the absence of market data, some economists have tried so-called willingness-to-pay methods to estimate the existence and strength of consumer demand for domestic over imported product or product without an origin label. Willingness to pay studies show that as many as 75 percent of U.S. consumers are willing to pay more for beef identified as U.S. born and raised, compared with beef that is not. Reasons suggested are that consumers perceive U.S. beef as safer, they believe it is higher quality or they desire to support U.S. agricultural producers. There are no data to suggest that imported beef sold in the U.S. is less safe than U.S. beef, nor can one conclude that imported meat is inferior in quality. Regardless of the reasons for consumers expressing a desire for this information, what is one to make of studies that say U.S. consumers are willing to pay more for U.S. beef? Such work must be treated with great care because the results are highly uncertain.

First, the survey respondents reactions are a function of the questions asked. A different questionnaire will yield a different outcome. For example, one recent study asks if consumers will pay more for U.S. beef but the question does not include compared to what. The respondent is left to decide whether they want U.S. beef or beef from who knows where. If consumers already believe they are buying U.S. beef and suddenly the package is labeled U.S. beef, it seems unlikely a price premium for domestic beef would emerge in the market.

Second, the respondent faces no real budget constraint. They are asked if they are willing to pay more, and may be asked to bid, but they are not spending funds from their household's budget.

Third, if consumers say they are willing to pay more initially, will they be willing to pay more the next day, the next month or the next year? Other industries with country of origin labeling, such as apparel, suggest origin preference will not persist if imported product provides similar quality at similar or better prices. An interesting example was recently reported in a trade publication concerning a Danish company that had stopped selling pork certified to have been produced with non-biotech feeds. The company had offered the pork as a test product, selling at a 10–15 percent premium. However, consumers were unwilling to pay the premium, despite surveys that indicated consumers wanted bio-tech free food.

The willingness-to-pay studies are an important contribution to our understanding of consumer preference and they support the notion that some consumers are indeed willing to pay more for U.S. beef compared with imported beef. But, even if some consumers are in fact willing to pay more for U.S. beef, can a price premium be captured in the marketplace? The chances are that it cannot, because the supply of U.S. beef is likely to far exceed the quantity demanded by those who actually would pay more. If studies show 75 percent of consumers hypothetically express a willingness to pay more for U.S. beef, then in the budget-constrained real world, the share of the population that actually would pay more is likely to be less, perhaps far less, than 75 percent, while the U.S. beef share of the total U.S. market exceeds 80 percent. Any attempt to price U.S. beef at a premium would result in excess supplies of U.S. beef at the premium price, which would result in the premium being competed down to a market clearing price.

While more analysis of benefits of mandatory country of origin labeling must surely be done, the work to date suggests very modest quantifiable benefits at best. The above discussion assesses consumer and producer benefits apart from the costs of implementation. If costs imposed on suppliers and retailers are large and exceed the benefits to consumers, then while prices of the covered commodities may rise, the quantity of meat demanded by consumers may decline. This result occurs when the implementation costs passed forward to consumers exceed the price premium consumers would pay for the origin information. In this case, farmers and ranchers could see lower farm-level prices, a lower market share, and higher operating costs for some. Let me now turn to a brief discussion of the costs of mandatory country of origin labeling.

General Observations on Costs. The expected costs of country-of-origin labeling fall into several categories. A 2000 USDA study, as requested by the 1999 Agriculture Appropriations Act, noted the major costs associated with country-of-origin labeling of meats were related to segregating and preserving the identity of imported and domestic product, labeling, and enforcement. The ultimate costs of country-of-origin labeling will depend on the number of the new activities required to comply with the regulations, and on the extent to which any new activities differ from current production and marketing practices. Firms will incur resource costs to the extent they have to reconfigure processing systems; implement new control/verification systems, including recordkeeping systems; produce signage or labels, and train staff. The government will incur costs to the extent that it conducts audits and other compliance activities.

Last fall, as part of the requirements of the Paperwork Reduction Act of 1995 associated with publishing the interim voluntary guidelines, AMS estimated the annual recordkeeping costs of creating and maintaining a voluntary country-of-origin system to be nearly $2 billion. These costs did not include any other resource, labeling, or enforcement costs. The estimates were preliminary and based on limited data and several critical assumptions. The estimate assumed all producers, handlers, and retailers would participate in the country-of-origin program, although in actuality all do not engage in producing or buying and selling the covered commodities. AMS also assumed that no records or record-keeping systems incorporating country of origin information and already otherwise required by Federal regulation were in place, and completely new systems would have to be created a critical assumption. AMS noted costs would decline over time and would be about $1.4 billion in subsequent years. Relaxing any of these assumptions would reduce the recordkeeping costs.

Several studies have reviewed the AMS estimates and the views range widely, from the belief the costs are seriously underestimated to the opposite view that costs are significantly overestimated. Therefore, reviewing these recordkeeping cost estimates will be a crucial component of the USDA cost analysis. Because the legislation is not specific as to what records will be required, except to note that the Secretary cannot mandate an identification system, the analysis of various options for verification systems may be necessary to assess least-cost alternatives. Much of the information on country of origin likely exists, but there is little reason for it to flow from one step in the supply chain to the next. Thus, there will be costs in transmitting that information through the system.

In addition to recordkeeping costs, another key area for the analysis will be the resource costs, which have been variously described as costs of segregation or preserving the identity of domestic versus imported product. These costs will reflect both the share of imported product used in domestic processing and retailing, as well as the specific manufacturing processes for each sector. USDA will likely have to analyze these costs on a sector-by-sector basis. In that regard, several studies have focused specifically on meats and live animals because of the highly integrated nature of North American beef and pork sectors.

Several studies have estimated costs for the cattle/beef and hog/pork sectors at between $1–3 billion annually, after examining costs for the entire supply chain, including identifying and tracking animals, reconfiguring processing plants, and retail tracking and labeling. Other studies have estimates above and below this range. The studies note that over 80 percent of U.S. beef consumption and almost 90 percent of pork consumption comes from domestic sources. Because food service establishments, restaurants, and ingredients in processed products are exempt from country-of-origin labeling, the implications for end use of imported versus domestic product in the beef and pork sectors will be a crucial area to examine.

Less work has been done on other covered commodities, but a few studies have looked at the cost implications for frozen food, fish and seafood, and fresh produce. We are not aware of any studies on peanuts. Again, depending on the assumptions used in the studies, the costs of implementation could be significant. We will examine these studies carefully as we conduct our cost-benefit analysis.

Another key question is who will bear the costs, which relates directly to the issue of assessing benefits from country-of-origin labeling. The direct burden of labeling falls on retail establishments, but where and how these and additional costs are distributed along the supply chain from farmers to consumers depends on the ability of the various participants to absorb or pass the additional costs on to buyers or back to suppliers. Although producers of covered commodities farmers and ranchers are not directly affected by the requirements, many are concerned that costs of segregation and identity maintenance will be pushed back onto them, in addition to their recordkeeping costs.

On the other hand, retailers may attempt to push their costs on to consumers. To the extent consumers do not care where their food comes from, increased costs would reduce their welfare. Consumers might prefer domestic products, but not enough to cover labeling costs. For producers, even if consumers do favor domestic over imported products to the point that it expands demand, costs imposed on producers directly and passed back to them may outweigh the benefits from increased demand.

Other Impacts. USDA will also examine the implications of mandatory country of origin labeling for trade, both on the import and export side. Depending on the commodity, trade accounts for a significant share of production and consumption. As noted above, over 80 percent of U.S. beef consumption and almost 90 percent of pork consumption comes from domestic sources, but exports of beef and pork have become increasingly important. Fish and shellfish imports now account for over two-thirds of U.S. consumption of these products. About 9 percent of vegetable consumption

comes from imports and almost 20 percent of fruits and nuts consumption (includes juices) is accounted for by imports. Exports of fruits, nuts, and juices account for over 13 percent of domestic output, and the share for vegetables is 8 percent, up from 5 percent a decade ago. For peanuts, exports have ranged from 15–20 percent of production, while imports have grown as a result of trade reform and are now almost 10 percent of domestic food use. Trade implications will mainly derive from potentially price effects on covered commodities. Again, the implications may be most significant for the beef and pork sectors because of the flows of animals and meats in an integrated North American market.

That completes my statement and I would be pleased to respond to questions.

STATEMENT OF NANCY S. BRYSON

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today to discuss the mandatory country-of-origin labeling provisions, and the legal requirements which USDA must implement under this farm bill mandate. I am Nancy Bryson, General Counsel of the U.S. Department of Agriculture, and I am pleased to be here today.

COUNTRY-OF-ORIGIN LABELING

The Secretary of Agriculture is required to implement a mandatory country-of-origin labeling program commencing on September 30, 2004. From that date on, all "covered commodities"must be labeled with their country of origin at the final point of retail sale. In effect, the statute mandates that retailers must make a marketing claim informing consumers of the country of origin of each covered commodity.

At the outset, it is important to note that country-of-origin labeling must be viewed in the broad legal context of other kinds of marketing claims, since the country-of-origin label distinguishes a commodity from similar commodities with different country-of-origin characteristics. In general, marketing claims are made to provide consumers with information that has been determined to be useful or material to a purchasing decision by them. As such, their truthfulness and reliability is paramount, and the laws require those providing such information to be able to substantiate its accuracy. Health claims must be supported by scientific studies. Other kinds of claims must be substantiated with data and records that will enable an agency exercising oversight to verify the truthfulness of the claim. The usefulness to the consumer of the information contained in the marketing claim would be nullified if the accuracy of the claim cannot be independently audited and verified.

STATUTORY REQUIREMENTS APPLICABLE TO RETAILERS AND OTHERS

The statute contains a number of very specific requirements, which USDA has no discretion to ignore or modify. Responsibility for making the country-of-origin marketing claim is placed upon the retailer by the statute, and USDA has no authority to adopt regulations that place that responsibility elsewhere. Additionally, the labeling of covered commodities of U.S. origin must meet highly specific statutory requirements that vary by commodity. For example, with respect to muscle cuts of beef, lamb, and pork, or ground meat made from them, the statute requires that the product be "exclusively from an animal that is exclusively born, raised, and slaughtered in the United States." To bear a U.S. country-of-origin label, wild fish must be either caught by a U.S. flagged vessel or caught in U.S. waters, and must be processed in the United States or aboard a U.S. flagged vessel. The retailer is required by the statute to make these claims, and USDA has no discretion to modify them. Furthermore, the statute does not authorize USDA to create a presumption that covered commodities are of U.S. origin if they are not claimed to be products of another country. Covered commodities cannot be assumed by default to be products of the United States.

The statute imposes an affirmative obligation on retailers to substantiate any claim of U.S. origin. How will the retailer obtain the information necessary for it to make this statutorily required marketing claim? The statute mandates that "any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity." With respect to beef, lamb, and pork of U.S. origin, the information must be sufficient to substantiate the statutorily mandated claim that the animal was born, raised, and slaughtered in the United States.

An issue created by the statutory language is that the term "covered commodities "does not include livestock, but much of the information that retailers must have

to meet their statutory burden of verifying and labeling country of origin can only be obtained from producers and handlers of livestock. However, USDA is not authorized by the statute to require them to provide the necessary information to packers and retailers.

It has been suggested that USDA could provide for a self-certification program, under which those who produce livestock could merely certify to packers and others who supply covered commodities to retailers that the livestock is born and raised in the United States. However, it is clear from the statute as a whole that self-certification by producers would not provide an adequate basis for those who supply covered commodities to retailers to substantiate the truthfulness of the information. Therefore, the retailer would not be able to verify and make the country-of-origin claim. Unless a country-of-origin claim can be independently verified, it will not provide consumers with reliable information that the Congress has determined that consumers want and need.

USDA Responsibilities Under the Statute

The statute authorizes USDA to require that "any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable record keeping audit trail that will permit the Secretary to verify compliance . . . ." Additionally, the statute requires that, if the Secretary determines that a retailer has violated its provisions, the Secretary shall provide the retailer with notification of the determination, and a 30-day period to achieve compliance. The statute also provides authority for USDA to fine retailers up to $10,000 for each willful violation after providing notice and an opportunity for a hearing. Other statutory provisions incorporated in the country-of-origin labeling law allow the Secretary to take enforcement action against those who supply covered commodities to retailers.

Although the Secretary's authority to impose specific regulations requiring a verifiable record keeping audit trail is discretionary, it is clear from the statute as a whole that a retailer must be able to substantiate the country-of-origin labeling claim that the statute requires the retailer to make, even absent a regulation requiring the retailer to do so.

The statute provides USDA with guidance on how to verify the country of origin of a covered commodity by citing several existing certification programs as models. Those programs include carcass grading and certification, voluntary country-of-origin beef labeling, voluntary certification of certain premium beef cuts, and origin verification systems carried out under the National School Lunch Act and the Agricultural Trade Act of 1978. It is important to note that all of these certification programs include record-keeping requirements that enable the agency to verify the accuracy of the claim.

Applicability of Other Laws to Country-of-Origin Labeling Claims

The country-of-origin labeling provisions require retailers to make specific marketing claims in the mandatory labeling of covered commodities. The truthfulness of these claims will have implications under other statutory authorities. For example, claims as to covered commodities subject to the Perishable Agricultural Commodities Act will be scrutinized for truthfulness under the provisions of that law. Mandated labeling claims regarding beef, lamb, and pork will also be subject to the labeling provisions of the Federal Meat Inspection Act. The Food and Drug Administration and the Federal Trade Commission may take action under their statutory authority over these claims as well. Finally, misrepresentation of country of origin may also give rise to third-party civil actions by competitors for injunctive relief and monetary damages under the Lanham Act.

Mr. Chairman, the country-of-origin labeling law requires USDA to implement a program for a wide range of food products. The Office of the General Counsel is working closely with the Agricultural Marketing Service as it designs and implements a program that faithfully carries out the provisions that Congress has incorporated in this statute. I believe that USDA is carrying out its obligations fully in accordance with the law, and is working to develop a regulatory program that is no more onerous than that which the law requires.

I am grateful for the opportunity to appear before you this morning and I will be happy to answer any questions from you or other members of the committee.

STATEMENT OF THOMAS E. STENZEL

Good morning Mr. Chairman and members of the committee. My name is Tom Stenzel and I am president of United Fresh Fruit and Vegetable Association (United).

United is a nonprofit association of produce growers, packers, shippers, distributors and marketers of fresh produce, working together with our retail and foodservice customers and allied suppliers. Our members range from the smallest family businesses to large multi-national companies.

We commend you for holding this oversight hearing today on USDA's implementation of the country of origin labeling statute as passed in the 2002 farm bill. For fresh produce, we believe the crux of this issue comes down to USDA's regulations to implement the statute. Will the Department continue on its current course outlined in its voluntary labeling guidelines, imposing huge needless costs and radically altering our ability to deliver fresh produce to consumers? Or, will USDA implement a simple country of origin labeling system for produce that has minimal impact on the industry, while complying with the statute.

Some of my members will argue that the whole issue has become so complex and potentially onerous that the quick fix is to pass a new law. Others argue that the intent of the statute to increase consumer information was wise, and that the key to fair implementation relies upon USDA's regulations. Consensus on this issue has never been easy, but our overall reading of the law is that USDA has sufficient flexibility with regard to produce to implement a fair and practical system if they so choose. We have provided an extensive regulatory roadmap to the Department which is attached as part of my written testimony today.

Let me highlight four main principles that we believe USDA needs to adopt.

First, USDA has the legal authority to develop regulations tailored to different commodities. I have no idea the complexities of the meat industry, but am confident that a produce specific labeling system can be more simple and less intrusive than the voluntary guidelines.

Second, USDA needs to rely upon existing law and regulations wherever possible. For example, produce traders are already subject to the Perishable Agricultural Commodities Act, and as such, are required to tell the truth in their buying and selling of produce. Retail grocers are legally entitled to rely upon the honest declaration of country of origin by a produce vendor, thus eliminating all need for audits or independent verification. Should a produce vendor present false information, USDA's COOL regulations should specifically state that a retailer would face no consequences for a willful violation under the Act.

Similarly, the Tariff Act of 1930 already governs the labeling of blended or processed imported products. Yet, USDA's voluntary guidelines have created a new concept of labeling blended product by order of weight in a container, with specific items and countries identified. In a fruit cup, we'd have to label cantaloupe from Guatemala, watermelon from Mexico, and Honeydew from Honduras, and hope we got the weight of each commodity in the right order. We urge USDA to propose a labeling system for blended products that allows the use of language such as "Contains product of Country X, Country Y and/or Country Z." This type of label would provide flexibility to fresh produce processors who frequently must change the source of ingredients due to product quality and availability, but would comply with the statute and still provide adequate disclosure to any consumer wishing to only "Buy American." In addition, USDA should consider some diminimus level of content in a blended product that would not trigger special labeling.

Third, USDA should use its discretion to comply with the intent of the statute, not create needlessly punitive and disruptive regulations. There are a host of issues I could talk about here, but the committee's patience would run thin. Suffice it to say, we're concerned that the Department almost seems intent on making the law as onerous as possible, rather than practical.

- For example, a retail sign "Washington Apples" or "Idaho Potatoes" would not be good enough to comply, without the additional words "Product of USA."
- A country name such as "Costa Rica" on a banana sticker would not comply without the preceding words "Product of."
- Even if the stickers on the fruit were in compliance, if a few of them fell off in transit, a retailer could be fined $10,000 for putting them out for sale. The voluntary guidelines simply fail the laugh test, although no one is laughing.

Finally, let me talk about record-keeping and verification. The voluntary guidelines impose a two-year record-keeping requirement, at retail store level no less. That is absurd. There is only one moment in time that verification of country of origin labeling matters under this statute that is at the precise moment a consumer

is making a choice at point of sale. Is the sign or sticker that tells me where the produce was grown accurate?

How does USDA verify the accuracy of that moment? An inspector walks into a grocery store, looks at the signage, and says, "Prove it." That's all. The store manager should have a reasonable period of time to consult with his corporate staff, check the records for what produce has been delivered to his store, and verify that his sign matches the bill of lading or country name on the box. You'll recall I said earlier that if a produce vendor puts produce of one country in a different country's box, he can already be prosecuted under PACA.

Verification is not that difficult, and cannot conceivably require extensive historical recordkeeping. Under what circumstances can you imagine an inspector walking into a store and asking what countries the tomatoes were from—that were offered for sale six months ago? It's irrelevant, and those records are simply extraneous to the intent of the statute. Yet, that is what is required in the voluntary guidelines.

In conclusion, I hope the committee can see our industry's dilemma. We believe the statute could be implemented in a practical way, but the voluntary guidelines issued by the Department are about as impractical as possible. That is why we believe this oversight hearing is so important.

At present, the mandatory date of October 1, 2004 is a sword of Damocles over our heads. If we knew the final regulations would mirror the voluntary guidelines, we would be here today urging repeal of the law. But, if the final regulations are fair and sensible, that step would not be necessary. That's our challenge. Every day that USDA does not propose final regulations makes it more difficult for the industry to wait, and risk a train wreck that we do not believe is inevitable. Our strong request to the committee is to urge the Department to proceed with great haste in publishing a fair, practical and balanced proposed final rule so we can see what our future options need to be.

However, should the committee wish to pursue legislative modifications to the country of origin labeling statute at this time, we offer to work closely with you in evaluating specific recommendations for improvement.

STATEMENT OF ALAN FOUTZ

Good Morning. My name is Alan Foutz. I am president of the Colorado Farm Bureau and currently farm 2,500 acres of wheat, sunflowers and millet in Akron. I am here on behalf of the American Farm Bureau Federation, and appreciate the opportunity to provide comments to the committee on the country-of-origin labeling law. Farm Bureau supports mandatory country-of-origin labeling as passed in the 2002 farm bill and we look forward to working with USDA on implementation of the program.

Congress debated country-of-origin labeling last year during the farm bill discussion and overwhelmingly voted in favor of mandatory labeling. Farm Bureau has participated in the USDA listening sessions and has been working with Undersecretary Hawks and the Agricultural Marketing Service on implementation. We believe the program can be implemented in a fair manner to all producers without large costs and burdensome paperwork requirements.

Much of the debate on country-of-origin labeling seems to be focused on meat and meat products. Farm Bureau supports a process verification system that livestock producers can use to verify any claims made as to country-of-origin to the packer. We have included the program details in our statement. A trace-back mechanism is not necessary to carry out the intent of the labeling law. The law specifically prohibits USDA from implementing a mandatory ID program. The law only requires the country-of-origin to be identified and labeled at the retail level. We support a process verification system that all segments of the industry can utilize to carry out the intent of the law.

Country-of-origin labeling is simply a labeling program to distinguish U.S. products. Our producers have a responsibility in working with all segments of the industry to carry out the labeling law. Farm Bureau will be presenting comments at the last listening session scheduled in Lancaster, Pennsylvania, in favor of mandatory country-of-origin labeling. USDA has had over eight months to compile comments and we urge USDA to issue a final rule before end of the year.

Farm Bureau supports the country-of-origin labeling law for the following reasons:

Labeling allows consumers to clearly differentiate U.S. and foreign products. Most U.S. consumers support additional labeling information and recent surveys indicate support for country-of-origin labeling. Our foreign customers support U.S. labeling because they know that U.S. products are the safest and of the highest quality. For

example, last week Japan asked for assurances that the product they were receiving from us was U.S. product, because they as well as our domestic customers trust in U.S. labels and products.

The labeling law passed in the farm bill can be implemented with little burden and little additional costs to producers. USDA has stated support for a process verification system that all segments of the industry can utilize to verify claims as to country-of-origin. Livestock producers with assembled herds of U.S., Canadian or Mexican stock will have to set up a system to segregate their animals in order to verify any claims they make as to country-of-origin. Obviously these producers will have more work to do than a producer with all U.S. born and raised animals. However, this is a reality of the law and our producers are willing to work with USDA to verify the origin of their animals. Florida has a fruit and vegetable labeling law that works very well and it is a cooperative program between the retailers and the Florida Department of Agriculture.

Country-of-origin labeling allows U.S. agricultural producers to promote the excellent products they take great pride in producing. This committee has worked diligently on behalf of U.S. producers and debated numerous farm bill programs with the goal of providing the American people with the most abundant, highest quality and safest food at the lowest cost to the consumer of any country in the world. The House Agriculture Committee should be proud and willing to support a law to label U.S. products.

Voluntary country-of-origin labeling will not work. There has been a voluntary meat labeling regulation for almost a decade and very little U.S. product is labeled as to origin in the grocery stores. A mandatory program is the only way to get all segments of the food chain coordinated to label final products for consumers. Consider if speed limits on highways, the U.S. taxation system, Federal security programs or nutrition labeling programs were voluntary. There was a great resistance in the food chain to label nutritional value on food products over a decade ago. Consumers have now come to expect nutrition labeling on all retail food items they purchase.

The labeling law purposefully includes meat, fruits, vegetables, peanuts and fish. It is important to carry out the law as passed in the farm bill and not split up commodities during implementation because it weakens the entire labeling program. All of the covered commodities in the law can be verified without great cost and record keeping requirements in cooperation between all segments of the industry.

