

**"MADE IN ???": LABELING ALL FOODS WITH THE COUNTRY-OF-ORIGIN**

MEGAN CONNOR

FOOD AND DRUG LAW WITH PROFESSOR FORTIN

*Topic: Country-of-origin-Labeling on FDA Foods and Additives*

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<sup>1</sup> We're not keeping up with imports!, [www.foodandwaterwatch.org](http://www.foodandwaterwatch.org) (last visited Nov. 5, 2007).

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## INTRODUCTION

Kimberly Joyner was on her way to pick up pet food for her beloved black lab. She picked up her USA TODAY, and read the headline, "FDA Limits Chinese Food Additive Imports."<sup>2</sup> The article informed that because 1,950 cats and 2,200 dogs died from melamine in their Chinese imported pet food, the FDA began allowing inspectors to detain vegetable-protein imports from China.<sup>3</sup> The article merely informed that inspectors *could* detain the Chinese import, but not that inspectors were *required* to do so. Kimberly Joyner decided that she would best protect her dog from bad pet food by just buying pet food from a country other than China until the issue was certainly solved. Much to her dismay, she tried to find where the pet foods were from on the labels of the can, and nothing indicated the country-of-origin.

Most United State citizens do not grow any of their own food, and therefore rely on the sale of food. Yet, in the United States, we have choices about what to buy. We can choose based on countless reasons: for a healthy heart, for a low fat diet, for an organic living, for a low calorie snack, for a fair trade barter, for cage free practice, for a moral cause, for a great taste. We could not make those choices unless the labels informed food composition and aspects of its making. However, we are hindered at present from making choices based on the country where the food is from because this particular fact is not mandatory on our food labels.<sup>4</sup> Because food country-of-origin matters for safety and/or ethical reasons, the Federal Drug Administration<sup>5</sup>

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<sup>2</sup> Elizabeth Weise, USA TODAY, available at [http://www.usatoday.com/money/industries/2007-04-30-chinese-imports-usat\\_N.htm](http://www.usatoday.com/money/industries/2007-04-30-chinese-imports-usat_N.htm) (last visited Dec. 2, 2007). See appendix A (showing how pet food from china can contaminate the entire country).

<sup>3</sup> *Id.*

<sup>4</sup> See *infra* Part II (detailing the relevant food labeling requirements)

<sup>5</sup> FDA is an agency within the Department of Health and Human Services which regulates food safety and food labeling other than for USDA foods. See 21 U.S.C. § 393 (1994).

(FDA) should promulgate a national food label requirement despite the many obstacles such rule would face.<sup>6</sup>

Part I of this Essay will explain that country-of-origin matters for 3 main reasons: 1) that consumers desire to know the information; 2) that globalization and increased import statistics mean citizens are eating substantial portions of imported foods which may not be safe; and that 3) some Nations are engaging in unethical practices U.S. citizens may not want to support. Part II will expound on the relevant food labeling laws, and the great obstacles this proposed labeling requirement would face. Part III will address some unanswered counterarguments. Part IV will detail how Japan has required a law to label foods with country-of-origin. The Essay will propose the FDA should adopt a law similar to Japan's.

## I. WHY FOOD COUNTRY-OF-ORIGIN MATTERS

In 2007, the U.S. imported about \$2 trillion worth of food products, and this amount is estimated to triple by 2015.<sup>7</sup> Each year, the average American eats about 260 pounds of imported foods, including processed, ready-to-eat products and single ingredients.<sup>8</sup> While a substantial portion of a given U.S. citizen's food and its ingredients are not from the United States, there is no readily available way for consumers to learn which country(s) a food came from.

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<sup>6</sup> See *infra* Part III (detailing the rule this Essay proposes).

<sup>7</sup> Statement on Agriculture, Rural Development, Food and Drug Administration by David Acheson, M.D., Assistant Commissioner For Food Protection Food and Drug Administration (Sept. 25, 2007), <http://www.fda.gov/ola/2007/foodsafety092507.html> [hereinafter FDA Statement by Acheson].