Farm Bureau supports mandatory country-of-origin labeling and will continue working with USDA to implement the program. We look forward to the rulemaking process and working with USDA to carry out the intent of the labeling law as passed in the 2002 farm bill.

STATEMENT OF DAVID J. FREDERICKSON

Thank you Chairman Goodlatte and Congressman Stenholm for holding this hearing on an issue of utmost importance to the National Farmers Union. Mandatory country of origin labeling (COOL) has been a cornerstone issue for the over 300,000 members of NFU. As one of the largest general farm and ranch organizations in the country, our membership felt a major sense of accomplishment with the passage of COOL in the 2002 farm bill.

Unfortunately, recent actions in the House Agriculture Appropriations Subcommittee attempt to undermine this landmark legislation included in the 2002 farm bill. Not only did the subcommittee take aim at halting further rule writing by USDA, meat and meat products were singled out as the only target. Meat products are one of the four covered commodities included in the law. Given the current volatility of consumer confidence within the beef industry, it is simply counter-productive to tie the hands of USDA at this time.

Many opponents of mandatory COOL use the buzzwords, unintended consequences. We absolutely agree that there could be unintended consequences of COOL, should the U.S. Department of Agriculture and other opponents continue to railroad implementation. At a time when our largest beef export market is demanding assurances that beef products from the U.S. are born, raised and processed, and contain no Canadian products, the unintended consequences of the House Agriculture Appropriations Subcommittee could have catastrophic unintended consequences. Not only could this potentially jeopardize our largest beef export market, but it also erodes the confidence of U.S. consumers in domestic beef products.

We currently import 3.2 million pounds of beef into this country. Opponents of COOL continually argue that the market is consumer driven and there is no evidence of consumer demand for mandatory COOL. This is simply not true, nor is

there evidence to suggest this assumption is accurate. Numerous survey's and consumer studies have indicated American consumers overwhelmingly support mandatory COOL and are willing to pay a premium for that information.

A study completed by North Carolina State University in February of this year concluded that four out of five U.S. consumers believe U.S. produced food is fresher and safer than imported product. Consumers in Denver and Chicago were surveyed in March 2003, and asked to indicate their willingness to pay more for labeled beef. Seventy-three percent of surveyed consumers said they would be willing to pay more for beef with country of origin labeling. An average of those respondents indicated they would be willing to pay an eleven- percent premium for COOL on steak and a twenty-four percent premium on hamburger meat. Opponents continue to say consumers are not demanding COOL or consumers are not willing to pay a premium. This data clearly demonstrates to me a different story. Another stark fact is there is no data that refutes any of the consumer studies completed to date.

Similar to American consumers expressing a lack of confidence in beef products, our largest beef trading partners, Japan and Korea have expressed their concern over the 2.4 million pounds of beef exported out of the U.S. every year. Prior to the actions in the House Agriculture Appropriations Subcommittee, the U.S. was on the right path to provide the requested information to our trading partners. These actions could not have come at a worse time. It seems only prudent that USDA speed-up the process of implementing mandatory COOL not be slowed down. The reason the Congressional authors delayed mandatory labeling by two years was to allow USDA time to implement it correctly. Unfortunately, opponents of meat labeling have disseminated misinformation and scare tactics among producers during this timeframe, which has lead to a doomsday mindset among those in the countryside.

Country of origin labeling also provides U.S. producers, as well as those from other countries, with a mechanism that allows for product differentiation in the marketplace. This is really no different than the retail product differentiation sought by processors and retailers when they label or brand products as a means to gain acceptance, loyalty and increase their share of the market.

Country of origin labeling is not a new phenomenon in the United States. A large number of consumer goods, including many retail-ready food products, already contain a label as to their country of origin. Most recently, the World Trade Organization (WTO) upheld U.S. laws on determining the country of origin of textile and apparel products in a dispute brought by India challenging these rules. After the WTO decision, U.S. Trade Representative Robert B. Zoellick stated, "This is an important victory for American trade laws and American textile trade." I find it alarming that administration officials do not regard the agricultural industry in the same manner. The passing of mandatory COOL in the farm bill was an important victory for American agriculture, yet the administration and opponents continue to attack its merits.

Furthermore, COOL is not a new phenomena the global world. The U.S. has trade relations with 60 countries that already have country of origin labeling systems in place and working. The U.S. labeling law also does not violate our international trade agreement commitments in that it does not impose any additional restriction in the form of tariffs, quotas or non-tariff barriers to imports and the requirements apply to both the domestic and imported commodities enumerated in the statute.

While debate over the merits of the law continues, country of origin labeling for the listed agricultural products was approved by Congress and agreed to by President Bush. It is the law of the land. We should all be focused on the development of the rules and regulations to allow for the law's implementation in the most efficient and least burdensome manner possible in a way that provides accurate and appropriate information to consumers while minimizing the cost and potential liability for producers, processors and retailers.

National Farmers Union believes the implementation challenges can most easily be met by:

- Adapting the requirements of existing programs that require country of origin labeling to the new law.
- Expanding and extending the country of origin information already collected on imported agricultural products, which represents a small portion of the total product volume subject to the act, through the U.S. processing, distribution and marketing system.
- Allowing maximum flexibility in adapting existing record keeping and verification information and new information requirements to the audit provisions of the law.

Thank you Mr. Chairman for the opportunity to testify this morning. It is the hope of National Farmers Union that you disregard the misinformation being cir-

culated about COOL and work with USDA to implement the law as quickly and efficiently as possible. I welcome the opportunity to answer any questions you may have.

The new law instructs grocery stores to label fresh meats, fish, fruits, vegetables, and peanuts with the country in which it was grown and processed by September 2004. The corporate giants that would profit most from American consumers not knowing their foods origin have launched an anti-labeling campaign primarily fueled by misinformation and scare tactics.

STATEMENT OF LEO MCDONNELL

Chairman Goodlatte, Ranking Member Stenholm, and members of the committee, thank you for inviting me to testify before you today on behalf of the United States cattle industry. I am Leo McDonnell, president of the Ranchers-Cattlemen Action Legal Fund-United Stockgrowers of America (R-CALF USA). My wife and I own and operate Midland Bull Test which is the largest performance genetic evaluation center in North America and we ranch in Montana and North Dakota. Bulls from our test center have been sold in both hemispheres, with several bulls standing in the major United States and international A.I. studs. R-CALF USA focuses on protecting and promoting the interests of cow-calf producers and independent backgrounders and feeders who constitute the heart of this country's cattle and beef industry.

Accepting change is never easy and the landmark reform embodied within mandatory country of origin labeling is no exception. In today's marketplace, consumers are left uninformed as to the origins of their food and this limits their choices at the retail counter. This deficiency provides processors and retailers with a significant economic advantage over both livestock producers and consumers. This has been particularly frustrating for U.S. cattle producers who contribute approximately 92 percent of the available funding for beef promotion. What U.S. cattle producers have discovered is when packers are afforded exclusive control over where they source the inventories to satisfy beef demand, an increase in beef demand no longer translates into a comparable increase in demand for cattle born and raised in the U.S., or an increase in domestic live cattle prices. Our domestic markets are not functioning properly and the lack of consumer information regarding product origins contributes greatly to this problem. COOL is absolutely necessary in order to ensure that competition remains the controlling force in the marketplace, not the undue influence of dominant market participants.

Beef industry representatives and Federal officials have repeatedly told cattle producers that they must learn how to compete in a global market or they will perish. We have heeded this advice and find that the single most important factor in either domestic or global competition is the ability to distinguish one's product from among the competitors' product. COOL will enable us to do just that and, already, our largest trading partners, Japan and Korea, have reinforced the need for COOL by demanding we certify that our meat exports are derived exclusively from animals born, raised, and slaughtered in the United States. We also learned that no industry can hope to be successful if it doesn't do what its customers ask. The Nation's largest consumer groups, representing over 50 million American consumers strongly support mandatory COOL, and every published consumer survey regarding COOL strongly suggests COOL is desired by U.S. consumers.

Consumers and producers are the intended beneficiaries of the COOL law. We are dismayed at the tactics our opponents are using in their attempts to undermine the new law, but we understand the packing and retailing sectors opposition. They stand to lose the economic benefits they have long enjoyed by not disclosing the origin of beef sold in the United States. They stand to lose their ability to capture consumer demand signals and to satisfy those signals with products originating from the country of their choosing. COOL will give U.S. cattle producers the ability to differentiate their products from that of their importing competitor's products.

A. USDA HAS GENERATED UNNECESSARY CONTROVERSY OVER COOL

The COOL Act (Act) is well written and timely. If USDA were to implement the Act properly, it would impose no costs or burdens on U.S. cattle producers; it would create no two-tiered pricing scheme for live cattle; it would provide no incentives for downstream segments to impose arbitrary conditions on producers; it would be consistent with existing trade agreements; it would enable origin verification of all beef within the meat supply chain; it would facilitate voluntary labeling by food

service establishments; it would minimize costs for packers, processors, and retailers, and it would allow competitive market forces to dominate the market.

However, in its October 11, 2002, Voluntary guidelines USDA has asserted jurisdiction over persons and commodities without Congressional authorization; USDA has imposed regulatory burdens on U.S. producers without Congressional authorization; USDA has delegated authority to the COOL opponents contrary to Congress's mandate; and USDA has ignored Congress's directive to use existing verification programs to implement COOL.

There is only one class of cattle slaughtered in the United States that is both ineligible for the USA label and of unknown origin. This class consists exclusively of unmarked cattle imported into the United States for feeding or breeding purposes. Rather than work to develop an efficient system for affirmatively identifying these cattle, which represent only a fraction of one percent of all U.S. cattle inventories, USDA has seen fit to impose a complicated record keeping system on the cattle industry, creating confusion and instilling doubt in the minds of the very U.S. cattle producers who worked with Congress to pass this landmark legislation.

B. Congress Withheld Jurisdiction Over Cattle and Producers of Cattle

Congress did not include cattle or cattle producers under USDA's jurisdiction. Congress clearly defined what commodities were covered by the Act. For the beef industry, it included only muscle cuts of beef and ground beef as covered commodities. USDA has recently acknowledged that cattle are not covered commodities. Because cattle producers produce live cattle which are not covered commodities, they do not supply covered commodities to retailers and, therefore, are not a regulated entity under the Act.

C. Cattle Producers Are Not Subject to USDA's Record Keeping Requirements

Congress reinforced this exclusion by stating that only persons who prepare, store, handle, and distribute covered commodities are subject to USDA's discretionary authority to require a verifiable record keeping audit trail. Because cattle producers do not prepare, store, handle, or distribute covered commodities, USDA has no jurisdiction over cattle producers and cannot subject cattle producers to a verifiable record keeping audit trail.

D. Cattle Producers Are Not Subject to USDA's Information Transfer Requirements

The Act states, "Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity." Cattle producers supply live cattle to persons who substantially transform the live cattle into covered commodities through a manufacturing process. These covered commodities are ultimately supplied to retailers. Cattle producers have no involvement in the process of manufacturing covered commodities. If Congress intended cattle producers to be subject to USDA's information transfer requirements it would have expressly included live cattle and live cattle producers in the Act.

E. Congress Purposely Withheld Jurisdiction over Cattle and Cattle Producers

Congress reinforced its purposeful omission of cattle and cattle producers by expressly prohibiting USDA from using a mandatory identification system to verify the country of origin of covered commodities. A mandatory identification system would necessarily involve regulatory authority over live cattle and the persons who supply live cattle. Congress withheld jurisdiction over cattle and persons who raise cattle for good reason: such jurisdiction is unnecessary for carrying out the purpose of the Act.

F. Congress Directed USDA to Begin the Origin Verification Process at the Point of Slaughter

Congress directed USDA to begin the origin verification process at the point of slaughter. The first transaction applicable to USDA's jurisdiction is the point at which live cattle are substantially transformed into covered commodities—the point of slaughter. Congress knows that USDA already has an effective and operational origin verification system to accurately verify origin requirements for beef without regulating cattle or cattle producers. Congress directed USDA to model both vol-

untary and mandatory COOL implementations on the very programs that USDA uses to ensure the integrity of labeling programs such as those required by the National School Lunch Act and other Federal food purchase programs.

G. USDA Already Uses a Presumption of Domestic Origin Model to Verify Product Origins

USDA administers a Domestic Origin Verification program for persons who supply meat and meat products to USDA for Federal purchase contracts as a contractor, subcontractor or raw material source. This domestic origin verification program is used to ensure compliance with domestic only labeling requirements of the National School Lunch Act and the various national programs requiring domestic only products. This is the ideal model for verifying whether livestock were born and raised in the U.S. or if they originated in a foreign country. The Domestic Origin Verification program uses a proven, reliable system to substantiate origin claims without imposing a single cost; requiring a single record; or requiring a single self-certification from cattle producers; and, without requiring a mandatory identification system or violating either trade or domestic laws.

Under this program, USDA is charged with confirming that only products manufactured from livestock raised in the United States are clearly marked with the label "Domestic Only Product. The COOL Act introduces a new definitional standard: that of reserving the USA label only for products manufactured from livestock that are both born and raised in the United States. This new standard can be readily incorporated into USDA's existing verification system.

To verify an origin claim under the various national programs requiring domestic only products, USDA employs a "Marking System" for all inputs entering the manufacturing process.

It uses existing authority under international trade law, Article IX of GATT 1994 and Article 3 of the WTO Agreement on Rules of Origin, which allow all countries to identify imported cattle and beef with a mark of origin.

It uses existing domestic law, the Tariff Act of 1930 and the Federal Meat Inspection Act, which require all imported beef products to be marked as to country of origin.

It uses the exception contained in the Tariff Act of 1930 to affirmatively identify livestock imported directly for slaughter without requiring a foreign marking.

Using these preexisting authorities, USDA affirmatively identifies all the inputs that do not meet the definition of "Domestic Only Product," and through the process of elimination considers all inputs that are not excluded to meet the definition:

- It rejects inputs marked with a foreign marking.
- It rejects inputs imported directly for slaughter.
- It considers all other inputs to be raised in the United States.

This same system can be used to verify the origins of all inputs entering the manufacturing process under the COOL Act:

Under section 304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), the U.S. Customs Service requires imported beef to be marked with its country of origin to the "ultimate purchaser" (defined as the last U.S. person who will receive the article in the form in which it was imported) in the United States. Further, the Federal Meat Inspection Act as amended (21 U.S.C. 601 et seq.) requires all meat and poultry products entering the United States to be labeled with its country of origin. USDA can read these marks of origin and employ its new authority to establish a verifiable recordkeeping audit trail to ensure the proper origin label is communicated to the retailer as required by the COOL Act. Thus no new verification system is required for USDA to ensure the proper labeling of all imported beef and beef products to the retailer. Further, the first transaction applicable to USDA's jurisdiction is the point at which the ultimate purchaser receives the beef or beef products for further processing.

Existing authority provides the means of identifying the origins of all livestock imported for immediate slaughter. The United States' general marking requirements provide that if the ultimate purchaser knows the country of origin of the imported article then the article need not be marked. See 19. U.S.C. section 1403(a)(3)(H). Livestock imported for immediate slaughter are already accompanied with USDA mandated paperwork and the person who substantially transforms these livestock (the packer) receives documentation as to the livestock's country of origin. Thus, no new verification system is required for USDA to ensure the proper labeling of all imported beef and beef products derived from livestock imported directly for slaughter. Further, the first transaction point applicable to USDA's juris-

diction is the point at which these live animals are substantially transformed into beef and beef products, i.e., the packer.

The origin of all live cattle imported from Mexico is known to whoever slaughters these cattle because USDA regulations already require all imported steers and spayed heifers from Mexico to be marked with a Mexico mark of origin (an M brand). All other cattle imported from Mexico are required to be tagged with a numbered, blue metal ear tag. Thus, no new verification system is required for USDA to ensure the proper labeling of all beef manufactured from cattle imported from Mexico. Further, the first transaction point applicable to USDA's jurisdiction is the point at which these Mexican cattle are substantially transformed into beef and beef products, i.e., the packer. The packer can readily read the mark of origin on these animals or the metal eartags at the point of slaughter and USDA can employ its auditable record keeping system to ensure the proper origin label on all beef and beef products manufactured from these marked cattle.

There is only one class of livestock, and one class only, slaughtered in the United States that is both ineligible for the USA label and not of known origin. This class consists exclusively of unmarked livestock imported into the United States for feeding or breeding purposes. The only live cattle not presently marked by the U.S. Customs Service or by USDA are live cattle imported from Canada for feeding and breeding purposes. On an annual basis, these imported Canadian cattle number 593,000 head, representing only 0.006 percent of the total cattle inventories in the United States. Thus, USDA need only to cause a mark of origin to be placed on imported live cattle from Canada and any other country which may import live cattle in order to affirmatively identify the origins of all imported cattle slaughtered in the United States.

With a marking requirement for all imported live cattle, USDA has a fail-safe method of affirmatively identifying all livestock ineligible for the USA label and all livestock imported from a foreign country. The marks of origin can be read by the person who slaughters the livestock or by USDA inspectors and USDA can initiate its Congressional authority to require the packer to establish a verifiable record keeping audit trail to ensure the resulting meat is properly labeled to the retailer according to the mark of origin on the livestock.

Because the origin of all livestock ineligible for the USA label can be affirmatively identified with a mark of origin signifying the livestock's country of origin, the absence of a foreign mark would be affirmative evidence that the livestock did not pass through the U.S. border and, therefore, could be none other than born and raised in the U.S. There is no risk of error, assuming proper enforcement by the U.S. customs service.

This is precisely the methodology USDA uses today to ensure the integrity of the Domestic Only label for beef and beef products served to our military troops and to our school children. It is a fail-safe method of accurately determining the eligibility of input products at the point of slaughter for both the USA label and a foreign label of origin.

H. USDA Appears to be Ignoring Congresses Instruction to Use the National School Lunch Act as a Model for Verifying Origin Claims

USDA appears unmoved by Congress's instruction to use the origin verification system presently used to carry out the domestic origin requirements of the National School Lunch Act. USDA claims on its website that the model is not applicable because the definition of origin is different in COOL. USDA appears to be missing the point. The differing definition of origin in COOL does not detract from the system's ability to accurately identify the origins of livestock at the point of slaughter through the use of an input marking system combined with a presumption of domestic origin. It is an ideal model for effective COOL implementation.

I. USDA Has at Least Two Options to Effect Origin Markings on Imported Livestock

USDA must focus its efforts on ensuring that all livestock crossing the border into the United States are clearly marked with a mark of origin. USDA has at least two options with which to effect this requirement:

USDA currently has the authority to regulate the importation of animals, including the requirements that the animals bear documentation or markings denoting their origin. USDA presently exercises this authority to require all imported cattle from Mexico to bear a mark of origin.

USDA and Congress can work cooperatively with the Department of the Treasury to remove livestock from the present list of products exempted from the general requirement that all imported products be marked with a mark of origin. This list of exemptions is called the J-List, so named for section 1304(a)(3)(J) of the statute. The

items included on the J-List, including livestock, were placed there pursuant to regulations of the Treasury Secretary and can be removed to facilitate proper identification for labeling purposes.

J. USDA has Delegated Authority to COOL Opponents Contrary to Congress's Mandate

In its October 11, 2002, Voluntary Guidelines, USDA signaled its intent to abrogate its congressionally assigned, discretionary duty to require a verifiable record-keeping trail and to verify compliance by empowering retailers to ". . . ensure that a verifiable audit trail is maintained through contracts and other means. Congress granted only the Secretary of Agriculture the authority to require ". . . that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable audit trail that will permit the Secretary to verify compliance with this subtitle (including the regulations promulgated under section 284(b)) We do not believe Congress intended to the Secretary of Agriculture to delegate this authority. Therefore, the Secretary of Agriculture must reserve its exclusive authority to require a verifiable audit trail, along with its exclusive authority to conduct any audits of such a trail, in order to prevent retailers and packers from imposing arbitrary conditions upon U.S. cattle purposes for purposes of verifying labeling claims.

Moreover, the standard of willfulness for determining violations of the Act make any surveillance or audits between and among retailers and persons who prepare, store, handle, or distribute covered commodities unnecessary. Retailers could not be held liable for a misrepresentation of a packer or distributor, for example. Under a willful violation standard, only if a retailer willfully mislabeled a covered commodity would the retailer be subject to the Agency's enforcement actions. Therefore, there is no reason for retailers to be afforded anything other than a representation of origin verification from its immediate upstream supplier.

K. USDA Has Reduced the Commodities Congress Intended to Cover

We do not understand why USDA would attempt to carve out exceptions to the list of products Congress included as covered commodities. However, in its October 11, 2003, Voluntary Guidelines, USDA appears to allow ground beef to be excluded from labeling if water, salt, or other flavoring, seasoning, or extenders are added in the grinding process. This significantly reduces the products that should be covered by the Act and it provides an unjust means of circumventing the intent of the Act. The Agency should ensure that ground beef remains covered by the Act even if water, cereal, soy or other derivatives, other extenders, salt, sweetening agents, flavoring, spices or other seasoning is added. The addition of any one or more of these additives, enhancers, or extenders does not change the fact that the resulting product is ground beef.

Further, the Voluntary Guidelines appear to greatly expand the scope of products Congress excluded from the Act. Congress said an otherwise covered commodity would be excluded from coverage only "if the item is an ingredient in a processed food item. We believe this means that if a covered commodity is further processed, i.e., cooked, cured, restructured, or flavored, it will remain covered by the Act unless the covered commodity is also commingled, mixed, or incorporated with other commodities to create a distinct food item such as pizza, ravioli, soup, or TV dinners, for example. A roast remains a muscle cut of beef even if it is cooked, salted, or flavored. Therefore, a cooked, salted or flavored roast should remain covered by the Act. The Agency appropriately recognized this fact with respect to peanuts, allowing the coverage of peanuts that are shelled, roasted, salted, or flavored. We believe USDA's definition of material change should be abandoned.

L. Packer Claims that COOL Compliance is Too Difficult/Costly Are Unfounded

Packers claim that segregating and tracking beef derived from livestock of various origins is a difficult, if not impossible task. However, packers presently participate in various labeling programs, many of which are more complicated than merely maintaining the origin identity of beef. Among these is the Certified Angus Beef program. Here, packers have considerable experience in maintaining the identity of every carcass originating from a black hided animal. The identity of this carcass as to the color of its hide is maintained until the carcass is graded. If the carcass grades according to CAB specifications, the identity of the resulting meat products cut from the carcass is maintained to ensure the integrity of the CAB label. This is a more complicated process than required by COOL. With COOL there is no secondary segregation step involving grading; the identity as to origin is simply main-

tained throughout the manufacturing process. Maintaining the origin identity of covered commodities throughout the packing and retailing processing chains is simple, cost-effective, and consistent with present industry practices.

M. USDA Claims that COOL and COOL Implementation Violates Trade Laws Are Unfounded

USDA claims that COOL will negatively impact trade. R-CALF USA conducted legal research in April, 2003, to determine if the United States has the authority under existing domestic laws and trade laws to require marks of origin on both beef and live cattle for purposes of implementing COOL. Our legal research concludes that we have the needed authority and it is consistent with trade laws. The International Agricultural Trade and Policy Center at the University of Florida conducted a legal analysis of COOL in May of 2003 which includes a legal analysis of COOL's compatibility with trade agreements. This study reinforces R-CALF USA's contention that COOL can be easily implemented by requiring all imported livestock to be marked with a mark of origin. USDA has received copies of both these studies but has offered no response. Instead, the agency continues disseminating disparaging trade related comments in its new Question and Answer document found on its webpage under COOL Resources. In the eyes of U.S. cattle producers and consumers the Agency charged with implementing the COOL law appears, instead, to have joined forces with the packers and retailers in an effort to repeal or weaken it.

Consumers must be doubly frustrated. The promised consumer benefit of liberalized trade and more imports is that consumers would have more choices. However, USDA is sending the message that consumers can't have a choice when it comes to where there food is grown.

It is important to note that while the United States may require a mark of origin on imported livestock for purposes of ultimately identifying the origin of meat derived from such livestock, no additional information may be required of imported livestock that is not also required of domestic livestock. Article IX of GATT 1994 is substantively identical to the provision that was contained in the original GATT (now known as GATT 1947). The provisions of Article IX of GATT 1947 was construed by a 1956 Working Party report. The 1956 Report of the Working Party on Certificates of Origin and Marks of Origin (cited by the WTO Panel in Korean Beef) clarifies that while countries can require marks of the country of origin, marking requirements going beyond the mere indication of country of origin should be limited. Specifically the Working Party considered that the question of additional marking requirements, such as an obligation to add the name of the producer or the place of origin or the formula of the product should not be brought within the scope of any recommendations dealing with the problem of origin. The point was stressed that requirements going beyond the obligation to indicate origin would not be consistent with the provisions of Article III, if the same requirements did not apply to domestic producers of like products. Working Party Report, Certificates of Origin, Marks of Origin, Consular Formalities, adopted 17—November 1956, BISD—5S/102, para. 13. Requiring that cattle have the country of origin markings as they cross the border, in the form of brands, tattoos or ear tags comports with this Working Party report. However, imposing additional record keeping requirements on only imported products or requesting information beyond the country of origin of the imported product may not.

N. Critics Complain that COOL Goes Both too Far and Not Far Enough

Ironically, opponents criticize the Act not only for what it does, but also for what it does not do. The exclusion of poultry and food service establishments are among the most frequent complaints of COOL opponents. This is disingenuous at best. Given the tremendous opposition to COOL without having evoked opposition from the vertically integrated poultry industry and the powerful restaurant lobby, COOL would likely have failed in Congress. R-CALF USA supports the labeling of commodities sold by these industries but the political reality strongly suggests we approach labeling one step at a time.

O. R-CALF USA Seeks Congress's Help in Implementing COOL

Congress would be of considerable assistance to USDA if it would initiate a request to the Treasury Secretary asking that livestock be removed from the J-List described in Paragraph I above. The removal of livestock from the J-List would immediately solve USDA's challenge of how to cost-effectively and accurately ascertain the origins of livestock at the point of slaughter. Further, Congress could issue a directive to USDA instructing the Agency to use the resulting marks of origin on

livestock, and the absence of such marks, to verify the origin labels required by the Act.

Congress could also help in the COOL implementation process by encouraging the Office of the United States Trade Representative to begin supporting Congress's born, raised, and slaughtered standard as the appropriate standard for determining origin under the WTO rules of origin. This would help ensure that future conflicts do not arise between the United State's definition of origin and the WTO's definition. The United States continues to support "substantial transformation" as the international standard of origin. This appears particularly inappropriate given the recent demands on the U.S. to certify all beef exports to Japan and Korea as originating from cattle born, raised, and slaughtered in the U.S. It also appears inappropriate given the United States' proposed action of requiring all beef and beef products from Uruguay to be accompanied with a certificate stating that the beef was derived from cattle born, raised and slaughtered in that country.

We urge Congress to direct USDA to implement COOL on schedule and as Congress intended, without imposing an undue burden on U.S. cattle producers or on the packing and retailing segments of the food industry.

STATEMENT OF ERIC DAVIS

Mr. Chairman and members of the committee, I am Eric Davis, president of the National Cattlemen's Beef Association. I am a rancher and feeder from Bruneau, Idaho. I am pleased to be here with you today to discuss Country of Origin Labeling, an issue that has been before this committee on numerous occasions.

Perhaps no issue in recent memory has stirred the passions of beef producers more than country of origin labeling for good reason. We are a proud lot and proud of the beef we produce. Therefore, labeling and promoting our product, especially US beef, is an easy argument to win when talking to ranchers. If labeling product is so popular, why all the discord?

Members of the committee, the ongoing debate of country of origin labeling is not about the merits of labeling, but rather how to provide country of origin labeling information to the consumer in a way that does not cause producers pain.

Since the day NCBA adopted policy supporting country of origin labeling, we and other groups, organizations and producers have struggled with it. Our policy has evolved over time from one brief statement of support for labeling, to a finely detailed description. We have tried to strike a balance between the demands of producers and the reality of cattle and beef production, marketing, and distribution.

My predecessors have sat before this committee and received in depth questions about the pros and cons, the costs and benefits, and the potential unintended consequences of country of origin labeling. We have been praised by members of the committee, and occasionally excoriated.

In 1999, our president, George Swan sat before then Livestock and Horticulture Chairman Pombo and Mr. Peterson, and presented testimony consistent with the labeling legislation that had passed the Senate but was stricken in conference in 1998. The USDA under President Clinton testified that there would be some kind of paperwork trace-back system and that monitoring through private, third party certifiers were possibilities. Producers were advised during this hearing by Chairman Pombo that not enough thought put into what the actual impact is on producers. Mr. Peterson worried that the law might end up putting a ton of paperwork and a burden on people it should not be put on. NCBA and those organizations at that hearing were urged to work to develop a voluntary, consensus approach to the country of origin labeling. We did.

In January 2000, a General Accounting Office study, written at the request of this committee, stated that U.S. producers could be required to track and maintain detailed records of the movements of their livestock and have controls in place to ensure the accuracy of this information. A USDA study, mandated by Congress, was published in January 2000. This study stated that Country of Origin Labeling is certain to impose at lease some costs on an industry which will either be passed back to producers in the form of lower prices or forward to consumers in the form of higher prices.

These two studies spurred the National Cattlemen's Beef Association, American Farm Bureau Federation, National Farmers Union, American Meat Institute, Food Marketing Institute, National Meat Association and American Sheep Industry Association to negotiate a voluntary program which was submitted to USDA. Incidentally, the NFU did not join us on that petition, but since that time, NCBA members have changed our policy to be in line with the position held by NFU at the time.

Unfortunately, the Clinton administration did not act on the petition and the Bush administration's action were quickly overtaken by farm bill events.

During the markup of the House version of the farm bill in July 2001, this committee endured a 6 hour debate on the topic. Fully 25 percent of the markup record is related to this topic alone. During this markup, USDA attested that the law would be records intensive, complex, and that it would entail being able to trace records back to level of production. Members of this committee during the 107th Congress will surely recollect the markup. I recommend that new members of this committee avail themselves to this markup record to better understand the record on this issue.

During the farm bill Conference in the Spring of 2002, House conferees worked to answer significant questions about country of origin labeling before the law passed. But many of the difficult questions remained unanswered in the conference. Statements by Senate conferees intentionally left many difficult issues to the department. Judging by the conference proceedings, the only clear intent of Congress was to leave many difficult questions to USDA.

The current country of origin labeling law was never fully analyzed and no hearing was held on the impact or interpretation of its provisions. Nonetheless, Congress has held many hearings and investigations on country of origin labeling generally, and this record suggests that this law is turning out as many predicted problematic. The provisions of the current law simply ignore many years of collective knowledge and debate on the subject.

As a result, USDA has had to make some tough decisions that may appear arbitrary, unnecessarily bureaucratic, and costly. These decisions and the implementation guidelines that USDA has released are creating concern for producers. Several issues of concerns include:

- the inability for producers to self-certify the origin of livestock;
- requirements that US producers document where animal was born, raised and processed;
- statements by packers and retailers that they will require more information from producers than the law requires;
- the manner in which USDA is interpreting the statute.

The committee has heard testimony this morning from USDA outlining the country of origin labeling program and the reasons that the department is taking the approach they have chosen. There are clearly easier and less costly ways to implement a country of origin labeling program other than what is contained in the statute. The challenge for USDA and this committee is to determine if alternative methods of implementation are allowed under the current statute. If the current statute allows alternatives implementation guidelines, then we are committed, through rulemaking, to working with USDA to implement the law in less burdensome manner. If, however, the statute does not allow other alternatives, then we must either change the law or live with its consequences. Clearly, the testimony given today and the frustration felt by all producers on USDA's current thinking demonstrates that living with the law as outlined by USDA is not acceptable.

The petition submitted to USDA and to this committee in September 2000 still represents a manner that could be employed to implement a country of origin labeling program that would benefit producers and consumers. Our policy today supports Country of Origin labeling that is voluntary and industry and producer led and we are hopeful that this approach could be used as a model for any modifications to the statute.

I would like to conclude my testimony with the following comments:

The National Cattlemen's Beef Association supports country of origin labeling. We want producers to be able to market and promote US beef. After all the hearings, all the discussion, all the debate, all the acrimony, and all the USDA listening sessions, we believe our approach of a voluntary, producer led effort offers the greatest opportunity to benefit producers because it avoids the costly mandates of the current law.

I would be happy to take your questions.

STATEMENT OF DEBORAH R. WHITE

Good morning, Mr. Chairman and members of the committee. My name is Deborah White. I am associate general counsel, regulatory affairs, of the Food Marketing Institute. Thank you for including FMI in this important hearing on the implications of section 10816 of the 2002 farm bill.

We believe that many of the inevitable and far-reaching consequences of this relatively brief provision were never intended by Congress. This hearing represents an

important step toward understanding the law and its full ramifications, many of which stem from the actions that retailers will be forced to take to comply with section 10816. We may disagree with the law's premise and foresee its negative consequences, but there's a law on the books and American grocery stores must take those steps necessary to ensure that they will be able to offer food to consumers in compliance with the law on September 30, 2004. In order for retailers to achieve compliance, however, growers, cattlemen, packers and distributors of covered commodities will have to change the way they do business. The law will prohibit retailers from partnering with suppliers who are unwilling to make those changes.

FMI represents 2300 food retail and wholesale companies with 26,000 individual retail locations and $340 billion in annual sales. Our membership includes small, single store operators, as well as the largest food retailers in the country. As such, our membership has a unique understanding of consumers' expectations regarding their retail food purchases and we know that, first and foremost, consumers expect their local grocery stores to deliver high quality, reasonably-priced food products from all over the world, every single day, regardless of weather, seasonality, or regulatory constraints.

Today, retailers voluntarily engage in a wide variety of state and country of origin labeling programs, programs that work well for producers, retailers and consumers alike. Section 10816 is different, though. The market drivers built into this brief amendment to the Agricultural Marketing Act are powerful and will have a profound impact on the dynamics of the entire food production and distribution system, especially on smaller, less competitive producers.

First and foremost, the law places the responsibility for informing consumers of the country of origin of the covered commodity on the retailer—the one link in the distribution chain that has no firsthand knowledge of or control over this information. Under the much more thoroughly debated and carefully crafted Nutrition Labeling and Education Act, the manufacturer is responsible for identifying the relevant information about the food and placing it on the label; the retailer sells the fully labeled finished food product. The same is true for other country of origin labeling laws. The manufacturer or the importer of record is responsible for the labeling because only they know the facts about the product.

Section 10816 stands this traditional, common sense approach to labeling on its head. Further, retailers are subject to Federal and state enforcement and penalties of up to $10,000 per willful violation for failing to meet their legal responsibilities.

Second, the law covers an extremely wide range of products beef, pork, lamb, fresh and frozen seafood, fresh and frozen fruits and vegetables, and peanuts and necessitates information on the entire life cycle of each and every one, and, in the case of seafood, the food's method of production.

None of this information is self-evident to the retailer. A retailer can't look at a hand of bananas and know whether it is properly labeled "Product of Guatemala" or whether it's actually from Honduras. A retailer cannot look at a fillet of salmon and know which flag flew on the vessel that caught it or whether it was actually raised on a farm in Asia. A retailer can't look at a chub of hamburger and know whether one of the cows from whence it came ever sojourned in Mexico or Canada. The only way that retailers can fulfill their obligations to consumers under this law is to ensure to the greatest extent possible that they receive accurate information from their suppliers.

Toward this end, our members are beginning to execute broad and far-reaching changes in their supplier relationships. Although the programs vary, most retailers are requiring their suppliers to do the following:

1. Sticker or label each individual food item with the required country of origin information. In the case of demonstrated impossibility, suppliers are asked to provide labels or signs that can be added at store level.

2. Sign contracts to indemnify retailers and ensure that suppliers are keeping verifiable audit trails. In some cases, such as in the produce industry, parties that have done business on a handshake basis for decades will need to enter written contracts.

3. Undergo third party audits. If retailers will be liable for the accuracy of the information that their suppliers provide to them, retailers have no choice but to require their suppliers to provide them with objective, third party documentation that the information is trustworthy. This model is not without precedent. The Organic Food Production Act requires third party certification for organic production claims, which are also marketing claims

A typical grocery store easily sells a thousand different covered commodities, comprised of hundreds of thousands of individual food items, received from thousands of suppliers several times each week over the course of the year. The law forces retailers to put this type of system in place to control the large amount of information attendant to this volume of supply.

And it will force retailers to make difficult marketplace choices to minimize their liability and maximize their compliance with the law.

Retailers will source covered commodities only from those who can afford the systems to document country of origin to the extent required by the law. Smaller suppliers—including growers and ranchers will have a difficult time affording the costs imposed by the law and, thus, competing with their larger economic rivals. In contrast, vertically integrated producers are virtually ready to comply now. So, despite the fact that section 10816 was intended to assist small, independent producers, the law is actually a strong driver toward concentration and vertical integration.

Retailers will limit the countries from which they source product, sometimes to the detriment of US producers. For example, at least one significant member has concluded that the domestic salmon industry cannot supply a sufficient amount of fish all year long to meet their consumers' demands, but that other countries, such as Canada, Norway or Chile, can. Rather than dealing with the costs and liability associated with carrying supply from multiple countries of origin, they intend to contract with suppliers from a single country that can satisfy their needs.

Retailers will reduce or eliminate US products sourced during the "shoulder" seasons. For example, retailers source grapes from both North and South America, depending on the season. Traditionally, retailers will purchase the early US crop even if it's not enough to fill their needs. After September 30, 2004, retailers expect to delay purchasing U.S. products until the crops are fully in.

Participation in state of origin promotional programs will be limited. USDA advises that, because of international trade obligations, state of origin designations (e.g., Florida citrus, Idaho potato) will not be sufficient to satisfy the Federal law. Therefore, a statement of United States origin will be necessary for those products that meet the new Federal standard. State labeling may no longer fit on existing labels or signs.

In short, we believe that section 10816 is fundamentally flawed. Mandatory country of origin labeling, particularly as defined by section 10816, will inevitably result in less consumer choice and higher production costs that far outweigh any potential benefit to consumers and producers.

Addendum to Testimony of Deborah R. White Food Marketing Institute:

The Enforcement Provisions of section 10816

Perhaps one of the most interesting aspects of the law, though, is the way the enforcement provisions operate. As I've gotten to know this law better I've come to realize that the enforcement provisions against producers are actually more stringent than those against retailers.

If we are going to be honest about this, this law was designed to protect and promote American producers—we believe it is flawed in part because of this premise—but even if we start from the assumption that domestic protectionism is a worthwhile goal, the law is inherently inconsistent. Here's what I mean.

Section 283, Enforcement, is divided into three paragraphs. Paragraphs (b) and (c) are the penalty provisions that apply to retailers. Collectively, these provisions essentially state that, if USDA believes that a retailer has violated section 282 which requires the retailer to inform the consumer of the country of origin of the covered commodity USDA must notify the retailer of the potential violation and give the retailer 30 days to remediate. If, at the end of the 30 days, USDA concludes that the retailer willfully violated the statute, then the retailer is subject to penalties of up to $10,000.

The penalties Congress imposed against anyone else who violates the statute including farmers, ranchers, growers, and packers—are actually more substantial than the penalties against retailers. These penalties are identified in paragraph (a) of section 283, which simply states as follows: "Except as provided in subsections (b) and (c), section 253 shall apply to a violation of the subtitle." Section 253 of the Agricultural Marketing Act of 1946 is codified at 7 U.S.C. section 1636b and states: "Any packer or other person that violates this subchapter [which includes Subtitle D] may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Each day during which a violation continues shall be considered a separate violation."

Two important things to note. First, retailers are subject to penalties under Subtitle D if and only if USDA concludes that they willfully violated the statute USDA must essentially prove that retailers intentionally violated or knowingly disregarded the statute. In contrast, the supplier liability provision does not include a mens rea element. That is, a supplier can be liable for penalties under the statute simply for making a mistake; it doesn't matter what they were thinking.

Second, the penalties against non-retailers are cumulative that is, each day that a violation continues is subject to an additional penalty. The law does not impose

accumulating penalties against retailers only against their suppliers. The law, as written, holds suppliers to a much higher standard than retailers.

STATEMENT OF KEN BULL

Thank you Mr. Chairman for giving me the opportunity to testify before your committee today to discuss what I believe is a well intentioned, yet severely flawed law. I want to start by thanking this committee for the leadership you showed in making this subject the most lengthy debate of your consideration of the new farm bill.

The COOL law represents unmistakable harm to the U.S. beef and pork industry. At a time when we have finally reversed the long downward trend in beef demand government is implementing an initiative that will add tremendous cost and complexity to all segments of the beef and pork production chain.

Supporters of COOL generally rally around one of several points:

Food safety—but it isn't about food safety because no one should be allowed to sell unsafe food simply by being willing to put a country of origin label on it.

Consumer right to know—but this can't be about "right to know" because the law exempts all of food service, not to mention poultry, cheese and almost all the rest of the grocery store.

Protecting the American market—many supporters are more motivated by trying to block cattle and hog imports from Canada and Mexico. But protectionism makes no sense either.

Protectionist sentiments do not hold water in light of the fact that Mexico is now the number one market for U.S. beef—where we currently enjoy a $450 million trade surplus in beef trade. Supporters must recognize that striking out against our most important buyer stands to have consequences.

COOL is now the law, and we are trying to figure out what we're going to do to comply with it.

As the committee knows, this is a retail labeling law that mandates there must be a "verifiable audit trail" to prove that the labels on products are true and accurate. The law also prescribes $10,000 penalties for violations of the law.

I recently met with AMS staff in Washington to ensure that our read of the law was right—and it is. A verifiable audit trail means that we must be able to provide documents that back up the claims made on the meat we market to our retail customers. In order for us to do this, we have not choice but to require all producers from whom we buy to certify that they are maintaining records that prove identification and traceability of their livestock. Additionally we may choose to audit records on a spot basis to further ensure that labeling will stand up under regulator scrutiny.

We and other major processors have been notified by retailers that if we intend to sell them meat after October 1, 2004 we will have to assume liability for any misrepresentation on their labels so you can imagine we are going to take every step necessary to ensure that we are keeping our customers and company in compliance with the law.

An additional concern few have talked about yet is that under the Meat Inspection Act, which is governed by another agency, the Food Safety Inspection Service, to apply a false label to a product is to ship misbranded product. This is punishable as a felony and the product involved is likely subject to recall. In light of this I'm sure you understand that we simply cannot certify anything we do not know to be absolutely true. Our interpretation of the meat act was confirmed when I met with the Deputy Administrator of the FSIS and the chief of the labeling branch.

While we already do some branding today it is based on attributes that reflect the market niche a retailer wants to uniquely fill. These brands are reliant on factors that are within our control and importantly, are cost effective. The COOL brand relies on factors from the birth of the animal, following it through our plants, then distribution and retail, all at significant cost. These are costs that we do not believe are recoverable in the marketplace and we and livestock producers will have to absorb them.

We invest significant revenue in developing and marketing brands. These investments are done only after significant research to demonstrate that the benefits or returns will far outweigh the costs.

There is much speculation on the cost of COOL and I certainly have my own idea of the cost, but frankly I believe the true cost is that there stands to be significant change in the cattle and hog industries as a result of this law. We have done cost estimates that quickly led us to conclude that we are not going to make the investments it would take to be able to run our plants the way we do now. To create the

kind of identity preservation system this law would cost unimaginable sums and even then, there would be the risk of an unintentional mistake.

A more likely scenario is that packers will call only on feeders we know have the best, most reliable, audit proof record systems especially electronic ear tags. I met with the deputy administrator of the USDA Packers and Stockyards Administration to ensure that this was consistent with the P&S law, and I have been assured that steps such as this are entirely within the scope of the law. We will seek to maintain a pro-active dialogue with the agency as this unfolds. We believe we are on solid footing with P&S in saying that if we suspect that records are not reliable we will have a difficult time being able to bid on livestock.

We believe one probable outcome of the law is that packers would most likely dedicate plants as U.S. only or mixed origin and then segregate production by days so that only like-origin animals are processed on given days. This move would eliminate marketing options that producers currently enjoy. We fear an unexpected outcome of the law is that the market will move to one that differentiates price not just on the basis of quality but on two new factors: reliability of records and origin status of livestock. Even with these kinds of changes we estimate we would have to invest a minimum $20–25 million per plant to ensure compliance.

Today we sort beef carcasses in about 27 different ways by grade, certified programs and others. Under this law we layer in at least a doubling of these sorts. Our coolers are the size of football fields and the changes this law necessitates aren't cheap. One example of an unrealized cost is that currently FSIS regulations require us to leave a three-minute gap between grade sorts. Down time in our plants is about $1100 per minute so increasing the number of these three-minute gaps adds up in a hurry.

Of particular concern is something we learned from AMS that is there is zero tolerance for error. In our meeting with AMS we painted a hypothetical scenario that goes like this—say we processed a group of cattle on Monday and in reviewing records in an audit on Thursday we found somebody made a mistake and a Mexico-born animal got into the mix of 1,500 head of U.S. born, raised and slaughtered. We learned from AMS that in that scenario all 1,500 are potentially mislabeled or misbranded meaning we possibly have created a huge list of violations. We must notify all retailers and they must not market the product because it would be a willful violation on every package of meat from that 1,500 head of livestock. The product from these 1,500 head that has going into retail is now subject to a class three recall bringing great harm to our reputation, our brand and our customer. This meat would have to be diverted into some other food service channel at a substantial discount all by virtue of a simple human error with no impact of food safety whatsoever.

Another huge concern for us is the impact on cow/calf operators and the dairy industry. We buy many of these culled cattle at auction and they do not have the kind of documentation that this new law requires. Dairy cows live 5 to 8 years, and many have crossed the Canadian border. Much of the cow beef ends up as lean trim that is blended with less lean trim for ground beef at retail. Under the law, because producers cannot guarantee the animal's birth, and residence of its entire lifespan, this beef will be relegated to food service as its only market for a long, long time. If you're a cow calf or dairy operator you'll want to pay close attention to this loss of the retail demand base, and the marketability of these animals. AMS again has confirmed our observations and I would strongly encourage producers to learn this for themselves.

I want to leave you with one final point to think about in the past 15 years our firm has had only two requests from U.S. retailers for country of origin labeled beef it was for Australian beef.

As you can see there are some far-reaching implications in this law and I appreciate the committee's time looking into them here today.

I would be happy to address any of your questions.

STATEMENT OF BRUCE PETERSON

Good morning, Mr. Chairman and members of the committee, my name is Bruce Peterson and I am the senior vice president and general merchandising manger of Wal-Mart Stores, Inc. Based in Bentonville, Arkansas, Wal-Mart is the Nation and world's largest retailer, with facilities in all 50 States and 10 countries. The Company operates more than 2,870 discount stores, Supercenters, Neighborhood Markets and more than 520 SAM;S CLUBS in the United States. Internationally, the Company operates in Argentina, Brazil, Canada, China, Germany, Korea, Mexico, Puerto Rico and the United Kingdom. Wal-Mart also owns a 31 percent interest in

Seiyu in Japan with options to purchase up to 66.7 percent of that company. Wal-Mart employs more than 1 million associates in the United States and more than 300,000 internationally.

As a major portion of our business focuses on the marketing of food, I would like to share Wal-Mart's perspective regarding country of origin labeling. This law requires retailers to inform consumers of the country of origin of all "covered commodities" both domestic and imported—as of September 30, 2004. Wal-Mart believes that marketing high quality, affordable food made in the U.S.A. is essential to our customers' needs. However, despite the law's best intentions, it is fundamentally flawed inasmuch as it diverts retailers from marketing and places the onus on product labeling and information validation. We believe that there is a better method to promote U.S. agriculture than implementing a flawed law with unduly burdensome regulations.

I would first, however, like to discuss the importance of Wal-Mart's relationship with our customers and our suppliers which directly relates to how we build trust and confidence in our supply chain. At Wal-Mart, we have worked with our suppliers to create and protect our relationship with our customers. They are, and will continue to be, the guiding force behind our decisions. Because of their comments, we have created stores that offer every day low prices (EDLP), quality merchandise, wholesome and safe food products in addition to fast and friendly service. Our one million U.S. associates are also involved with individuals and families in their respective communities. Last year alone, our associates raised and contributed more than $200 million to support communities and local nonprofit organizations. We aspire to be an important part of our customers' communities and to provide products and services that raise the standard of living for the working families of America. This includes providing safe, quality, affordable food to feed those families.

With respect to our suppliers in the food industry, Wal-Mart has been reported as the Nation's largest grocer with 1333 Supercenters (retail and full-line grocery) and 52 Neighborhood Markets (grocery). We highly respect the relationships that we have built with the agricultural communities who supply our stores. Over the years, we have also established strong partnerships with State Departments of Agriculture to market key state products. A few produce examples include: radishes, squash and corn from the State of Ohio grapefruit, oranges tangerines and avocados from the State of California; tomatoes, watermelons, oranges and cucumbers from the State of Florida; and onions, mushrooms, and berries from the State of Texas.

We also maintain well over a thousand relationships with local growers in order to bring hometown produce to the local Wal-Mart outlet. Because of our near symbiotic relationship, the continued financial health and success of our suppliers is directly linked to our ability to provide EDLP food products to our consumers. Any overzealous regulations or laws which unduly burden our suppliers, many of whom are small and medium-sized enterprises, ultimately provides a disservice to our customers.

IMPLEMENTATION CHALLENGES

At Wal-Mart, we value our customers and suppliers and that is why we are so concerned about the Farm Security and Rural Investment Act of 2002. As stated above, the law as it stands, requires retailers to both label and verify the country of origin of all covered commodities—both domestic and imported—as of September 30, 2004. While this may seem a while away, recent regulations promulgated by the U.S. Department of Agriculture (USDA) during the voluntary period are already beginning to impact our supply chain. We understand that the USDA has hosted a series of field hearings to solicit comments about implementation. Proponents of the law continue to claim that problems with country of origin are regulatory rather than legislative; but we would disagree. While the regulations are excessively burdensome, and will no doubt be revised, they pale in comparison to the law's fundamental requirement that retailers properly identify products for our customers.

In order to better prepare for the anticipated impact and recognizing the extent of preparation necessary to implement such a program, I coordinated a meeting with over 700 of Wal-Mart's key suppliers in February to discuss the steps necessary to comply with the law and the proposed guidelines. What many in that room did not realize is that under the proposed guidelines, the required country of origin goes beyond the simple classification of country. Rather, the declaration extends back to the farm or ranch where the food originated and must reflect all countries where subsequent processing occurred. The law then requires retailers to provide our consumers with information. Retailers face penalties of up to $10,000 if the information is missing or inaccurate—even though our suppliers are the only ones who can verify the information.

Because customer trust is our top priority in providing quality, safe, affordable food products, we felt that it was necessary to take steps to ensure that the country of origin information provided by our suppliers for each of the covered commodities is accurate and verifiable. After all with 500 products in 1300 stores, we have over 650,000 opportunities to make a mistake every day not to mention those in the supply chain. Simply put, if someone inadvertently hangs the wrong sign, the result is that the consumer is misled, not informed, making execution of the program untenable.

In order for us to comply with the current regulatory guidelines and to fulfill our responsibility to our customers, Wal-Mart has requested that our suppliers ensure that they are capable and willing to do the following:

Sticker all covered commodities with country of origin information that fully complies with the Federal standards set forth in the statute as interpreted by USDA. A sufficient number of signs (one for each retail display) or stickers (one for each retail-sized package) will be required to accompany every shipment of products that cannot bear labels.

Maintain records and a verifiable audit trail to establish the accuracy of the country of origin information that we receive for your covered commodity.

Indemnify us for any fines or other costs that we incur as a result of the country of origin information that you provide or fail to provide.

Segregate all covered commodities by country of origin throughout the production chain until they are delivered to us and maintain documentation verifying the efficacy of your segregation plan.

Audits. Provide us with the results of an audit conducted by USDA or another mutually acceptable independent third party to establish that you have the systems in place to ensure the accuracy of the country of origin information that you provide us.

In the interim, so that we may have some assurance that our suppliers will be able to comply with the law in a timely fashion, we have requested that all covered commodity suppliers provide us with a country of origin labeling action plan and Letter of Assurance by September 30, 2003 that states their intent: (1) to provide Wal-Mart with the results of a third party audit of their country of origin labeling programs and (2) to sign a contract with a commitment (a) to reimburse Wal-Mart for any fines or other costs that may incur as a result of the supplier's country of origin declaration and (b) to maintain (and hold suppliers responsible for maintaining) a verifiable audit trail.

The Letter of Assurance must also provide a sample or mock-up of the country of origin label, sign or other mechanism that suppliers provide to us with their products, as well as a description of how that information will be provided, e.g., affixed to every product at a particular rate of adhesive effectiveness; number of signs or labels per box; printed directly on the packaging or product overwrap that apply, etc. It also asks suppliers to describe how they intend to ensure that all necessary information is available in sufficient time to allow us to offer such products to consumers on September 30, 2004 in full compliance with the law.

Wal-Mart believes the steps enumerated above are necessary in order for us to meet the requirements for implementation. And, as you will recall, suppliers who fail to fulfill the law's mandate may also be subject to penalties of up to $10,000 under the law. Accordingly, supply chain veracity is critical.

UNINTENDED CONSEQUENCES

There is an emerging consensus that, our current system frequently functions in ways that undermine, rather than strengthen, American competitiveness at home and abroad. Little did we realize that in the case of country of origin labeling what was originally intended as a means to support and promote U.S. agricultural products may turn into a program that (a) hinders U.S. competitiveness, (b) adds an undue financial burden to these same producers and (c) confuses customers resulting in mistrust.

Almost immediately after receipt of this letter, calls from suppliers unaware of the actual ramifications of the law, started to pour in—many of whom, did not realize the extent and cost of implementation. Their testimony at today's hearing is the best indication that some of the best-laid plans have unintended consequences.

Specifically, we are concerned about our small suppliers who may not be able to comply with those requirements that enable us to implement the program. The law simply does not distinguish between large and small operations and could force further consolidation. Wal-Mart would rather promote local products than lose suppliers.

Next we are concerned about the implementation for our suppliers. While the meat industry, except poultry, is required to demonstrate origin on the front end; the produce industry must be cautious on the back—through signing in an ever-changing perishable marketing environment. For example, under this law, one fruit bowl could require 25 different labels depending on the time of year. This is particularly worrisome for American produce growers who have an international interest in marketing their product year round through off-season supplements from foreign markets.

Here, as growing seasons collide, supply intermingles in order to provide customers with consistent product availability. The quality of this year-round supply whether produced in the U.S. or imported is reinforced by adherence to the administration's food wholesomeness and safety standards. Wal-Mart has worked hard to build year-round markets for perishable commodities for our American producers and these efforts are in jeopardy if the law goes into effect as written. Furthermore, competing signage in stores may very well detract from the produce market promotion efforts we have developed with State Departments of Agriculture.

Our supply chain is equally affected. Under the current regulations agricultural producers must provide information, shippers must maintain separate compartments, our associates in our distribution centers must provide separate storage space, and our store associates must manage a continually changing display of signs as well as maintain voluminous documentation for two years. At each step in this cumbersome process, we move further and further away from our original objective: to promote U.S. agriculture.

From the retail standpoint, disruption in the supply chain is beginning to spawn questions about why some in the food business are not subject to the law. If country of origin is intended to promote U.S. agriculture, how do we tell our customers that while the majority of food products are subject to labeling, others are exempt. Such inconsistencies are certain to shatter consumer confidence.

From a practical standpoint, this system may simply collapse under its own weight.

In summary, we share the view that it is vitally important for Congress to revisit this law in order to allow the marketplace, not the USDA, to implement a successful, voluntary marketing program that works. This will help everyone in the supply chain satisfy our customers and support, rather than hinder, our suppliers—especially those on the farm or ranch. We would also stress that this solution should be applied to all covered commodities on an equal basis to avoid any further inconsistencies that fail to deliver a quality marketing program.

Wal-Mart is an excellent example of how success in the grocery industry directly supports agriculture and agricultural jobs in the United States. We are proud that our relationships with State Departments of Agriculture and local producers to market and promote U.S. agricultural products will only continue to strengthen. As we increase our number of stores overseas, we will continue to provide additional markets for U.S. products sold in our international operations. We look forward to continuing to work with our suppliers on a voluntary basis so that we may continue to bring high quality, low cost, safe food products to our customers—our top priority.

On behalf of Wal-Mart Stores, Inc., I thank you for the opportunity to testify today.

STATEMENT OF RAY WALKER

Thank you, Chairman Goodlatte and members of the committee. I am Ray Walker, president and chief executive officer of Patterson Frozen Foods, Inc., a processor and grower of frozen produce located in California's central valley.

I also have the honor of serving on the Board of Directors of the American Frozen Food Institute (AFFI) of McLean, Virginia. AFFI is the national trade association that represents frozen food processors, marketers and suppliers to the industry. AFFI's membership of more than 500 companies is responsible for approximately 90 percent of the frozen food processed annually in the United States, valued at approximately $70 billion. I appreciate the opportunity to appear before the committee today to discuss country of origin marking requirements for food products, specifically the produce commodities covered in the 2002 farm bill.

OVERVIEW

I have in my career seen the logic of both sides of this issue. As a member of AFFI's Board of Directors, I have participated in many discussions on country of origin labeling and I must admit there are those, including me, who have advocated

for ways to mandate the promotion of U.S. produce. However, the members of AFFI's Board of Directors are unanimously opposed to this concept as it is proposed in the 2002 farm bill.

As a grower of many types of vegetables, we at Patterson obviously have a strong incentive to sell our own products that are grown in the United States.

Unfortunately, if the country of origin marking guidelines issued in 2002 by the U.S. Department of Agriculture (USDA) were made mandatory, they likely would have significant unintended consequences on members of the frozen food industry who grow, process and distribute frozen produce in a blended form. Among these consequences are incentives to increase sourcing of some products from abroad and cease sourcing of domestic products, and to relocate domestic manufacturing facilities to locations outside the United States. These consequences are ironic given that the purported intent of new labeling regulations was to aid U.S. agriculture.

These unintended consequences can be anticipated because of the ambiguity of the processed food exemption as it relates to frozen produce. In its deliberations on this section of the farm bill, Congress wisely excluded ingredients in processed products from coverage under the Act because of the complexity and the negative impact of doing so. At the same time, by using the Perishable Agricultural Commodities Act (which considers frozen produce among its covered commodities) as the framework for the produce provisions, it appears Congress inadvertently may have included frozen produce in its efforts to achieve country of origin labeling for raw produce. USDA has interpreted the legislation in such a way to include frozen produce, yet the complexity in labeling is no less for blended frozen produce as it is for other processed products.

In the case of frozen produce, consider the following facts:

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

• A new mandatory country of origin protocol in the image of the current voluntary guidelines established by USDA would present food companies with a Catch–22 situation. They obviously must comply with the law. Yet companies blending domestic and imported ingredients in U.S.-based facilities would find compliance unnecessarily difficult—even unachievable—given existing methods and infrastructure for product storage and processing.

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

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

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

In short, the law of unintended consequences may turn a perceived boon for U.S. growers of produce destined for frozen produce processors into a bust.

For my industry, this issue is not one of tracking or segregation. Currently, through the product code required on each package we have the capability to identify not only the lot number and plant in which the package was produced, but also the country of origin and the portion of the grower's field from which the product was harvested. It is extremely more difficult and considerably more costly, however, for U.S. processors to implement the legislation as written for blended produce products, which does not apply to foreign competitors.

THE LEGISLATION

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

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

The farm bill's country of origin labeling provision contains two important exclusions. First, it excludes from coverage any product that is an ingredient in a processed food item. Under the second exclusion, a retailer is not required to provide any additional information if the covered commodity is already individually labeled for retail sale regarding country of origin. These exclusions are important in that some of the products included in USDA's guidelines, and perhaps ultimately in the mandatory requirements, arguably need not be included to satisfy the legislative intent.

EFFECTS OF THE FUTURE USDA REGULATIONS ON FROZEN FOOD PRODUCTS

As stated previously, frozen produce of foreign origin already is required to be labeled for country of origin under section 304 of the Tariff Act of 1930. Under this Act, as interpreted according to current U.S. Customs Service practice, fresh fruits and vegetables that undergo cutting, sorting, steam blanching and freezing, but not further processing such as cooking or combining with a sauce, are considered to retain the origin of the country in which they were grown for country of origin marking purposes.

For example, frozen okra grown in Mexico and frozen in Texas must be marked Product of Mexico. Hence, most types of frozen produce that are of foreign origin are required to display country of origin marking on the containers in which the product reaches the ultimate purchaser. For a product that contains produce from multiple countries of origin, each of the countries must be listed on the package.

Therefore, at this moment, in any supermarket in America, a consumer who wishes to know whether the frozen broccoli he or she is about to purchase is from outside the United States need only read the label on the package. That holds true for produce processed abroad as well as that processed here in the United States.

Frozen produce that is a product of the United States, which is not now subject to mandatory country of origin labeling under section 304, also would be affected by the new regulations. This would go well beyond the current situation in which companies in my industry promote their goods as a Product of the USA if they so desire; the new marking scheme would mandate such marking. In effect, the new regulation would mandate a marketing strategy that makers of qualifying products in my industry already are free to employ if they choose to do so. And, since produce grown abroad is already subject to this labeling, the burden of this legislation falls on those who have chosen to source domestically.

GENERAL EFFECT OF THE USDA GUIDELINES ON FROZEN PRODUCE

The USDA guidelines, if promulgated as regulatory requirements, would not require an enormous burden for single ingredient items such as a bag of frozen peas, green beans or blueberries. The industry already is tracking the information required and this information is already labeled on produce of foreign origin. Although implementation of the farm bill provisions will cause processors who source U.S. produce to incur additional costs, for single ingredient items it is not a magnitude of cost that would substantially affect the manner in which we operate.

The provisions, however, will complicate substantially the country of origin labeling scheme for blended frozen produce. Under the guidelines, if the United States is one of multiple source countries for a commingled fungible good (i.e., a package of the same type of commodity from various sources) or a mixed produce product (i.e., a package of various types of commodities), the country of origin label would be required to list the United States as a source country. Additionally, in either case, all source countries would be required to be listed in the order of their predominance by weight. This not only would require massive labeling changes upon implementation of the new regulation, but also would require numerous labeling changes throughout the regulation's existence in the event of sourcing changes in the composition of the product.

The USDA guidelines further depart from current country of origin marking practice under section 304 by requiring country of origin labeling for produce ingredients in a mixed produce product that underwent blending or processing in the United States. That is, the country, or countries, of origin would be required to be listed in a way that identifies the source countries, including the United States, on an ingredient-by-ingredient basis. If there are multiple source countries for an ingredient, the source countries would be required to be listed on the label, in the order of predominance by weight. Here also, changes in sourcing would require frequent changes in the retail labeling of the finished product.

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

DIFFERENT LABELING REQUIREMENTS DEPENDING ON THE LOCATION OF BLENDING

A product containing imported produce such as a frozen mixed fruit salad or frozen vegetable stir-fry would be subject to different labeling requirements depending on the location of the processing. If any processing occurred in the United States, the label would be required to identify both the source countries in the order of predominance by weight, as well as the fact that processing occurred in the United States.

To demonstrate my concern with this concept, consider the label for a typical, domestically processed vegetable stir-fry as it would have to appear under the new legislation, shown in Attachment 1. In this example, the product contains seven ingredients and each of these along with its country of origin and location of processing would be required to be displayed.

Unfortunately, there are some complicating factors. As demonstrated in Attachment 2, there are variations in raw material sources. The seven ingredients are sourced over time from nine different countries, including the United States. This means there are 216 possible declaration combinations for this example. Clearly, it would be impractical to pre-print this label on the package because of sourcing changes due to seasonal and other conditions.

Currently, frozen food processors use an ink-jet machine to comply with country of origin marking requirements under section 304. However, under the duplicative country of origin regulations being proposed by USDA, this would not be possible. The current ink-jet coding capabilities of the industry only allow a maximum of two lines and 12 to 17 characters. As a result, a labeling outcome such as the one in the example in Attachment 2 could not be accomplished under current technology.

In contrast, in the example used previously, if all processing occurred in Mexico, and produce from the U.S. were excluded, USDA would regard the product as having retained the country of origin as determined for Customs purposes at the time of importation, i.e., as determined for purposes of section 304. The resulting required labeling is demonstrated in Attachment 3, clearly showing that the labeling is much simpler and can be printed using the current technology.

The disparity between the complex scheme of country of origin labeling required for the product blended in the United States and the much more simplified labeling for the bulk or retail-packed imported product reveals that the labeling scheme currently contemplated by USDA creates a major disincentive to blend in the United States using U.S. produce. As a result, large- and medium-sized processors that have overseas blending operations will divert blended, value-added processing to those facilities. Small- and medium-sized firms that do not have an overseas operation likely will have to confine their production to lower-value single-ingredient products.

Some might argue that a sufficient incentive would counteract, or perhaps outweigh, the disincentives. Some might argue that consumers' interest in buying food products Made in the U.S.A. would provide such an incentive; however, indicators do not provide hope that this is the case. Perhaps the most clear indicator of this position is that if frozen food processors believed a simple Made in the U.S.A. marking were necessary to compete, or would provide a marketing advantage, more processors would ensure their products could be so labeled and market them accordingly. As I said, current law even prior to USDA's issuance of voluntary guidelines in 2002 allows for voluntary use of Made in the U.S.A. labeling, assuming it qualifies for such designation.

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

Consumer opinion provides further evidence that even if a Made in the U.S.A. marketing strategy were possible for more companies, it would unlikely meet with sufficient success. Opinion Research Corporation conducted an independent nationwide survey for AFFI in January 2003, regarding factors that affect consumer purchasing decisions related to frozen fruits and frozen vegetables. Less than one percent of respondents stated a response related to country where a product is from as a main factor.

Significantly, this is the same result revealed by an identical survey fielded by the same company for AFFI in 1996. Between 1996 and 2003, there has been ongoing public debate about country of origin marking proposals offered by members of Congress and Federal agencies. Advocates of changes in country of origin marking requirements have waged aggressive campaigns in the media. Still, amid an onslaught of publicity, less than one percent of respondents consider country of origin as important to their purchasing decisions when it comes to frozen produce.

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

A Word About Surveys by Proponents of New Regulations

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

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

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

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

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

These findings may put into perspective those that otherwise would seem to indicate strong consumer support for new regulations. An example is a survey conducted for the Desert Grape Growers League in 1996, as cited in testimony by the

General Accounting Office (GAO) before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry. This survey found that approximately half of respondents would be willing to pay a little more to get U.S. produce. The GAO testimony noted, However, the survey did not specify the additional amount that consumers would be willing to pay.

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

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

In conclusion, it is important to note that there is good news in the world of produce. Due to the increased awareness of the importance of fitness and nutrition, consumption of produce, including frozen produce, has increased. The blended products described in this testimony are leading the way in providing a nutritious, convenient and value-added product to consumers in the produce category. It would be a shame, however, if due to good intentions, U.S. farmers were not able to participate in this growth.

The unintended consequences described that result from duplicative regulating produce are a good reason why this type of government-mandated market intervention, however well meaning, should be avoided.

Thank you for this opportunity to present my views. I would be happy to answer any questions you may have.

STATEMENT OF J.H. CAMPBELL, JR.

Good morning, Chairman Goodlatte and members of the committee, and thank you for this opportunity to provide you with the views of the Nation's independent, community-focused retail grocers and wholesalers regarding the impending Country of Origin Labeling (COOL) program.

My name is J.H. Campbell, Jr., and I am president and chief executive officer of Associated Grocers, Inc., which is a retailer-owned company with headquarters in Baton Rouge, Louisiana, servicing more than 245 independent retail grocers in Louisiana, Texas, Arkansas, and Mississippi. I am also a past chairman and a member of the Board of Directors of the National Grocers Association (N.G.A.), on whose behalf I testify today. N.G.A. is the national trade association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. Some are publicly traded but with controlling shares held by the family while others are employee-owned. Independent retail grocers are the true entrepreneurs of the grocery industry and are dedicated to their customers, associates, and local communities.

At the outset, it is important to note that the Country of Origin Labeling program was the subject of political debate and discussion for at least a decade. The issue of whether or not it was good public policy to pass protectionist legislation covering food products has been discussed for at least the last ten (10) years. Country of Origin labeling was ultimately passed by Congress not long after the tragedy of September 11. Since then, all have had time to reflect and consider the consequences of this legislation. Congress, the Federal Government, and private enterprise have all had time to objectively assess our Nation's security needs. We are here today to suggest to you that, in the light of a calmer time, it is appropriate to evaluate two different forms of public policy intended to make our food system more secure and to produce more pertinent information for consumers.

One policy option would require that only certain products, sold only in certain retail formats, have certain labels indicating the product's country of origin. This option is extremely costly, burdensome, misleading to consumers, and inequitable. This is the option our Nation is facing, and we are asking this committee to begin working to repeal the COOL program as envisioned under the 2002 farm bill.

An alternative policy option, and one that our industry can support, would involve taking the billions upon billions of dollars it will cost to implement the current COOL program and give a portion of that appropriation to the USDA and to the

Food and Drug Administration to further improve their food inspection efforts and increase the number and quality of import inspections. These services are currently underfunded, and improving food security in this regard would produce real, tangible benefits to our Nation's food security and food safety. In the meantime, we suggest that U.S. producers of agricultural commodities who are concerned about foreign competition take the opportunity to voluntarily label their own product and leverage their domestic products as a marketing advantage (i.e. Florida oranges; Idaho potatoes; Georgia peaches; Louisiana crawfish; Nebraska beef, etc.).

Looking at these two broad policy options, one must ask: Which one is best for the American consumer? N.G.A. believes strongly that the second option, one with real food security improvements and voluntary labeling of products, is the best and most effective course of action.

The alternative, the COOL program currently slated to go into effect in 2004, will be extraordinarily burdensome, would require extensive and unrealistic record-keeping, and will merely add costs to food products routinely and customarily sold at retail to all Americans—all the while providing no increase or improvement in food safety or product security.

Country of Origin Labeling has been presented as a law intended to give more information to consumers. Our industry strongly supports informing consumers, and we continue to believe that voluntary, industry-led efforts are the best way to provide that information. But this reasoning, that consumers can only be informed through a mandatory program that includes only certain products sold through certain retail formats, ignores the fact that this program has been a political issue for years. We believe that, in fact, this program will misinform consumers, by falsely implying imported products are either inferior or less safe. We believe this program will confuse and mislead consumers, giving them only an irrelevant piece of information a certain product's country of origin with no supporting information with which to make an informed buying decision.

Ultimately, at the heart of this debate, has been the desire of domestic agricultural producers to resist foreign competition. The implication is that labeling would somehow improve the safety and security of the Nation's food supply.

If our goal is to provide vital information to consumers, then why does COOL cover only certain food sold or provided at certain retail outlets? Why are some products covered and not others?

The Nation's community-focused retail grocers and their wholesalers are committed to food safety, and support workable, effective measures to increase the Nation's food security. With today's high technology and instant communications capability, and in coordination and cooperation with Federal and state agencies, retailers and wholesalers throughout America currently are able to rapidly recall products for any food safety related reasons. This is routinely and efficiently done when there is a factual determination, where deleterious or dangerous materials are contained in any type of food product.

With this in mind, which would you rather see: A government inspector checking actual food products to ensure that they are free from contamination, or a government inspector auditing the records of a retail grocer to determine if a certain banana, sold months previous, was actually from Costa Rica rather than Honduras?

It seems clear that only one of those inspectors is doing something that is actually increasing the Nation's food safety and security.

It is particularly worth noting, in reviewing the COOL program, that its record-keeping requirements would be extraordinarily complex, voluminous, costly, and burdensome. The guidelines would require every entity, or person, that prepares, stores, handles, or distributes a covered commodity to a retail store to keep those records on the Country of Origin for a period of at least 2 years. This requirement forces all producers, handlers, packers, processors, importers, retailers, and wholesalers to maintain auditable records documenting the origin of the items covered. Retailers must ensure that there is a verifiable audit trail through either contracts, invoices, or other means, identifying all suppliers throughout the production and marketing chain, and retailers must maintain supporting records at the place of sale.

This provision will require retailers and wholesalers, much less the producers of the products, to have readily available an audit trail covering the hundreds of items that are stocked, sold, and changed on a daily basis in most retail stores. As an example, our company distributes more than 120 separate beef, lamb and veal items, as well as over 90 pork items and over 75 different seafood items. We completely turn (sell) these commodities (and their replacement items) in our distribution center more than 35 times each year. We buy on the average of 17 loads of beef and 11 loads of pork each week. An average retail grocery store or supermarket will have to maintain records on more than 600 products that turn in inventory daily.

This will require adding the country of origin to all of the invoices for covered commodities by every industry segment. This will expand tremendously the volume of paperwork, which, by the way, over 75 percent of N.G.A. retailers report is being done manually. For example, our company may receive a shipment of bananas from four different countries. As a wholesaler, we will have to track and put on each invoice to our retailers the country of origin for each case shipped to them. This is a product that would be shipped three times each week. This is for just one product.

Records must also be maintained for domestically produced and/or processed products, identifying the location of the growers and production facilities. When similar items are present from more than one country of origin in a display case for sale, a segregation plan must be in place, and for the imported items, records must provide clear product tracking from the port-of-entry into the United States. The USDA has not disclosed what will be considered adequate segregation of product in the distribution center or retail store.

These recordkeeping costs are not only burdensome, but also excessive in cost. The USDA has estimated that the recordkeeping requirement alone will cost the industry almost $2 billion, with $628 million imposed on retailers, $340 million on food handlers such as wholesalers, and $1 billion on producers or manufacturers. N.G.A. believes, however, that the true costs will be much higher, and will result in unnecessarily higher prices for products routinely purchased in supermarkets in our country every day. It is important to note that recordkeeping is only one part of the compliance costs. It does not include costs of computers, software, labels, additional labor, and more that would be required to change our processes to comply.

Under the law, wholesalers are subject to fines of up to $10,000 per violation for failure to comply, and fines of up to $10,000 per violation for willful violations. The USDA has indicated that it intends to have state agencies enforce the law.

With states facing severe budget deficits, it is not hard to envision this program becoming a target for state agencies seeking to subsidize their budget restraints through a series of targeted sting operations to catch retailers for trivial paperwork violations. It is not hard to imagine how that could occur. For example, a wholesaler could receive 12,000 cases of bananas in a week, and have to distribute those cases, each weighing 40 pounds, to hundreds of retailers.

Currently, we are not concerned with mixing bananas from various countries. If one has a good, wholesome, ripe banana that just happens to come from Costa Rica, and adjacent to it is another good, wholesome, ripe banana that just happens to come from Honduras, or wherever, what difference does it make which country it came from? The consumer just wants a fresh banana to slice over his morning cereal. It should be noted that both should have been previously inspected and approved at the port-of-entry, and therefore can be assumed to be equally nutritious and delicious.

But under COOL, those bananas have to be segregated, possibly even individually hand-labeled, in order to protect the wholesaler and retail grocer from liability under COOL—and to provide the consumer with a bit of useless, trivial, and unnecessary information.

When you look at the requirements which our industry will have to satisfy to comply with this law, it makes the law's omissions all the more glaring and questionable. If consumers have a right to know from where the food they purchase at retail comes, then why is more than one half of the food that Americans consume excluded from this law? Why were food service products, and their distributors, and their outlets excluded?

Excluded from this law are: convenience stores, small supermarket formats that sell less than $230,000 worth of fresh fruits and vegetables per year, airlines, passenger trains, restaurants, fast-food outlets, hospitals, school cafeterias, and very significantly, dining facilities on military bases and military commissaries. Consumers who get their food in these places get no information about the country of origin of the food they are provided—none! Over one half of the food consumed by Americans would not be covered under this law.

It is interesting to note that the products sold in grocery stores and supermarkets have a mandatory nutritional label on each and every product sold, and yet, you or I can enter any restaurant in America and be served any item on the menu and be told nothing about the contents, ingredients, recipe, preparation technique, or anything else about the product that will be served. It is the restaurant customer's personal responsibility to ask if they are interested or concerned about the menu item that they desire.

While only certain retail formats are covered, only certain food products are covered under COOL. But why is it important for consumers to be informed of the country of origin of just those certain commodities? Why must their beef, lamb or pork carry a label, but not their chicken, or turkey?

And commodities covered under COOL are excluded if they are an ingredient in a processed food item. It just seems absurd and totally inconsistent. Peanuts must be labeled, but not our peanut butter. Pork must be labeled, but not our pork sausage. Oranges have to be labeled, but not our orange juice.

Finally, in order to accurately label products, wholesalers and retailers have to assess a commodity's whole biography. Beef can be labeled as U.S. product, but only if it has spent 60 days or less outside the country. Fish can be labeled U.S. so long as it was caught in U.S. waters or on a U.S.-flagged vessel.

Members of the committee, as you examine this program, and weigh the excessive costs and burdens it will place upon our industry against the fragmentary and misleading information it will provide to consumers, we hope you will agree that this legislation requires immediate repeal. N.G.A. and its members have provided USDA with extensive comments regarding the program and the published guidelines. Attached to my testimony are N.G.A.'s comments submitted recently to USDA on the voluntary guidelines, and I would ask that these also be incorporated into the record of today's hearing.

Community-focused grocers believe in giving their customers information about the products that they sell, but we believe this is best accomplished through voluntary means driven by consumer demand and marketing leverage. With regard to food safety, a) the systems currently in place with USDA, FDA, and the various state departments of agriculture, and b) the notification provisions, procedures, and processes, that we currently have in place, and c) the voluntary compliance that manufacturers, producers, processors, wholesalers, and retailers, currently utilize with each other; all ensure a safe, sound, secure, product supply indicating no need for any additional, mandatory labeling.

Food safety and security are indeed high priority items for anyone in the food business. In our marketplaces across America we have available the broadest variety, selection, and choices of food products for the American consumer to enjoy each and every day. We should work to preserve that free marketplace and adequately fund the USDA and FDA so that port-of-entry inspections are thorough and complete to maintain the safety and security of the food products we enjoy from abroad.

Thank you very much for this opportunity to testify before the committee today. I would be pleased to answer any questions you might have.

STATEMENT OF DICK TROYAK

We welcome this opportunity to comment on the country of origin labeling provisions as set forth in the Food Security and Rural Investment Act of 2002 (i.e., the farm bill). The American Peanut Product Manufacturers, Inc. is a national trade association representing the companies that manufacture a majority of the peanuts produced in the United States into snack peanuts, peanut candy and peanut butter.

As a result of the 2002 farm bill, more-extensive country of origin labeling requirements will be imposed on certain commodities. This law establishes country of origin labeling requirements for a number of covered commodities, including peanuts. Section 10816 of the farm bill (7 U.S.C. 1638) also specifically excludes a covered commodity from the labeling requirements "if the item is an ingredient in a processed food item."

The initial guidelines developed by USDA's Agricultural Marketing Service (AMS) on October 11, 2002, are correct in excluding peanut candy and peanut butter from the requirements of the new Federal country of origin labeling statute. Unfortunately, these initial guidelines are over-inclusive in extending the scope of the statute to include most snack peanut products. In these initial guidelines, AMS has taken the rather arbitrary position that peanuts that are shelled, roasted, salted and/or flavored (which are hereinafter collectively referred to as snack peanuts) for retail sale are not excluded from the country of origin labeling requirements of the statute. Snack peanuts are a processed food item that has been materially changed during the roasting process, and therefore must be excluded from country of origin labeling requirements.

We strongly oppose recent efforts by peanut growers to have peanut butter included in the country of origin labeling guidelines. Peanut butter is clearly a processed product that involves the grinding of peanuts and the addition of other ingredients to make a product that is materially changed from raw peanuts.

Snack peanuts and peanut butter must be excluded from coverage under the plain meaning of the statute as well as the language of the guidelines themselves and an existing agency definition of processed food. The guidelines as currently written to include snack peanuts and any expansion of the guidelines to cover peanut butter

will cause considerable economic hardship for a vital sector of the U.S. peanut industry and potentially raise serious trade concerns.

ESTABLISHED USDA REGULATORY DEFINITION OF PROCESSED PRODUCT

An existing Federal regulatory definition governing inspection and certification of processed food products defines the term processed product as a food product which has been preserved by any recognized commercial process, including, but not limited to canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation (see 7 C.F.R. 52.2(b)). This definition outlines USDA's long-standing approach for determining whether a particular food product is a processed product. This current regulation clearly would treat any peanuts and peanut products in the form of canned snack nuts, peanut candy and peanut butter as processed peanut products. Under this existing definition, only in-shell peanuts that are available in bulk or loose form for retail sale at grocery stores would be subject to country of origin labeling.

SNACK PEANUTS & PEANUT BUTTER FIT THE PROCESSED FOOD EXCLUSION OF THE STATUTE

Under the country of origin statute, a covered commodity is expressly excluded from the scope of the country of origin labeling provisions if the item is an ingredient in a processed food item. Snack nut products, including cocktail peanuts, dry roasted peanuts, and honey roasted peanuts, which are generally sold at retail in cans, jars or bags are finished processed products that contain at least two or more additional ingredients. Therefore, snack peanut products may start out as peanuts meeting the statutory definition of a covered commodity, but the peanuts themselves are just one of the ingredients in what becomes a processed food item in the category of products referred to as snack nuts. Snack peanut products fall within the plain meaning of the processed food labeling exclusion of the statute. An interpretation to the contrary by AMS would be in violation of the clear statutory language.

Similarly, peanut butter fits the processed food exclusion of the country of origin labeling statute. Peanut butter is sold in jars as finished processed products that contain at least two or more additional ingredients, where the original peanuts have been processed through grinding, such that the resulting peanut butter is a food product that does not even look like peanuts.

Snack Peanuts & Peanut Butter Are Excluded Under the Proposed Agency Definition

If the proposed AMS definition contained in the guidelines for processed food item is applied to snack peanuts, such products would be excluded from the country of origin labeling requirements. In its guidelines, AMS defines a processed food item as either of the following:

1. a combination of ingredients that may include a covered commodity but the identity of the processed food item is different from that of a covered commodity; or a covered commodity that has undergone a material change.

Snack peanut products appear to fall under both tests set forth in the guidelines for the processed food item exclusion. Pursuant to the first test, snack peanut products are made from a combination of ingredients that result in a product with an identity different from that of the covered commodity (that is, peanuts).

Application of the second alternative test presents even a stronger case that snack peanuts fit within the scope of the processed food item exclusion. A raw peanut undergoes significant physical and chemical changes during the roasting process. The chemical reactions triggered by roasting changes the raw peanut kernel irreversibly and generate a characteristic roasted flavor not present in the raw kernel. Among other things, roasting denatures the peanuts storage proteins to produce flavor compounds and aroma, as well as brown pigments.

Proper roasting also produces the desired crisp texture of a roasted nut, while antioxidants generated by the application of high heat help preserve the freshness of the roasted product. When combined with proper packaging, these desired roasted product attributes can be preserved for years.

The roasting process clearly consumes amino acids, sugars, peptides, and other components to produce the characteristic flavor, color, and physical structure of a roasted peanut. None of these features exists in a raw peanut. Thus, roasted peanuts have been materially changed from raw peanuts, just as the second definition requires, and thereby qualify as a processed food item.

Likewise, peanut butter has been materially changed from its original state as peanuts through grinding and the addition of ingredients.

SIGNIFICANT COSTS FROM EXPANSION OF THE STATUTE TO COVER SNACK PEANUTS & PEANUT BUTTER

Some of our member companies that manufacture and market roasted peanut products as well as peanut butter will incur significant unnecessary costs if AMS fails to exclude snack peanut products and peanut butter from its country of origin labeling guidelines. Neither the statute nor the definition of a processed food item, which is contained in the proposed guidelines require such labeling for snack peanut products. The same is true for peanut butter, which is not a covered commodity under any reading of the country of origin labeling statute.

If AMS proceeds to arbitrarily require labeling for snack peanuts or expands the guidelines to include peanut butter, it will cause the substantial commitment of individual company resources to implement and comply on an ongoing basis with the country of origin labeling requirements. Significant implementation and compliance costs will be associated with product segregation, audit trail, record keeping, labeling, and customer assurance.

ONLY IN-SHELL PEANUTS FIT THE DEFINITION OF A PROCESSED FOOD ITEM

We do not believe that AMS has followed the explicit language in the statute in applying the country of origin labeling requirements to snack peanuts in its initial guidelines. AMS should limit its regulation to in-shell peanuts because snack peanut products, such as shelled and roasted peanuts clearly fit within the exemption for an ingredient in a processed food item. Thus, before the current voluntary guidelines are issued as a proposed rule, we urge the committee to work with USDA to ensure that mandatory country of origin labeling regulations issued by the Department apply to only in-shell peanuts, and not processed peanut products, like shelled, roasted, and other snack peanuts.

Thank you for allowing us to provide our views on this issue of significance for the U.S. peanut industry. We believe that the committee can provide much-needed assistance in minimizing the adverse and unproductive aspects of the mandatory country of origin labeling legislation.

STATEMENT OF HON. TIM JOHNSON, A SENATOR FROM THE STATE OF SOUTH DAKOTA

Mr. Chairman, thank you for the opportunity to submit written testimony for today's hearing. I appreciate your willingness to accept this statement in support of the country of origin labeling law.

As a former member of the House of Representatives and this committee, I worked to enact legislation requiring country of origin labels on food items. Last year, thanks to support for labeling in both bodies of Congress, mandatory country of origin labeling for beef, pork, lamb, fruits, vegetables, peanuts, and fish was included in the farm bill. The U.S. Department of Agriculture is developing rules for labeling, set to begin in September of 2004.

Recently, the House Subcommittee on Agriculture Appropriations included language in the fiscal year 2004 bill to effectively restrict USDA from issuing regulations to implement labeling for meat and meat products. If agreed to by Congress, this language would dismantle our only law to ensure consumer confidence in beef and jeopardize our most valuable export markets.

Support for the mandatory country of origin labeling law is bipartisan and broad. In the House, Reps. Bill Janklow (R-SD), Earl Pomeroy (D-ND), and Mary Bono (R-CA) are strong leaders who support the law. I worked with Sens. Chuck Grassley (R-IA) and Mike Enzi (R-WY) in the Senate to include labeling as part of the Senate farm bill last year.

The most important and influential farm and consumer organizations in the Nation support the labeling law, including the American Farm Bureau Federation, National Farmers Union, and Consumer Federation of America. In fact, 134 groups supporting the labeling law sent a letter to Members of Congress to express their opposition to steps in the House to delay implementation of this critical program. I have included a copy of this letter for the committee record. Altogether these organizations represent more than 50 million Americans—each one a consumer who supports the right to know where their food comes from and the law we passed last year. The only groups that oppose labeling are the narrow special interests in the meatpacking, food processing and major retailing sectors. These well-funded opponents and their politically connected allies appear to have significant influence in

the House. It is unfortunate the clear majority who support the law have been overruled in the House by a smaller fraction of special interests with power and money.

I think it is important to address some of the frequent criticisms that opponents of the labeling law use to defend their position. Opponents of the law have complained about the lack of Congressional hearings on this issue. However, today's hearing marks the seventh time since the late 1990's that a Senate committee, House committee, or conference between the two bodies have met to discuss labeling. Opponents go on to suggest labeling somehow violates our trade commitments. What they don't want the public to know, however, is that 34 nations already require country of origin labeling for beef cuts and 33 require labeling for ground beef. In fact, some meatpacking firms who allege it is impossible to carry out a labeling program already comply with labeling laws in order to export meat products to Japan and the European Union. Opponents are also quick to cite inflated cost estimates for the program released by USDA. However, through a Freedom of Information Act request, the Consumer Federation of America obtained documents which reveal these cost estimates were developed after groups opposed to the law met with USDA. The University of Florida completed the only objective cost analysis which indicates the cost of labeling can be contained to around $200 million versus the USDA and opponent's claim of $2 billion. It is also common for opponents to assert labeling will not result in any benefits. But these arguments ignore the many consumer surveys and University of Florida analysis, all which demonstrate consumers are willing to pay a premium for information about the origin of their food.

Finally, opponents of the labeling law contend it is complex and impossible for USDA and the industry to implement. However, those of us who wrote the law permitted USDA broad authority to piggy-back existing government and industry programs to ensure easier implementation. For instance, the new labeling law can be modeled after the National School Lunch program, Department of Defense subsistence program, and the Market Access Program—all Government-run to ensure the origin and identity of food products are retained. Moreover, the labeling law can be modeled after existing industry programs such as the USDA grade certification system, Certified Angus Beef, and other systems meatpackers use to provide special marketing labels for meat products. But opponents misconstrue the law to scare producers these programs won't work. Worse yet, USDA has turned a blind eye to packer threats against livestock producers regarding on-farm surveillance and third-party certification. Some packers have resorted to letters to producers threatening costly third-party certification and mandatory identification programs, which are not permitted under the law. These scare tactics are inappropriate and only intended to kill the law.

I will conclude my statement with some thoughts concerning Canada, mad cow disease, and Japan, our most valuable export market for beef. Mad cow disease in Canada demands that USDA and Congress take careful and appropriate steps to protect our cattle industry and restore confidence in beef supplies. Despite enormous pressure from the meatpacking lobby and Canadian government to lift the ban on imports of Canadian beef and cattle, I have called upon USDA Secretary Veneman to fully implement labeling before completely lifting the ban. Labeling won't prevent BSE but it will allow consumers to differentiate between U.S. and Canadian beef. We shouldn't take this issue lightly since the U.S. imports more beef and cattle from Canada than any other nation in the world.

Japan has sent a letter to USDA insisting that all beef exports are certified by July 1 so as to indicate their country of origin. Japan purchases around 1 billion pounds of valuable U.S. beef each year, but without a labeling guarantee, Japan cannot certify whether Canadian beef is being laundered through our borders and disguised as coming from the U.S. However, USDA asked for a delay of the July 1st deadline which now has been granted by Japan. The U.S. now has until September to certify all beef exports as U.S.-origin only. The entire world is waiting to see how we respond to Japan's request, and USDA now has more time to meet it. I believe we should comply with their request to certify the origin of beef exports, using the U.S. labeling law as a model. Otherwise, we are carelessly jeopardizing our most valuable export market for beef.

Mr. Chairman, action in the House to delay country of origin labeling for meat is misguided. Dismantling our only way to differentiate and identify beef given the BSE scare in Canada recklessly risks consumer confidence. Ignoring requests from important beef customers to certify exports by country of origin is taking a serious gamble with our most valuable export markets. Rather than stalling the law or contending it is too difficult to administer, we should encourage USDA to accelerate implementation and hold USDA responsible to carry out the intent of Congress. BSE in Canada and Japan's request creates a unique circumstance and the opportunity for the U.S. to act responsibly. Indeed, the significance of BSE in Canada and Ja-

pan's desire to import only U.S. beef compel us to swiftly move ahead and implement the mandatory country of origin labeling law.

Thank you once again, Mr. Chairman.

STATEMENT OF J. PATRICK BOYLE

Good morning. I am J. Patrick Boyle, president & CEO at the American Meat Institute (AMI), the Nation's oldest and largest meat industry trade association. AMI represents packers and processors of about 95 percent of the beef, pork, lamb, veal and turkey produced in the U.S. About two-thirds of these companies are small businesses with fewer than 100 employees. The remaining third are mid-to-large firms, including some major international food processing companies.

AMI has long-standing policy opposing mandatory country-of-origin-labeling (COL) for meat and poultry products. During consideration of the 2000 farm bill, we opposed mandatory COL for meat products and were successful in helping to defeat amendments offered during the House Agriculture Committee mark up of the bill. When mandatory COL was passed on the House floor during farm bill consideration, meat products were exempt from the bill. During Conference Committee deliberations between the House and Senate, the House voted unanimously, twice, against the mandatory COL provisions for meat products included in the Senate passed bill.

During my tenure at AMI, I have yet to hear an argument from proponents of mandatory COL that makes sense for the producer, packer/processor, retailer or for the consumer. Proponents of mandatory COL initially argued that concerns about food safety was reason enough to impose mandatory COL. When it was established that meat products coming from countries eligible to ship product into the U.S. were inspected under a food safety system equivalent to U.S. standards; reviewed annually by USDA food safety experts; subject to reinspection at the port of entry; and, ultimately, inspected by USDA inspectors in federally inspected meat plants—that argument subsided. The argument is even more fallacious when one considers that mandatory COL will apply not only to imported meat, but also to the meat from animals slaughtered in USDA inspected plants in this country. Many of those animals are born in Mexico or Canada, often raised in the United States, and all of those animals are subject to the very same inspection system as animals born, raised, and slaughtered in the U.S. When the same USDA inspector looks at both animals, the illogic of the COL proponents food safety argument becomes readily apparent.

Then we heard proponents argue that mandatory COL was a consumer-right-to-know issue. In fact, it was the consumer-right-to-know premise that led to mandatory COL's inclusion in the 2002 farm bill. However, this argument too rings hollow. Mandatory COL is required for a select group of commodities (red meat, fruits and vegetables, peanuts and fish) and not all commodities. Equally troubling, mandatory COL only applies to certain product lines within those commodity groups—for instance, not all red meat products, fish products or peanut products are required to be labeled, just some of them. This suggests a level of fickleness among consumers beyond comprehension!

Perhaps the greatest flaw in the consumer-right-to-know logic is that the law applies to covered commodities sold in retail establishments but the same commodities sold in restaurants are exempt from mandatory labeling. So, what does this mean? A consumer has the right-to-know where their hamburger, lettuce and tomato come from when they purchase it from the grocery store, but they do not have that same right when they purchase it from a diner or restaurant. It is ironic that proponents assert that the consumer has a right to know the country-of-origin regarding the hamburger he or she purchases at a retail store, but does not have the same right regarding the hamburger they ate at a restaurant just before going grocery shopping (even though both hamburgers could have come from the same animal. Where's the logic?

Lately, we have heard from some producer segments that mandatory COL for meat products will lead to increased profits for red meat sales. They claim that consumers are willing to pay more for products with a "Made in the U.S.A." or "Product of the U.S.A." label. For the sake of argument, let us suppose that to be true. Let us also suppose that such a labeling regime will lead to an increase of 1-cent, 5-cents or 25-cents per pound. If so, we should also assume that the USDA cost estimate for implementing mandatory COL will cost $1 billion in paperwork alone. Indeed, AMI's conservative estimates of the capital costs alone for the approximately 120 largest cattle and hog slaughter facilities are about $2.4 billion. Those costs are in addition to the substantial annual costs of implementing such a labeling system.

Now, the following questions must be answered: if increased revenue is realized by retailers for meat products bearing mandatory COL, will that revenue off-set the cost of mandatory COL that retailers and packer/processors will incur? If the answer is no, producers are not likely to realize additional revenue to offset their cost of implementing mandatory COL. Even if the answer is yes, and I do not believe there is evidence to support that answer, how much of the "profit," if any, will "trickle down" to producers?

There is simply no credible data or evidence available to suggest that the cost of implementing mandatory COL will offset, much less exceed, those costs.

Let me also briefly comment on another problem. The law imposes the responsibility for accurate labeling, and provides for civil penalties for errors in such labeling, on the retailer and those in the distribution chain who supply covered commodities to the retailer. In the livestock and meat industry the only people who can provide accurate information as to the country of origin of livestock are livestock producers (not the packer and not the retailer. Yet, some producers deny their accountability and seek to shirk that responsibility, asserting that they should be able just to declare the country of origin of their livestock. Packers and those up the chain must, however, must be able to rely on something more because it is the packer, the wholesaler, the retailers and others in the chain who will bear the brunt of the regulatory burden if the producer's information is wrong, either through negligence or fraud.

Since the adoption of NAFTA, the North American livestock and meat industry has aggressively pursued free trade opportunities and efficiencies among Canada, Mexico and the U.S. Annually, we export more than $1.2 billion worth of beef and pork to Canada and Mexico. Some argue, make it simple—just track the imports. But the national treatment provisions of our international trade agreements require that the country-of-origin provisions law, including the necessities of recordkeeping, be applied equally to everyone - whether they import livestock or raise hogs or cattle domestically. To do otherwise violates the WTO and create a non-level playing field - a playing field decidedly in favor of those who advocate that AMS should "just track the imports."

The issue of COL is complex in that its proponents see it as a means to a variety of ends. For some, it is a means to limit competing imports. Frustrated by Canadian or Mexican imports, some see such labeling as a way to discriminate against other North American agricultural products and thereby improve the position of U.S. products in the U.S. marketplace. For others, COL is a way to promote U.S. products to consumers. If Americans only knew how to choose U.S. products, they reason, then they would prefer to purchase those products and help American agriculture in the process.

AMI shares the goal of those who seek to promote U.S. products, but we oppose the goal of those who seek to discriminate against imported products. In our view, mandatory COL will create untenable barriers to imported meats, damage our ability to export U.S. meats and mandate significant new costs throughout our industry.

There is, however, another approach that we continue to believe is responsive to the desire to provide country-of-origin labeled meat in the marketplace without creating an expensive, administratively burdensome, protectionist mandate. That approach is a voluntary U.S. meat certification program.

As you may know, Mr. Chairman, AMI joined the National Meat Association, Food Marketing Institute, American Farm Bureau Federation and National Cattlemen's Beef Association in petitioning USDA one year ago for a new, voluntary, U.S. beef certification program. This program would be administered by the Agricultural Marketing Service and would be available to anyone in the beef packing business, for a fee, to provide certified U.S. beef. Importantly, the livestock used for this voluntary program would be subject to an animal identification program to ensure that they, too, meet the standards to be certified U.S. beef under the terms of the program. Under this system, the market would provide for what COL proponents profess to be the case (that the American consumer will prefer and pay more for meat products from animals born and raised in the United States. Under this program, those that believe that to be true could enter the market with those products and if the benefits outweigh the costs, succeed.

Thank you for this opportunity to testify.

STATEMENT OF E. LISA LANGELIER

On behalf of Ocean Spray Cranberries, Inc. we appreciate the opportunity to submit the following comments as part of the hearing record on the new Country of Origin Labeling Regulations now being considered by the U.S. Department of Agri-

culture to implement provisions included in the Farm Security and Rural Investment Act of 2002.

Ocean Spray is an agricultural cooperative with members in the United States and Canada who supply fresh cranberries for retail sale as well as fresh cranberries for processing into various cranberry drinks and food products. We request consideration of the following points of concern:

• Ocean Spray believes that the current Country of Origin labeling regulations as administered by the Bureau of Customs and Border Protection (formerly U.S. Customs) are adequate to protect the consumer. The current regulations are understandable and there is a well-developed body of law to support the interpretation of the regulations. Therefore, new country of origin regulations as proposed by USDA are both un-necessary and an unjustified regulatory burden.

• As presently proposed, these regulations will be very costly to Ocean Spray to implement due to the expensive reporting and auditing procedures and further impact the ability of our cooperative and its grower members to recover from low commodity prices and continue to grow demand. Additionally, in order to comply with the new USDA proposed regulations, supermarket retailers are requiring suppliers such as Ocean Spray to conduct expensive third party verifications of these reporting and auditing procedures. These costs will be passed along to consumers, or in the alternative will be absorbed by struggling cranberry farmers.

Ocean Spray endorses the comments submitted by the National Food Processors Association, the American Frozen Foods Institute and the Grocery Manufacturers of America, and request that careful consideration is given to their concerns and recommendations.

We appreciate the committee's efforts to review and address the potential negative implications of the new Country of Origin Labeling Regulations and hope that you will not hesitate to contact Ocean Spray if we can provide any additional information to you or your staff.

STATEMENT OF PETER H. CRESSY

Over the past decade, the export market for U.S. distilled spirits products has become increasingly more important to the U.S. distilled spirits industry. In fact, since 1990, U.S. exports of distilled spirits worldwide have doubled, growing to over $550 million in 2002. While the Uruguay Round Negotiations produced significant benefits for U.S. distilled spirits exporters, numerous barriers still remain. Therefore, the U.S. distilled spirits industry actively supports the U.S. Government's efforts to seek the elimination or reduction of these remaining barriers within the context of the ongoing World Trade Organization negotiations, and in other multilateral and bilateral trade negotiations. Improving market access for U.S. distilled spirits products worldwide is necessary in order to ensure the continued growth of the U.S. distilled spirits industry.

II. WORLD TRADE ORGANIZATION: DOHA DEVELOPMENT AGENDA

The Distilled Spirits Council has had a long and active involvement with the World Trade Organization (WTO), and remains a strong supporter both of the organization and its ongoing work program, as well as the Doha Development Agenda negotiations. The Distilled Spirits Council and its member companies are enthusiastic supporters of efforts to liberalize international trade and to strengthen the rules-based multilateral trading system administered by the WTO.

Unquestionably, the U.S. distilled spirits industry has benefited significantly from the leadership role the United States government has assumed in the WTO. The tariff elimination commitments on distilled spirits, secured during the Uruguay Round and subsequent negotiations under the WTO's auspices as part of the U.S. Government's "zero-for-zero" initiative, have paved the way for a significant increase in U.S. spirits exports. The industry has reaped the rewards of the WTO's dispute settlement mechanism, which the United States government has used to challenge successfully the discriminatory excise tax regimes of Japan, Korea and Chile. The provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) include important protections for geographical indications for spirits, including Bourbon and Tennessee Whiskey, which are essential for the protection of these distinctly and exclusively American products. And the reporting mechanisms established by the Agreements on Technical Barriers to Trade (TBT Agreement) and Sanitary and Phytosanitary Standards (SPS Agreement) have, in many cases, at least given the industry some advance notice of significant regu-

latory changes that could have significant—and sometimes adverse—effects on the industry.

The improvements in market access achieved under the auspices of the WTO—and before it, the General Agreement on Tariffs and Trade—have led directly to a sharp increase in U.S. spirits exports. For example, since the Uruguay Round agreements entered into force in 1995, U.S. exports of Bourbon—the leading U.S. distilled spirit export—have increased 57 percent over their 1994 levels, reaching $351 million in 2002.

A. MARKET ACCESS NEGOTIATIONS— AGRICULTURAL PRODUCTS

Distilled spirits are processed agricultural products classified under HTS headings 2207.10.30 and 2208, and fall within the scope of the ongoing negotiations on agriculture. As noted previously, distilled spirits (HTS 2208) were included in the Uruguay Round's zero-for-zero negotiations and yielded significant benefits to the industry. However, participation in the spirits zero-for-zero agreement has been limited. Until recently, only the United States, the European Union, Japan and Canada, were participants in the agreement with respect to most categories of spirits. More recently, Taiwan joined the spirits zero-for-zero agreement upon its accession to the WTO in January 2002. Macedonia has also agreed to phase out its 48 percent tariff on distilled spirits in connection with its WTO accession.

Notwithstanding the progress that was achieved during the Uruguay Round and more recent accession negotiations, however, the U.S. distilled spirits industry continues to face pervasive, and in some cases prohibitive, tariffs in a number of the industry's most important markets. This is particularly true with respect to emerging markets. For example, in India imported spirits are assessed a base tariff of 166 percent ad valorem. As noted below, the central government also levies an additional customs duty on top of the base tariff, which results in effective tariffs rates ranging from 240 percent to 578 percent ad valorem. In addition, although South Africa applies a tariff of 5 percent ad valorem (arguably a nuisance tariff) on imported spirits, its bound rates are exorbitant, ranging from 67 percent for bottled brandy, whisky, rum and gin to an astronomical 597 percent for vodka and liqueurs. South Africa represents a potentially lucrative market for U.S. distilled spirits exports, and is itself a significant producer of distilled spirits products. Moreover, pursuant to its recently-concluded free trade agreement with the European Union, South Africa will reduce and eventually eliminate (by 2012) its tariffs on imports of EU-produced spirits. Thus, one of the U.S. spirits industry's objectives in the Doha Round is to secure South Africa's commitment to bind its tariff on spirits at zero.

Furthermore, in some developed country markets the tariff burdens on imported spirits are significant, which add significantly to the costs of doing business. For example, Australia also applies a nuisance tariff of 5 percent ad valorem, which, despite being relatively low, imposes a high tariff burden: more tariffs were assessed on the importation of U.S. spirits into Australia ($2.7 million) in 2001 than were assessed by any other government. Similarly, New Zealand applies a tariff rate of zero on imports of whisky, brandy and rum, but assesses a 5 percent nuisance tariff on liqueurs and a 6.5 percent tariff on vodka and gin.

Moreover, since the conclusion of the Uruguay Round, the U.S. spirits industry has encountered setbacks in a number of its priority markets:

The margins of preference extended to distilled spirits produced in the European Union (EU) by a number of the Central and Eastern European countries in the process of acceding to the EU have progressively increased, putting U.S. distilled spirits at an even greater competitive disadvantage. For example, Bulgarias tariff on EU spirits is approximately half the rate applied to U.S. spirits. EU spirits enter the Czech Republic subject to duty rates that are 40 percent - 70 percent lower than the rates applied to U.S. spirits. In Poland EU spirits are assessed tariffs ranging from 52.5 percent to 73.5 percent (within a quota of 3,000 liters of pure alcohol), while U.S. spirits exports face tariffs ranging from 75 percent to 105 percent.

We have seen a significant improvement, however, in Romania, where the import tariff on Bourbon was reduced recently from 70 percent ad valorem to 35 percent ad valorem, which is the same rate that is currently applied to whisky imported from the European Union (EU). The action was prompted, in part, by a Distilled Spirits Council petition seeking the withdrawal or suspension of Romania's benefits under the Generalized System of Preferences (GSP) program. (The petition, therefore, was subsequently withdrawn.) Unquestionably, this successful result would not have been possible without the persistent efforts of the U.S. Government.

When India lifted its quantitative restrictions on distilled spirits on April 1, 2001, it simultaneously imposed additional duties on spirits imports, on top of its already

prohibitive base tariff. Currently, additional tariffs ranging from 25 percent to 150 percent ad valorem or US$40 to US$53.20 (depending on the case price) apply to imported spirits, on top of India's base tariff of 166 percent ad valorem. Thus, the current effective tariff on imported spirits ranges from 240 percent to 578 percent ad valorem. When India fully phases in its Uruguay Round commitment in 2004, the base tariff will still be an exorbitant 150 percent, wholly apart from the additional customs duties imposed in April 2001.

The EU's free trade agreement negotiations with the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) continue to move forward, with the prospect that EU spirits will at some point enter these markets duty-free. U.S.-produced spirits will continue to face significant tariffs (applied rates currently range from 13.5 - 21.5 percent). The Distilled Spirits Council strongly supports the ongoing negotiations for the Free Trade Area of the Americas (FTAA), but also urges the United States government to make reductions in the Mercosur countries' spirits tariffs, on an MFN basis, a high priority.

In the current Doha Development Agenda negotiations, the industry seeks the broadest possible participation in the spirits zero-for-zero agreement, and views those developed countries whose spirits tariffs constitute, in essence, nuisance tariffs (including Australia, New Zealand and Switzerland) as prime candidates. China, Korea, and Thailand should also be encouraged to join the zero-for-zero agreement, just as Taiwan and Japan have done. Although U.S. negotiators secured significant tariff concessions from China in the spirits sector (a reduction from a base rate of 65 percent to 10 percent over five years) in the context of its WTO accession negotiations, the next logical step—and one that is consistent with China's role as a major spirits producing- and consuming-nation-is full adherence to the zero-for-zero agreement. Both Korea and Thailand are also major spirits producers. Korea's current applied rates range, however, from 15-20 percent, while its fully-phased in bound rate is 30 percent ad valorem. Thailand currently applies a complex tariff, with an applied rate of 55.2 percent or 59.8 Baht per liter, whichever is higher, on gin, and a rate of 60 percent or 120 Baht per liter, whichever is higher, on all other spirits. (Thailand's bound rate on gin is 55.2 percent or 59.8 Baht/liter, whichever is lower; for other spirits, the bound rate is 62 percent or 124 Baht/liter, whichever is lower.)

In parallel with these objectives, we seek the U.S. Government's support in ensuring that the Central and Eastern European countries implement the EU's common external tariff on spirits zero immediately upon their accession to the EU. Ten of the EU-accession countries are scheduled to accede in May 2004, while others are not currently scheduled to join until 2007 at the earliest.

With respect to the industry's other priority countries, the Distilled Spirits Council seeks significant cuts in the effective tariff rates, i.e., reductions that will yield rates that are substantially below the currently applied rates. Anything short of this goal would fail to achieve any real improvements in market access. We continue to urge that negotiations be conducted on the basis of applied, rather than bound, rates, and applaud the U.S. Government's success in the FTAA negotiations to proceed largely on the basis of applied rates.

In the context of the Doha Development Agenda, we understand that certain countries whose current applied tariffs are below their bound rates have objected to this approach because they fear that they will not be given credit in the negotiations for having undertaken unilateral tariff liberalization. In order to address this concern, a method could be developed whereby the country in question could receive credit toward its overall tariff-reduction commitment in the agriculture sector for any such unilateral tariff cuts that occurred before the beginning of the new round. If it is not possible to negotiate on the basis of applied rates, a formula should be employed whereby cuts in bound rates translate immediately into commensurate cuts in applied rates: without such an approach, there will likely be no real improvements in market access in countries maintaining the highest tariff barriers, as was the case for distilled spirits products in the Uruguay Round. At the very least, we urge that the U.S. government insist that WTO members adopt a benchmark measure for real market access that would quantify the actual improvements in market access—i.e., a quantitative assessment of the differences between the rates applied at the beginning of the Doha Development Agenda negotiations and the bound rates agreed at the conclusion of the Round—in order to provide a more accurate assessment of actual improvements in market access. Indeed, one of the agreed goals of the market access negotiations should be to seek a significant improvement in this real market access indicator.

For the U.S. distilled spirits sector, the following goals for the WTO agriculture negotiations are of paramount importance:

- a minimum reduction of 50 percent or more for each line item;

• a ceiling rate for all line items once reductions are phased in, e.g., 20 percent for developing countries; 5 percent for industrialized countries;
• elimination of current nuisance tariffs of 10 percent or less;
• no exceptions for individual products or participants;
• a 5-year maximum for staged implementation; and
• the binding of tariffs at the intermediate stages, as well as at the final stage.

The Distilled Spirits Council also strongly believes that any special and differential treatment accorded least developed countries should be reflected in longer implementation periods, rather than by exempting these countries altogether from their obligations to improve access to their markets.

B. Geographical Indications—Agriculture Negotiations

The Distilled Spirits Council and its member companies have a direct and significant interest in the negotiations under Article 23.4 of the TRIPS Agreement on the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits. Although the inclusion in the TRIPS Agreement of provisions specifically mandating the establishment by all WTO member countries of a legal means of protecting GIs associated with distinctive distilled spirits was, in our view, a major achievement of the Uruguay Round, protection of internationally-recognized GIs remains uncertain in many WTO member countries.

Accordingly, our objective in the ongoing negotiations is to secure more certain recognition and protection, in all WTO member countries, of internationally-recognized GIs for spirits such as Bourbon and Tennessee Whiskey. We are concerned that certain proposals currently under review will do little to achieve this goal, while other proposals appear to incorporate complex and cumbersome procedures that may impose significant additional and unnecessary costs on industry. Moreover, we are concerned that the effort on the part of certain WTO member states—in the context of the agriculture negotiations—to extend the TRIPS Agreement's current enhanced protection of geographical indications for wines and spirits to other products has unfortunately deflected attention from the negotiations on wines and spirits, which were specifically mandated by the Doha Declaration.

The Distilled Spirits Council and its members stand ready to work with the U.S. negotiating team to design a system that would secure more certain protection for internationally-recognized GIs for spirits without constructing cumbersome and costly new procedures for doing so.

C. Non-tariff Barriers

With respect to non-tariff measures, the Distilled Spirits Council urges that particular attention be given to seeking improvements under GATT Article X (transparency). In that connection, the Distilled Spirits Council and its members have witnessed a proliferation of new and proposed regulatory measures concerning, e.g., product labeling requirements and food safety standards. Although the TBT and SPS Agreements incorporate basic notification and consultation obligations, a number of these new regulatory proposals are simply never notified, or are notified well after they have entered into force, thus nullifying the benefits of any existing notification obligation. We urge the U.S. government to ensure that the Article X negotiations embrace improvements in the TBT and SPS notification and consultation procedures.

III. Other Multilateral and Bilateral Trade Negotiations

The Distilled Spirits Council and its members also strongly support the United States' efforts to further open markets within the context of the negotiations towards a Free Trade Area of the Americas (FTAA), and in the ongoing bilateral negotiations towards free trade agreements (FTAs) with Australia, Central America, Morocco, and the Southern African Customs Union. Pursuing these negotiations provides an unparalleled opportunity to liberalize further these markets for U.S. distilled spirits products.

The objectives of the U.S. distilled spirits industry for these regional and bilateral negotiations are consistent with those identified above for the Doha Development Round. These include, for example, securing the immediate elimination of the import duties on distilled spirits products from the United States. As stated above, the United States has already eliminated tariffs on nearly all spirits products from all countries. In contrast, U.S. spirits currently face tariffs ranging from, for example, 5 percent to 40 percent in Central America, and up to 133 percent in some Caribbean countries. Securing the immediate elimination of these duties will enable U.S. spirits entering these markets to be accorded the same tariff treatment as spirits

from these countries entering the United States. Furthermore, since some of these countries have already concluded free trade agreements that include tariff preferences for spirits products, U.S. spirits exports are currently at a competitive disadvantage vis-a-vis, for example, spirits products from the EU (in South Africa), Canada (in Costa Rica) and Mexico (in Colombia and Venezuela). Thus, securing the elimination of these tariffs on U.S. spirits products will place U.S. spirits exports on a level playing field with our competitors.

Second, the Distilled Spirits Council and its member companies place a very high priority on securing certain protections for Bourbon and Tennessee Whiskey as distinctive products of the United States within the context of regional and bilateral negotiations. Such protection will ensure that only spirits produced in the United States, in accordance with the laws and regulations of the United States may be sold as Bourbon and Tennessee Whiskey.

Third, these negotiations provide an opportunity to address the specific technical barriers to trade affecting imports of U.S. distilled spirits products into some of these markets. These include, for example, certain technical standards in, inter alia, El Salvador, Nicaragua, South Africa and Australia, labeling requirements in Australia and Morocco, and burdensome brand registration, certification and import licensing requirements in some Central American countries. These negotiations, therefore, provide a significant opportunity to seek the elimination of these practices that impede trade in U.S. spirits products.

Finally, the Distilled Spirits Council and its member companies enthusiastically support the prompt entry-into-force of the free trade agreements with Chile and Singapore, which will bring about significant and measurable benefits for U.S. sprits exporters. The agreements eliminate several of the barriers that U.S. spirits exporters currently face in these markets. Prompt implementation of the FTAs will permit U.S. spirits exporters to benefit from improved market access to Chile and Singapore, thus contributing to the continued growth of the U.S. distilled spirits industry.

The U.S. distilled spirits industry views the Doha Development Agenda as providing the industry with its best—and in some cases only—opportunity to address a broad range of significant market access problems that continue to impede U.S. exports of distilled spirits. As described in greater detail above, our principal objectives for the WTO market access negotiations on agricultural products are:

Elimination, where possible, or, at a minimum, significant reductions in both bound and applied tariffs on distilled spirits products, including through an expansion of the zero-for-zero agreement;

Improvements in regulatory transparency through focused negotiations targeting procedural improvements in the TBT and SPS Agreements; and

More certain recognition and protection of geographical indications associated with distinctive distilled spirits.

Similarly, the industry's goals within the context of the FTAA negotiations and the various bilateral free trade agreement negotiations are to:

Secure the immediate elimination of import duties on U.S. distilled spirits products;

Obtain certain protections for Bourbon and Tennessee Whiskey as distinctive products of the United States; and

Remove the technical barriers to trade that unnecessarily impede the import of U.S. distilled spirits in these markets.

We stand ready to work with the Congress and the administration to ensure that these goals are achieved in the multilateral and bilateral agriculture negotiations.

Thank you very much for your consideration.

STATEMENT OF JOHN CADY

Mr. Chairman, Ranking Member Stenholm and members of the committee. We want to thank you for providing an opportunity to comment upon this matter.

The National Food Processors Association (NFPA) is the voice of the $500 billion food processing industry on scientific and public policy issues involving food safety, nutrition, technical and regulatory matters and consumer affairs. NFPA's three scientific centers, its scientists and professional staff represent food industry interests on government and regulatory affairs and provide research, technical services, education, communications and crisis management support for the association's U.S. and international members. NFPA members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers.

NFPA urges Congress to expand upon the actions taken in the Appropriations Committee and Agriculture Appropriations Subcommittee and effectively repeal the country of origin labeling mandate. This would relieve the entire food industry of these onerous and ultimately counterproductive mandates. Absent that, we strongly urge stringent oversight of the approach USDA has taken in its recently proposed Guidelines, which, if issued as binding regulations, would be administratively unsound and in some respects, NFPA believes, legally impermissible. The Guidelines would over-regulate by prescribing country of origin labeling rules for products already required to display such labeling, creating the prospect of duplicative, confusing, and even conflicting regulations.

In implementing its country of origin labeling regulations, NFPA believes USDA should adhere to the fundamental principle of regulating only where necessary and to the extent necessary to effectuate the statutory purpose. Specifically in implementing regulations NFPA believes USDA should:

- Provide that mixed processed food products are outside the scope of Subtitle—D, as required by section 281(2)(B) of that statute;
- Delete from the implementing regulations the requirement in the Guidelines to display the country where processing occurred;
- Exclude from the scope of its implementing regulations all frozen produce;
- Exclude from the scope of its implementing regulations all frozen seafood;
- Delete from the implementing regulations the requirement in the Guidelines that multiple countries of origin be listed in the order of predominance by weight; and
- Define the scope of the implementing regulations to apply to inshell peanuts but not peanuts that are shelled and roasted.

1. Effective Date. Absent repeal of the country of origin labeling mandate, NFPA requests that Congress make clear to USDA that it should not impose labeling or recordkeeping requirements on products packaged before the date the mandatory rules become effective. To require labeling to be in place at the store level for such products will have the effect of making the voluntary guidelines mandatory, contrary to what we believe was Congress' intent in requiring the agency to have a final rule in place by September 30, 2004.

NFPA believes it reasonable and practical for the agency to provide for packaged covered commodities that are in the channels of commerce prior to the promulgation of any final rule be permitted to continue in commerce. Product that has entered the food chain (e.g., packaged frozen peas) and which otherwise complies with existing regulations (including existing country of origin marking requirements for packaged goods) but that may be at variance with any final rule issued by USDA, should be permitted to continue to proceed through the food chain to retail sale without the need to relabel or repackage the product. In any event, all imported packaged produce (including bulk shipments repackaged for retail sale) is subject to country of origin marking requirements established by the Bureau of Customs and Border Protection (formerly the U.S. Customs Service) regulations (19 CFR Part 134) under the Tariff Act of 1930. Among other advantages, a phase-in period will provide time for the agency to issue guidance to industry regarding what it will consider to be adequate to satisfy the recordkeeping requirements to verify the country of origin declaration.

2. Definitions. NFPA requests that Congress consider directing USDA to consider amending the following definitions offered for comment in the Guidelines as follows:

a. Material Change

Fresh and Frozen Fruits and Vegetables. Because frozen packaged fruits and vegetables are covered by Bureau of Customs and Border Protection country of origin marking requirements at 19 CFR Part 134, we believe it is important to delete the definition's reference to frozen fruits and vegetables in order to be consistent with current law or for USDA regulations for this product to be identical with existing Bureau requirements.

b. Peanuts. With regard to peanuts, we also request the agency recognize that the roasting of peanuts is a material change from the raw peanut and so incorporate roasting into the regulations definition of material change for this commodity.

Wild and Farm-raised Fish. We believe the final regulations should recognize freezing and smoking as constituting a material change. The amended definition may read, for example:

5. Wild fish and farm-raised fish: Altered to the point that its character is no longer that of the covered commodity. Includes the freezing, smoking, cooking and canning of fish and shellfish. Examples include canned tuna and canned sardines, frozen and/or smoked fish, Surimi, and restructured fish sticks.

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

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

This interpretation will recognize that the Bureau of Customs and Border Protection has established regulations effecting country of origin marking for packaged frozen produce.

3. Consumer Notification

a. Labeling of Imported Products

We agree with the statement that imported products "Shall be labeled with the country from which it was exported in conformance with existing Federal laws." NFPA interprets this statement as recognition that the Bureau of Customs and Border Protection has jurisdiction over the country of origin marking requirements for imported products at port of entry as well as the labeling of packaged products containing imported ingredients including those repackaged in the United States. USDA should recognize Bureau of Customs and Border Protection jurisdiction and permit Customs rulings on such marking to continue in place or adopt regulations identical to those provided for by such Customs rulings. For packaged food products this means the package bears a statement Product of Country X with X representing the country in which the product was prepared and packaged in its final form. This is not necessarily the country from which it was finally exported to the United States. During the West Coast Dock strike many ships carrying products from Asia were diverted to ports in Mexico or Canada then transported by truck or rail to their final destination in the United States. Simply entering the United States from Mexico or Canada did not make them a product of either of those countries.

b. Consistency with Bureau of Customs and Border Protection Regulations

With regard to those parts of the proposed regulations that turn upon the conclusion that a product has been substantially transformed, we believe that the final rules should be made consistent with the long-standing interpretation of substantial transformation of product as determined by the Bureau of Customs and Border Protection at 19 CFR Part 134 under the Tariff Act of 1930. With respect to the example label statement in this section Grown and packed in Country X and Processed in the United States, we believe the current labeling permitted by Customs Product of Country X is sufficient to inform the consumer of the origin of the product. We agree that an additional voluntary declaration Processed in the United States may be provided for fruits and vegetables and request that it be made voluntary for seafood.

c. Blended Products

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

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

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

Order of Predominance. NFPA also believes that USDA's voluntary guidelines further depart from the requirements of Subtitle—D in addressing the country of origin of covered commodities having multiple countries of origin. Such commodities, which under the section 304 regulatory scheme are regarded as commingled fungible goods, are required under that regulatory scheme to display the multiple foreign countries of origin, but not in any particular order. For commingled fungible goods, USDA's voluntary guidelines require that the countries be listed in the order of their predominance by weight, even though no such requirement appears in Subtitle—D. The requirement to disclose this level of detail in country of origin information, which is of dubious value to the consumer, will greatly complicate the record-

keeping and other compliance-related burdens on the U.S. food industry and require frequent, and costly, labeling changes. Any reference to listing of countries in order of predominance should be removed from the final document.

4. Markings

a. AbbreviationsWe support the abbreviations provided in the voluntary guide and request that additional country name abbreviations be provided consistent with current Bureau of Customs and Border Protection list of permissible abbreviations (December 19, 1997 letter from Sandra Bell, Chief, Special Classification and Marking Branch, U.S. Customs Service copy attached). That list includes the following:

Country/Abbreviation
Great Britain/Gt. Britain
United Kingdom/U.K.
Luxembourg/ Luxemb or Luxembg
Federal Republic of Germany or Fed. Rep. of Germany
Mexico/ Mex. (only if used in conjunction with names of cities or state initials)
Switzerland/Switz.
Republic of Korea/Rep. of Korea/ or South Korea or S. Korea
Dominican Republic/ Dominican Rep.
Sierra Leone Sa. Leone
South Africa/S. Africa

Additional country abbreviations may be provided for where they clearly indicate the country of origin.

5. State or Regional Labeling Programs. We disagree with the agency's position regarding state or regional labeling programs, which states that these programs were inadequate to insure domestic origin. It is our position that State and regional labeling programs are designed or could be designed to provide proper documentation that the fresh fruit or vegetable included in the program does, in fact, originate in that State or region of the United States and the labeling of the product at retail Washington State Apples clearly communicates to the consumer that it refers to a geographic region in the United States. Clearly such programs should be considered to be in compliance with the intent of the law. We believe that such programs and the labeling permitted under those programs provides the consumer with sufficient information to determine that the produce originated in a specific geographic region of the United States. We request that Congress consider directing USDA to reevaluate its position and provide as a part of any final rule a list of State and regional labeling programs which fulfill the intent of the law subject to periodic review of the recordkeeping provisions of such program(s) to ensure compliance. We encourage Congress to direct USDA to work with State and regional groups so that programs currently judged as not meeting the minimum criteria of the compliance program can be brought into compliance.

Again, we thank the committee for this opportunity to comment on the country of origin labeling issue.

STATEMENT OF THE AMERICAN SHEEP INDUSTRY ASSOCIATION

On behalf of the 64,000 lamb producers in the United States, we appreciate this opportunity to re-iterate our support for mandatory country of origin labeling of lamb. The long-standing policy of the association supports positive identification of the origin of lamb at retail.

The sheep industry supported the labeling provision authorized last year in the farm bill. In fact testimony provided to the committee on April 28, 1999 by ASI remains very relevant today. Mr. A.H. Denis III, representing our association, spoke of his role in our industry as a lamb producer, lamb feeder and Chairman of the Board of Ranchers Lamb of Texas (one of the largest lamb slaughter and processing companies in the U.S) and the need to label lamb meat at retail. Mr. Denis remains committed as does the national board of directors of ASI to support mandatory labeling of lamb for country of origin.

We provide for today's hearing, key points from our comments in support of the USDA/AMS proposed rule regarding labeling of lamb.

ASI commends USDA/AMS for developing what we believe is a workable approach for implementing voluntary COOL guidelines that should form a framework for the mandatory regulation.

For the past decade, the American Sheep Industry Association (ASI) has worked toward implementing a national system that would ensure consumers' ability to accurately recognize the origin of lamb on the shelves of American supermarkets. ASI's policy was never aimed in such a way to prevent the importation of foreign

lamb—merely to identify it at retail. Mandatory Country of Origin Labeling (COOL) was designed to provide consumers with the type of assurance they already have with some food products—in that they know where those products originated.

• Most of the major lamb companies now handle both U.S. and foreign lamb. Product blending and substitution does occur to achieve a less expensive price point without differentiation of the product origination.

• Many of the U.S. lamb companies and retailers do not label country of origin on their products.

• Consumers are willing to pay more for product labeled American lamb as compared to product merely labeled lamb. Therefore, the financial rewards to the U.S. sheep industry for COOL-labeled product would be substantial conservatively, an estimated extra $40 million annually. (This figure was generated through the utilization of data from two sources the U.S. International Trade Commission (USITC) and USDA's Economic Research Service (ERS) both of which identified a 40-cent price differential between foreign ($3.90 a pound) and domestic ($4.30 per pound) product.

• The U.S. lamb industry now has the American Lamb Board to promote its product. Labeling American lamb as such will enhance the board's promotional efforts in getting consumers to seek out and purchase American lamb.

• Implementation will be enhanced in the U.S. lamb industry due to the very small number of live lambs imported to the U.S. (typically 80,000 live lambs imported annually therefore the extreme range is 1–3 percent of U.S. slaughter).

• Additionally the lamb checkoff precludes imported lamb so an audit trail exists already on imported live lambs, which are not assessed. A limited number of individuals and firms import live lambs. Since nearly all-major lamb processors participate in the USDA commodity purchase program, segregation plans are already in place if any Canadian born lambs enter the plant.

• The born, raised and slaughtered definition for U.S. origin is appropriate as that is the license requirement in place today to use the American lamb seal on packaging.

• Congress has authorized labeling and sheep leaders believe private industry will find the most economical and efficient manner to implement this legislation.

We greatly appreciate the support and leadership of the committee on the critical agricultural issues regarding competitiveness of the farm and ranch families that produce the Nation's lamb and wool. Labeling is but one of those issues. We look forward to working with the members of the committee on this and additional key issues facing our industry.

Gary Ray: Country-of-Origin Labeling Hearing

June 20, 2003

Good morning, my name is Gary Ray, Executive Vice President Refrigerated Foods, Hormel Foods Corporation based in Austin, MN. I am speaking to you today on behalf of the Hormel Foods Corporation and Jennie-O Turkey Store, one of our subsidiaries based in Willmar, MN. We would like to share with you our thoughts on the Country-of-Origin Labeling law that has been enacted.

Hormel Foods slaughters and processes hogs raised by producers located principally in the Midwest, many of whom purchase piglets born in Canada. The law requires country of origin labeling for livestock born, raised or slaughtered in a foreign country.

You are all aware of the categories covered within country-of-origin labeling. What is perplexing is the inconsistency in which the law was written. First, poultry is not included, one of the highest consumed proteins in the United States. Second, the law exempts products sold through foodservice (e.g., restaurants) channels where billions of pounds of these categories are consumed annually. And finally, it does not include products that are further processed which use many meats and other covered foods as an ingredient. If this is a "right to know" issue, then why were these categories excluded? Other food products today carry labeling identifying only the location of final manufacturing (e.g., Wheaties doesn't identify the origin of its wheat, Minute Rice doesn't identify the origin of its rice, etc., etc.). Meat shouldn't be any different. We are certainly not a proponent of adding more categories. Rather, this is to point out that these are all contradictions that are confusing to the manufacturers, producers and consumers alike, if the purpose of country-of-origin labeling is to provide the consumer with the "right to know."

Despite the law's applicability to only a relatively small percent of our Company's pork products, we must of necessity know the origin (i.e., where every pig was born) for every pig Hormel slaughters because

different parts of the same pig wind up in processed foods (exempt), foodservice channel (exempt) and fresh/refrigerated (required). Requiring so much information for so little doesn't make a lot of sense.

There is a lack of depth and breadth of quantifiable consumer preference and perceived need for country-of-origin labeling. Studies that have been referred to have not demonstrated country-of-origin labeling is high on the list of importance to consumers. On the contrary, in a frequently referenced study through Colorado State University and the University of Nebraska by proponents of country-of-origin labeling, only 273 randomly selected consumers in Chicago and Denver were surveyed which is a very small sample population. Country-of-origin labeling ranked 8 out of 17 items of importance, well behind freshness and food safety inspection. In Hormel's own consumer research, primarily relating to food safety, country-of-origin labeling has not been brought up by consumers in any of the studies we've done over the past several years.

There has been a great deal of speculation relating to the cost of implementing country-of-origin labeling. The USDA initially estimated it at $2 billion. Sparks Company, Inc. has estimated it at $3.7 to $5.6 billion for the total food industry. Whatever figures you chose to believe, the cost impact is going to be far reaching and effect everyone from the small producer to the consumer. Ultimately, it is going to be the consumer who will be picking up the majority of the tab for this law through increased prices at the shelf.

It is our belief that country-of-origin labeling is going to result in retaliation as a "protectionist law" from our foreign trade partners. Country-of-origin labeling is an intervention pattern that the European Union consistently uses to isolate themselves. Have we not been extremely critical of these EU practices? What happens with NAFTA? If we are looking to curtail free trade with country-of-origin, then we must be prepared to pay the consequences.

Consumers are already faced with a plethora of labeling on packages, particularly on meat; item description, pricing, store code, safe handling instructions, nutrition facts, etc. With the country-of-origin labeling, there

could be up to four labels on the front of an item. How can the consumer even see the product, which is one of the most important attributes to them? And most important, no concrete evidence has been revealed to prove that the consumer cares about another label relating to country-of-origin.

The USDA had proposed a voluntary program for country-of-origin labeling prior to the passing of the 2002 Farm Bill. The Hormel Foods Corporation is a proponent of a voluntary program, which can be used as a marketing tool, should producers, manufacturers, or retailers chose. Many organizations do so today as point of difference. The consumers then vote at the supermarket and can pick and choose for themselves if this important to them. Mandatory country-of-origin labeling severely dilutes or even destroys this fundamental marketing strategy.

The Hormel Foods Corporation in order to stay viable and serve our customers must continually stay in contact with our consumers, and even more importantly, listen to them. Country-of-origin labeling is not based on listening to the consumer and adds absolutely no value. The price consumers will pay will increase with no compensating increase in benefit. Let the consumer be the ones to make that choice at the point of purchase....not have the government tell them what is or should be important to them.

If there is merit to this legislation, consider this suggestion:

As noted above, the law requires country of origin labeling if the livestock was "born, raised or slaughtered" in a foreign country. Since virtually all the value is found in the raising and slaughter of livestock, I would suggest the elimination of the word "born." Very few jobs are created from and virtually no value is added to the birthing of livestock. By contrast, raising livestock requires large quantities of feed and huge investments in buildings and labor. Likewise, slaughter requires transportation and huge investments in capital and personnel. Such an elimination would relieve the farmers and the industry of a huge cost and administrative burden, and labeling would be focused on where the value is added.

We urge each of you to review mandatory country-of-origin labeling and look at the implications that have been brought forward. We believe that once you review all the facts you will find that this law's applicability to meat should be repealed.

Thank you for listening.

Statement of

Mr. Jon Caspers
President
National Pork Producers Council
Before
U.S. House of Representatives
Committee on Agriculture
Hearing on
Mandatory Country-of-Origin Labeling

June 26, 2003

Good Morning, Mr. Chairman, Mr. Ranking Member, and Members of the Committee:

I am Jon Caspers, President of the National Pork Producers Council (NPPC) and a pork producer from Swaledale, Iowa. I operate a nursery-to-finish operation, marketing 18,000 hogs per year.

I would like to thank the Chairman for scheduling this hearing. In recent months it has become clear that the issue of mandatory country-of-origin labeling is indeed far more complicated and far reaching than simply identifying live animals at the U.S border or affixing a label to a package of pork chops in grocers' retail meat cases. The National Pork Producers Council appreciates the opportunity to further examine the long-term consequences of this law for U.S. pork producers.

We believe that the mandatory country-of-origin labeling provision of the 2002 Farm Bill offers little value for either U.S. pork producers or U.S. consumers. It is clear that the law:

- Will not result in long-term higher hog prices for U.S. pork producers;
- Will not provide additional food safety assurances for U.S. consumers;
- Will not provide adequate traceback to handle a foreign animal disease emergency;
- Will reduce U.S. pork exports by creating comparative advantages for our export competitors such as Canada;
- Will place U.S. pork producers at great financial peril due to the need to indemnify their customers for damages that a producer error might cause;

- Will favor vertically integrated pork production systems in both the U.S. and Canada;
- Will impose onerous requirements and additional costs on U.S. pork producers if administered in the credible manner which Congress intended; and
- Will create a permanent cost advantage for chicken and turkey, even if those species were to be covered by the law.

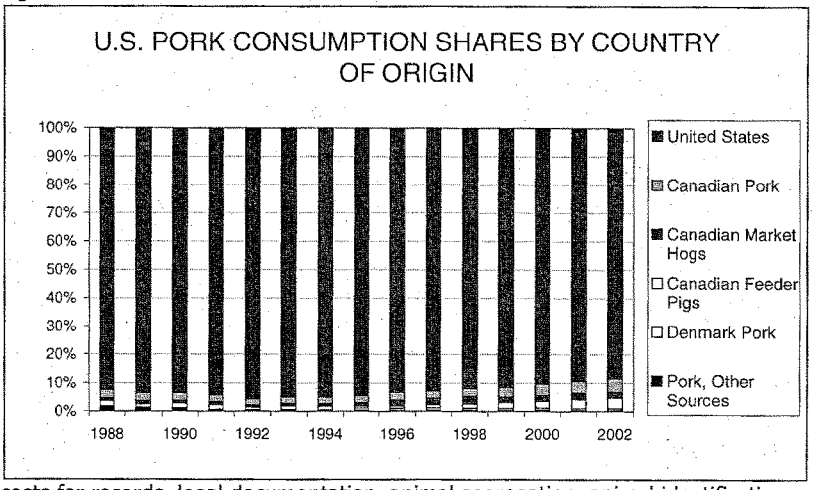
All of these issues will limit the long-term economic health and growth of the U.S. pork industry.

I would like to address these issues as well as several others that have been swirling around the emerging debate on this law and explain why the National Pork Producers Council is urging Congress to repeal the mandatory country-of-origin labeling provision and replace it with a workable voluntary program for hogs and pork.

A "workable voluntary program" should be one that producers, processors, and retailers will choose to participate in, one that will reward entrepreneurial pork producers who choose to differentiate their product in the U.S. meat case. Further, it should include pork destined for retail, restaurant and foodservice outlets. In order to guarantee the integrity of the U.S. labeled product, USDA must ensure, as they currently do with other programs such as their "Organic" and "Certified Angus Beef" programs a legitimate and dependable label. The program should include specified standards for records (such as breeding, farrowing, death loss, livestock purchases, and sales), a method for legal affirmation that information provided to sellers is true, that records exist to support that affirmation, and a requirement for pre-specified product segregation plans complete with records and periodic spot checks. The National Pork Producers Council stands ready to assist in developing such a system.

Country-of-origin labeling is an effort to reduce pig, hog, and pork imports that account for just over ten percent of total U.S. pork consumption (see Figure 1). To accomplish this goal, the law will impose large costs on the remaining ninety percent of the pork consumed in the United States. These will include

Figure 1



costs for records, legal documentation, animal segregation, animal identification product segregation, enlarged inventories and multiple stock-keeping units, signage, and many other items. It is not reasonable for U.S. pork producers to incur these costs over one tenth of the market, especially when the same program will put pork exports (which account for eight percent of total U.S. production) at extreme peril.

> "I must stress at the outset that country of origin labeling is a marketing issue, not a food safety issue. USDA's Food Safety and Inspection Service (FSIS) ensures that imported meat is as safe as domestically produced meat. FSIS requires imported meat to be inspected under a system that FSIS has determined – through a rigorous and comprehensive process – to be equivalent to the U.S. system. Perhaps most importantly, all foreign plants exporting meat to the U.S. must meet the requirements of the Hazard Analysis and Critical Control Points (HAACP) inspection system."
>
> *Statement of Secretary of Agriculture Dan Glickman before the Senate Committee on Agriculture, Nutrition and Forestry, May 26, 1999*

The mandatory country-of-origin law is NOT a food safety law. It is trade protectionist law designed to restrict access to U.S retail meat cases. The law will not enhance the U.S. Government's ability to address food safety emergencies or foreign animal disease outbreaks,

such as BSE, nor will it provide additional food safety assurances for U.S. consumers. The law enables consumers to determine the country-of-origin for fresh pork sold only through retail meat cases—not for pork that is either sold by food service establishments or further processed. Food service establishments include: restaurants; fast-food outlets; lunchrooms; cafeterias; lounges; bars; and food stands. This excludes over 50 percent of the pork consumed in the U.S. today! The information required by this law is not sufficient to find the state, let alone the county or farm of origin in order to identify and respond to a food safety emergency or a foreign animal disease outbreak. In fact, the law actually prohibits the Secretary of Agriculture from requiring an animal identification system, a key element for any workable food safety traceback system. USDA already has the authority to require animal identification to protect U.S. consumers from the threat of illegal residues and food-borne pathogens. USDA is about to convene a National Animal Identification Task Force on July 1st in Kansas City, Missouri. This Task Force will use the research and work completed by the National Institute for Animal Agriculture to make recommendations to the Secretary of Agriculture on implementing an effective animal identification system. I will represent U.S. pork producers on this task force.

If the mandatory country-of-origin labeling law is intended to ensure the safety of the U.S. meat supply, why prohibit the Secretary of Agriculture from requiring an animal identification system and why exempt over 50 percent of the pork consumed in the U.S. today? Do these products not have the potential to pose an equal food safety or animal health risk? Those who argue that mandatory country-of-origin labeling guarantees a safer meat supply in the U.S. are clearly distorting the facts. The reason so many products are excluded from the purview of this law is that this law is NOT about food safety at all.

This mandatory country-of-origin labeling law has little to do with the "consumers' right to know" about their food – if it did, it would fail miserably. U.S. consumers have indicated they are concerned about the price, convenience, nutrition, freshness, and flavor of the food they buy. Only after these factors, and then only when prompted, do consumers consistently mention the origin of food. No credible evidence has ever shown that consumers are willing to pay a premium for country-of-origin labeled pork. U.S. pork suppliers who are currently capable of delivering such a labeled pork product to any U.S. buyer report that, to date, NOT ONE BUYER has requested this product. Where is the market for origin-labeled pork? If consumers have a "right to know" where their pork comes from, they have a responsibility to pay for that information and not pass the cost back to the U.S. pork producer. We should heed the advice of former Secretary of Agriculture, Dan Glickman.

> "I also think it is important to consider fully the implications of basing a mandatory labeling requirement on the theory of a consumer's right to know. As the Committee is well aware, the European Union believes its consumers have a right to know if food products contain genetically modified organisms. It is possible that imposing country of origin labeling in the U.S. could weaken our ability to object to other labeling requirements sought by our trading partners."
>
> *Statement of Secretary of Agriculture Dan Glickman before the Senate Committee on Agriculture, Nutrition and Forestry, May 26, 1999*

Now, I would like to turn to the long-term effects that the mandatory country-of-origin labeling provision will have on North American hog and pork production and prices. **In the long-term, this law will raise North American hog and pork production and drive prices down.** Why is this so? Because the Canadian pork industry, responding to Canadian market signals will feed the pigs and process the hogs, previously fed U.S. corn and soybeans and processed in the U.S. While lower prices in Canada will result in some reduction in Canadian pig production, Canadian output will not fall to the levels to compensate for the number of feeder pigs previously sent to the U.S. In addition, Provincial and Federal Canadian whole-farm income support programs will cushion Canadian producers' losses so pig production will not drop as far and as fast as the market would otherwise dictate. The shortage of weaned and feeder pigs in the U.S. will cause finishing buildings to stand empty, drive pig prices upward in the short term and encourage higher production in the U.S. You can easily see what will eventually happen: higher pig and pork supplies in North America. Without increased demand for pork, a circumstance for which there is no supporting consumer demand research, these higher supplies MUST result in lower wholesale pork and hog prices. So, while there are arguably some short term benefits for SOME U.S. pork producers--the long term consequences will lead to lower prices for ALL U.S. pork producers. The economic pain of lower prices will fall hardest on high-cost producers and those without contracts or management systems that limit risk exposure. Generally, these are independent, small to medium sized producers.

Low-or no-cost certification and audit systems for producers will NOT eliminate the mandatory country-of-origin labeling law's negative impact on U.S. pork exports. While certification and audit costs are a certainty, finding a way to minimize them for U.S. producers will not eliminate the segregation costs associated with raising and processing Canadian-origin pigs or reduce the logistical costs of increased stock-keeping units at U.S. packing, processing, and retailing operations. These factors will only drive a price wedge

between U.S. and Canadian pigs and force the Canadian industry to increase domestic feeding and processing capacity. Canada's small population simply will not consume the additional output so Canada, already the world's largest exporter of pork, will export it to the United States, Japan, Mexico or other countries. The result will be lower U.S. export growth or even lower U.S. exports in the future. Research suggests that, at best, U.S. exports will stagnate near their current levels over the next 10 years. At worst, U.S. pork exports may end up 50 percent lower than they would have been in 2012 had the mandatory country-of-origin labeling law not been enacted.

In recent months we have been hearing much about how U.S. retailers, processors, and packers are allegedly unfairly and illegally requiring changes in current business relationships with U.S. pork producers. We are also hearing about how USDA is creating a huge mess and placing an unnecessary burden on producers. This is simply not true.

While we do not like the indemnity requirements that retailers, processors, and packers have sent to producers, we believe they are reasonable given the onerous financial liability that everybody in the pork chain faces when the law takes effect. It is perfectly understandable why retailers, processors, and packers would require indemnification against violations caused by supplier error as a prerequisite for any future business relationship. These are reasonable and sound business practices. A reasonable pork producer would do the same if placed in the same position. Yet the potential costs of a producer's mistake could be immense. Not only would the producer have to reimburse downstream participants for any fines incurred, he/she could also be liable for recall costs and lost value of product that cannot be labeled with certainty. Mislabeled product in a retail store is grounds for a Class III product recall. Further, a packer's mislabeling of product would be more than just a violation of the mandatory country-of-origin labeling law, it would also be a violation of the Meat Inspection Act; this violation is a felony! By creating a new labeling scheme, and requiring a legally binding disclosure about where an animal is born and raised, Congress created the need for downstream firms to protect themselves against the possibility of a pork producers' unintentional mistake. This protection places America's pork producers in great financial peril. An unintentional act will likely put a pork producer out of business.

The relatively short time period until the law becomes mandatory poses even more problems for producers. USDA has yet to propose the mandatory program's regulations. After publication of a proposed mandatory program rules will come comment periods, reviews, and revisions. Sows bred in early December 2003, will produce pigs that will be processed on or near September

30, 2004. How will producers know what records they need if the regulations are not finalized by December 1, 2003?

The requirements of a credible mandatory country-of-origin labeling system will greatly favor vertically integrated pork producers. A completely vertically integrated system can deliver product to a retailer (and anyone else, for that matter) with a 100 percent origin guarantee. This is true of systems in both the U.S. and Canada! These organizations have records in place today capable of meeting the laws' requirements and the individual requirements of USDA and/or any retail customer. In every way they have an advantage over the traditional hog-pork production system that uses the spot market. Even systems with a high percentage of contracted hog supplies will have some disadvantage relative to a vertically integrated system. The mandatory country-of-origin labeling law's proponents never mention this FACT because they know this trade protectionist law favors vertically integrated producers who they loathe and abhor. However, the law they have put in place will hurt the very constituency -- independent producers--they purport to represent.

USDA'S guidelines are NOT the problem; this law is. Proponents of the mandatory country-of-origin labeling law argue that this law was never intended to affect pork producers. Proponents claim that the only reason that producers are impacted is because USDA does not like or agree with the law and is determined to make the regulations as onerous as possible. How they can make this argument with a straight face while knowing what is required to accurately label a retail product is beyond us.

Let us be perfectly clear: The National Pork Producers Council opposes this mandatory country-of-origin labeling law. However, we believe that USDA has accurately interpreted the law as it is written. It is very clear that Congress intended for the country-of-origin label to be a credible source of information for U.S. consumers. If not, why would Congress have allowed this provision to become law? The legislative language is unequivocal in that it provides for a "verifiable audit trail" and specifies that, for a pork product to be labeled "Product of the U.S.", the animal must have been "born, raised, and slaughtered in the U.S." This can only mean that Congress intended for U.S. producers (the only parties with knowledge about where a pig was born and raised) to provide "auditable" information to downstream processors and handlers. Proponents of the law appear to want a meat labeling program that costs nothing because it requires nothing. We believe that such a system would result in a label that MEANS nothing and is merely a consumer sham. Such a view defies logic and trivializes the profound impact this law will have on the U.S. pork industry and U.S. consumer confidence.

The law hands a permanent cost advantage to the U.S. poultry industry. This advantage CANNOT be overcome by including chicken and turkey. The mandatory country-of-origin labeling law places records, auditing, segregation, and logistical costs on the U.S. pork, beef, and lamb producers, packers and processors while excluding chicken and turkey. Simply including chicken and turkey, will not level the playing field because virtually all U.S. chicken and turkey comes from vertically integrated production systems. Just as mandatory country-of-origin labeling favors vertically integrated pork production systems, so it favors the entire U.S. poultry industry! The origin of all chicken and turkey is known and can be easily traced. Complying with mandatory country-of-origin labeling regulations will require practically no new practices on the part of any poultry firm. The cost of poultry compliance would be little more than the ink to print the label on packages. In the U.S. retail meat case, poultry and pork are highly price competitive products. Handing the integrated U.S. poultry industry a new cost advantage at the expense of 80,000 U.S. pork producers is simply bad economics and bad public policy!

In conclusion, Mr. Chairman and Members of the Committee, I have outlined the many reasons why the National Pork Producers Council opposes the mandatory country-of-origin labeling provisions in the 2002 Farm Bill. The law as currently structured will not provide additional food safety assurances for U.S. consumers; will deliver advantages to our export competitors such as Canada; and will impose additional costs on the U.S. pork producers. All of these issues as well as many others I mentioned will limit the long-term health and growth of the U.S. pork industry.

Thank you Mr. Chairman and Members of the Committee for your time and attention. I would be pleased to answer questions at the appropriate time.

House Committee on Agriculture
Grocery Manufacturers of America
Country-of-Origin Labeling Testimony, June 26, 2003

On behalf of the member companies of the Grocery Manufacturers of America (GMA), I appreciate the opportunity to submit testimony to the House Agriculture Committee regarding the mandatory country of origin labeling law enacted as part of the Farm Security and Rural Investment Act of 2002 (the farm bill). In short, GMA encourages the committee to support a voluntary country of origin labeling system rather than the mandatory scheme scheduled to take effect on October 1, 2004. A voluntary approach would enhance consumer choices without the burden of increased cost, increased regulation, and increased uncertainty for producers, processors, consumers, and our trading partners. In addition, we have serious concerns about the unintended consequences of future USDA regulations, based on the voluntary guidelines issued by the department in October, 2002.

GMA is the world's largest association of food, beverage and consumer product companies. With U.S. sales of more than $500 billion, GMA members employ more than 2.5 million workers in all 50 states. The organization applies legal, scientific and political expertise from its member companies to vital food, nutrition and public policy issues affecting the industry. Led by a board of 42 Chief Executive Officers, GMA speaks for food and consumer product manufacturers and sales agencies at the state, federal and international levels on legislative and regulatory issues. The association also leads efforts to increase productivity, efficiency and growth in the food, beverage and consumer products industry.

GMA has consistently opposed expanded country of origin labeling requirements, like those enacted as part of the 2002 farm bill, on the grounds that it would increase costs to producers, manufacturers, retailers, and consumers, and could harm efforts to expand international markets for U.S. products while doing nothing to further ensure the safety of the domestic food supply or health of consumers. We maintain that position and urge the committee to support a USDA-administered voluntary country of origin labeling program that is market-oriented and consumer friendly in lieu of the farm bill requirements.

With respect to the current implementation of the farm bill labeling provisions, GMA joined with the American Frozen Food Institution, the National Food Processors Association, and the National Fisheries Institute in submitting comments to USDA addressing the "Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts..." in April 2003. In that submission, we listed six recommended changes to the guidelines that USDA should adopt prior to promulgating binding regulations.

As you are aware, Congress wisely included an exemption for any covered commodity that is "an ingredient in a processed food item." Most of the changes we recommended focused on USDA's interpretation of this key provision, which we contend USDA is interpreting far too narrowly. We addressed the legal and statutory basis for our position in great detail in our comments to USDA. A brief synopsis of our six recommendations is listed below – if you would like our full USDA submission, please let us know.

The guidelines should not apply to any peanut products other than in-shell peanuts sold in bulk at retail.

- Under USDA's current interpretation of the 2002 farm bill provisions, shelled, roasted and salted peanuts would be covered, although such peanuts are clearly "processed" and should therefore be covered by the processed food exemption. In addition, under Section 304 of the Tariff Act of 1930 such peanuts are currently required to bear country of origin information, making the new requirement duplicative, costly, and unnecessary. Therefore, only those peanuts sold in-shell at retail in bulk or in bins should be covered under the 2002 farm bill provision as they are not currently covered under current tariff laws. Despite the inclusion of the exemption for processed foods, some groups are actually advocating expanding the regulation to cover peanut butter and peanut candy.

Mixed, processed food products must clearly be excluded from the scope of the regulations.

- Again, the 2002 farm bill labeling provision expressly excluded from its scope any covered commodity that is "an ingredient in a processed food item." USDA, in addressing mixed processed food products in its voluntary guidelines, adopted an impermissibly narrow interpretation of this exclusion.

Frozen produce products should be excluded from the scope of the regulations.

- As all frozen produce falls within the plain meaning of the exclusion for an ingredient in a processed food item, it should be excluded from the scope of the regulations. This would avoid duplication and overlap with current country of origin marking regulations for frozen produce under Section 304 of the Tariff Act of 1930.

The requirement in the current USDA guidelines to display the country where processing occurred must be deleted.

- Under USDA's interpretation of the farm bill provisions, additional information beyond country of origin must be displayed, including the country in which a covered commodity was processed. This requirement is outside the scope of the statue and would exceed USDA's authority if the requirement became part of the binding regulations.

USDA should not require multiple countries of origin to be listed in order of predominance by weight.

- Under USDA's current voluntary guidelines, "commingle fungible goods" are required to be listed in the order of their predominance by weight, even though no such requirement appears in the 2002 farm bill provision. Such a requirement, of

dubious value to the consumer, would greatly complicate the compliance-related burdens on the U.S. food industry and would require frequent and costly labeling changes.

USDA should exclude frozen seafood products from its implementing regulations.

- Like frozen produce, frozen seafood should be excluded from the farm bill requirements as they are, of necessity, "processed" food products and should therefore fall under the exemption for an ingredient in a processed food item. Like frozen produce, frozen seafood is also subject to country of origin labeling requirements under Section 304 of the Tariff Act of 1930.

These and other concerns that have been highlighted by many other groups underscore the need for this committee to conduct aggressive oversight on the implementation of the country of origin labeling requirements. In addition to addressing the specific changes referenced above, GMA reiterates its position that the committee should support a voluntary system of country of origin labeling and abandon the requirements enacted in the 2002 farm bill. A voluntary marketing system would eliminate the numerous unintended consequences of the current law, including the significant international trade implications, while providing a market-oriented system to provide such information to consumers. GMA looks forward to working with the committee as you review the implementation of country of origin labeling and possibly consider statutory changes.

NMA
NATIONAL MEAT ASSOCIATION

STATEMENT
BY
SHAWNA THOMAS
WASHINGTON LIAISON
NATIONAL MEAT ASSOCIATION
BEFORE
HOUSE AGRICULTURE COMMITTEE
JUNE 26, 2003

INTRODUCTION

Mr. Chairman and members of the House Agriculture Committee, thank you for the opportunity to submit testimony on the mandatory country of origin labeling provision in the Farm Security and Rural Investment Act of 2002 on behalf of National Meat Association. National Meat Association has been advocating the interests of the meat industry since 1946. We are a non-profit trade association with over 600 members throughout the United States, as well as internationally. We appreciate that you are having this hearing to discuss a law that we perceive as being well intentioned but fatally flawed.

It is our belief that the current law simply cannot work in the real world. While good intentions drove the legislation, the subsequent law and the regulations proposed by the Department of Agriculture to implement it, simply will not work in the very complex farm to retail store meat distribution system. It is the belief of National Meat Association that this law should be *repealed or amended* because of the awesome cost burden, the practical impact on the meat industry's ability to produce quality product, and the impossibility to follow the law without some type of animal identification program.

COST BURDEN

On November 21, 2002, the Agricultural Marketing Service (AMS) released its findings on the estimated record-keeping burden of the Voluntary Country of Origin Labeling (COOL) guidelines for Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts that were published on October 11, 2002. AMS estimated the annual record-keeping burden associated with this program for the first year to be $1.97 billion. While this projected cost is obviously immense, it is not our belief that the AMS estimates take full account of the total costs that will be incurred just by cattle producers to be in a range of $1.50 billion to $2.00 billion annually. Even the cost estimates submitted by the COOL legislation's principal Senate author place the annual cost of maintaining the COOL record keeping requirements at the same level as AMS' cost estimate. Senator Johnson of South Dakota criticized the agency's cost estimates as too high, but submitted a study conducted by "an agricultural think tank of producers and market experts" called the Organization for Competitive Markets (OCM), which seems to contradict the proposition for which it is submitted. According to OCM figures, the annual cost of maintaining COOL record keeping will be $6.91 per person for each United States citizen. Multiplying these per capita costs by the current U.S. population of ~281,429,906 people (as calculated in the last census), the annual cost of maintaining (not including implementing) COOL record keeping will be $1,944,680,650.46. This figure, which does not include start-up costs, is nearly equal to AMS' cost estimate for the first year of implementation, where the AMS estimate includes $400 million in start-up costs. When start-up costs are included, the OCM estimates submitted by Senator Johnson exceed, by a significant margin, the costs forecast by AMS. Therefore, it appears that even the substantial costs projected by AMS significantly underestimate the full costs associated with COOL record keeping. It is our belief that the overly prescriptive nature of the law and the inclusion of civil penalties are the primary reason that the implementation of the mandatory guidelines is estimated to be so unreasonably costly.

In Section 283 of the COOL Subtitle in the 2002 Farm Bill it states:

> Fines -- If on completion of the 30-day period described in subsection (b)(2), the Secretary determines that the retailer has willfully violated section 282, after providing notice and an opportunity for a hearing before the Secretary with respect to the violation, the Secretary may fine the retailer in an amount of not more than $10,000 for each violation.

The law states that these fines will be imposed on retailers but organizations such as the Food Marketing Institute (FMI) have already released guidelines to their retail members stating that they should modify their supplier contracts to reflect the forthcoming requirements.

> Suppliers should be required by contract to indemnify retailers for any errors made in the country of origin determination.
> - Under the statute as currently interpreted by USDA, retailers will be held liable and subject to $10,000 penalties - for providing accurate country of origin information to consumers.
> - Retailers must depend on suppliers to provide them with accurate information. Contracts should specify that suppliers will be liable for any fines or other costs incurred by retailers for inaccurate country of origin information provided by suppliers.

In other words retailers are preparing contracts to pass on the burden of civil penalties to the suppliers of covered commodities. These are companies like the ones represented by NMA. Companies such as the ones referred to in the section of the law entitled Information, which states:

> (e) INFORMATION - Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity.

We believe that the two aforementioned sections of the COOL subtitle hold suppliers and packers primarily accountable for records and civil penalties. Packers and processors have no choice except to hold their suppliers to the same standard. With the retailers developing contracts, supported by the law, to pass back the civil penalty burden to their suppliers without any provision for those suppliers to require accurate information from producers, it puts a grossly unfair burden on the suppliers. Civil penalty burdens such as

these can easily put the small and medium packers that National Meat Association represents out of business.

PRACTICAL CONCERNS

Mandatory COOL will significantly limit processors' ability to produce lower fat blends of ground beef. Lean, imported boneless beef is typically blended with trimmings from high-quality Choice and Prime U.S. beef to produce the relatively lean ground beef products which American consumers prefer. COOL will be a serious impediment to the flexible product formulation, which is necessary to produce these consumer-preferred ground beef products.

USDA's cost estimates for COOL amount to approximately $45 to $60 per head of cattle. The cost of labeling product from Australia, New Zealand or Canada will inherently the much less, because they will not incur the same record-keeping burden as U.S. producers. This means that imported product will be significantly less expensive. Should consumers prefer the less expensive imported beef products, as they have come to prefer the less expensive imported automobiles, U.S. producers will have to meet lower import prices by absorbing their own $45 to $60 per head cost of country of origin labeling.

ANIMAL IDENTIFICATION

The COOL subtitle in the farm bill explicitly states, "The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity." NMA fails to see how it will be possible to audit and track livestock without some type of approved and official system of animal identification. It seems irrational to implement a law, such as this one, without a provision or plan for how to track livestock that is already on the ground as well as livestock that has not yet been born. Without an animal identification program, meat packers and retailers are faced with the burden of verifying

whether their supplier's records are auditable and possibly facing civil penalties that they might not have been able to avoid.

If COOL is not repealed, the law needs to be amended to include a provision for an animal identification program. At the very least, this would be a template of what the government was asking for in the kind of records they want and how one develops an auditable trail. Even a voluntary COOL program, which we do support, would need a practical animal identification program to succeed.

SOLUTIONS

It is our sincerest hope that Congress will take the points presented by our organization as well as numerous other organizations and companies and repeal Country of Origin Labeling. The provision, that was inserted in the 2002 Farm Bill without official hearings on what it would do to the various industries that if affected, was not thought through. The prescriptive law, which the Agricultural Marketing Service of USDA has attempted to turn into equally prescriptive regulations is a problem for our large packer/ processor members and disastrous for our small and medium-sized ones. Too often, the meat industry is faced with raising objections to well-intentioned laws that are the result of political maneuvering instead of being the product of sound science and good economics.

After this law is repealed, we will be pleased to work with Congress and develop a voluntary COOL law and program that will not hurt the very businesses it is intended to help. We see the benefits of advancing a "Product of the United States" designation and are aware that there is some consumer curiosity, especially in light of the recent BSE scare in Canada. In this regard NMA's position is on par with livestock producer organizations such as the National Cattlemen's Beef Association. There are other groups who will support a voluntary COOL program while disagreeing with current law that makes it mandatory.

CONCLUSION

In conclusion, NMA would like to thank the House Agriculture Committee again for holding hearings on the subject of country of origin labeling. The government is employed to serve the people. By holding a hearing on this volatile subject it is clear that this committee is listening to the concerns of the public here in DC as well as elsewhere. Thank you for allowing National Meat Association to submit comments on the behalf of our members