<sup>8</sup> Andrew Bridges, *Imported Food Rarely Inspected*, USA TODAY, available at [http://www.usatoday.com/news/nation/2007-04-16-imported-food\\_N.htm](http://www.usatoday.com/news/nation/2007-04-16-imported-food_N.htm) (last visited Oct. 1, 2007); Aimee Heald-Nielson, *U.S. Food Imports on the Rise*, *University of Kentucky* (Feb. 9, 2005) (quoting Craig Infanger, University of Kentucky College of Agriculture Economist) (The United States is the world's largest food exporter, but "the U.S. is on the verge of becoming a net food importer"). It is not certain the U.S. is in fact "on the verge of becoming a net food importer" as no other sources seemed to indicate this.

U.S. Citizens have no way of knowing where food and the ingredients it may contain originate because manufacturers do not have to tell the consumers.<sup>9</sup> The only mandatory location information is the address of the company selling the product.<sup>10</sup> Yet, a Consumer Report Poll released in July of 2007 showed 92% of Americans support labels indicating where food is from.<sup>11</sup> "[D]emocracy thrives on information and our ability to make informed choices, a value grounded in the First Amendment of our Constitution, and in exercising our right to vote [with our dollars], the essential democratic act."<sup>12</sup> "Consumers care about where their food is coming from and how it's produced."<sup>13</sup> There are a myriad of reasons why it matters.

### ***A. Country-of-origin Matters Because the Information Could Aid Consumers in Avoiding Imported Food that May Not Be Safe***

"What Food is to one, is to another bitter poison" – Lucretius (96 BC - 55 BC).<sup>14</sup> Consumers may care about where food is from so that they can use their own discretion in deciding whether it is safe. The current procedure<sup>15</sup> for importing food is arguably insufficient in terms of safety.<sup>16</sup> "Just 1.3% of imported fish, vegetable, fruit and other foods are inspected---yet those government inspections regularly reveal food unfit for human consumption."<sup>17</sup> While the

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<sup>9</sup> See *infra* Part III.A (indicating that the Tariff Act only requires country-of-origin information to the "ultimate purchaser", which does not include the consumer).

<sup>10</sup> Rosemary Fifield, *COOL: Where Does that Food Come From?*, CO-OP NEWS, <http://www.coopfoodstore.com/news/current/cool.htm> (Last visited Sept. 28, 2007); see also FORTIN *supra* note 73, at ch. 3, 22-23 (indicating address of manufacturer, packer, or distributor is required--which is not necessarily indicative of the country of origin).

<sup>11</sup> Nathan Hurst, *Foreign Meat to Carry Labels Soon*, THE DETROIT NEWS, Sept. 3, 2007, available at <http://www.detnews.com/apps/pbcs.dll/article?AID=/20070903/LIFESTYLE05/709030347/1001/BIZ>.

<sup>12</sup> Neil Hamilton, Article: Essay—Food Democracy and The Future of American Values, 9 Drake J. Argic. L. 9, 22 (Spring 2004).

<sup>13</sup> Hurst, *supra* note 11 (quoting Joseph Mendelson, legal director of the Center for Food Safety).

<sup>14</sup> Quotations Page, <http://www.quotationspage.com/subjects/food/> (last visited Nov. 1, 2007).

<sup>15</sup> See FDA Import Procedures (1996), available at <http://www.cfsan.fda.gov/~lrd/import.html> (offering basic FDA import procedures and links to updated legislation that makes the procedures more stringent in light of threats such as bioterrorism); see also FORTIN *infra* note 73, at ch 11, 4 (detailing import procedure).

<sup>16</sup> See Bridges, *Imported Food Rarely Inspected*, *supra* note 7; Alexei Barrionuevo, *U.S. Food Imports Often Escape Scrutiny*, HERALD TRIBUNE, May 2007, available at <http://www.iht.com/articles/2007/05/01/business/01food.php>.

<sup>17</sup> See Bridges, *Imported Food Rarely Inspected*, *supra* note 16.

food is visually inspected, and more strictly scrutinized if historically contaminated,<sup>18</sup> the system is imperfect. The regulatory body in charge of food import safety, the Food and Drug Administration,<sup>19</sup> does not have sufficient resources or control over imports.<sup>20</sup> Last month the FDA detained about 850 shipments of grains, fish, vegetables, nuts, spices, oils and other imported foods for issues ranging from filth, to unsafe food coloring, to contamination with pesticides, to salmonella.<sup>21</sup>

Knowing the country where food originated from matters because the information allows consumers to choose what they think is safe based on knowledge available on a given country's practice at the time<sup>22</sup>:

Dozens of people have died in China because of poor quality or fake food and drugs, sparking widespread international fears about the safety of Chinese exports. Thirteen babies died of malnutrition in 2005 after being fed powdered milk that had no nutritional value. US inspectors have blamed exported Chinese pet food ingredients, contaminated with melamine, for the deaths of cats and dogs in North America. And they recently halted shipments of toothpaste from China to investigate reports that they may be contaminated with toxic chemicals.<sup>23</sup>

This BBC News story informs that the former head of China's State Food and Drug Administration from 1998-2005, Zheng Xiaoyu, was executed for taking bribes to permit substandard products.<sup>24</sup> The execution was to show the world China is "getting a grip" on the corruption crisis.<sup>25</sup> If the head of the food agency in China was corrupt for 7 years, how many products came into use that should not have, and how many of those are reaching the United States borders? Perhaps the consumer would just assume refrain from "Made in China" food

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<sup>18</sup> See FORTIN, *supra* note 73, at ch 11, 4.

<sup>19</sup> U.S. Food and Drug Administration, <http://www.fda.gov/> (last visited Dec. 2, 2007). This is the FDA homepage which offers substantial information on this Administration.

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> This refers to an instant like that of Kimberly Joyner *supra* Introduction when she learned about a potential danger but was unable to protect herself from it because she did not know the country-of-origin.

<sup>23</sup> *China Food Safety Head Executed*, BBC NEWS, July 10, 2007, available at <http://news.bbc.co.uk/2/hi/asia-pacific/6286698.stm>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

products until regulatory standards are higher. Yet, consumers have no way of doing that because, again, the food labels do not tell us where the food or the ingredients came from.

An information statement on the FDA website informs "[a]lthough we have witnessed some improvement in product quality, some Chinese companies continue to export substandard food products to the United States."<sup>26</sup> Country-of-origin matters because it would allow the consumer to avoid a Chinese product or any other country's product that the news and/or scientific study reveals are unsafe, at least until the issues are adequately addressed.

Furthermore, while tracking food and food-labeling are separate regulatory issues, the labeling inherently could assist regulatory and health officials in more quickly identifying the source of tainted products and therefore gain more rapid product recall.<sup>27</sup> Thus, the information could minimize the business disruption for other similar products that are not tainted.

One may argue that giving consumers country-of-origin information so that they can perhaps irrationally speculate on which foods are more or less safe, instead of leaving it in the hands of the expert agency would not be a sound regulatory measure. This argument would contrast with the underlying assumption with other labeling disclosure that in fact the consumer is capable of making good choices based on the information given. For instance, labels list ingredients,<sup>28</sup> and while some consumers may mistakenly think certain ingredients are safer or healthier than others, the FDA has not prevented the information.

One may further argue that safety import procedures are in fact sufficient, reminding that the Federal Food, Drug, and Cosmetic Act (FDCA) requires all imported foods to meet the same

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<sup>26</sup> See FDA Statement by Acheson, *supra* note 7.

<sup>27</sup> Essays on Proposed Record keeping Regulations, Center For Science in the Public Interest, 68 Fed. Reg. 25,187, 14 (May 7, 2003) (Comment proposing the FDA adopt a country-of-origin labeling requirement), *available at* <http://www.fda.gov/ohrms/dockets/dailys/03/jul03/070903/02n-0277-emc0048-01-vol9.pdf>

<sup>28</sup> See FORTIN *supra* note 73, at ch. 3, 19 ("ingredient declaration is required on all fodds that have more than one ingredient . . .").

safety standards as those produced in the U.S.<sup>29</sup> Further, the import procedures are sufficient because they permit import denial if a product appears to be adulterated or misbranded.<sup>30</sup> The several cited instances of food recall indicate that the import procedure is imperfect, and therefore enabling consumers to take precautionary measures may be in order.

### ***B. Country-of-origin Matters Because Consumers May Not Want to Buy Foods from Places for Ethical Reasons***

Even if food is safe, consumers may want to choose food based on country-of-origin for ethical reasons.<sup>31</sup> The country-of-origin matters because a consumer may not want to support a country that is committing atrocious crimes against humanity. Mali currently has countless files on its missing children who have been kidnapped into slavery to make cocoa.<sup>32</sup> A BBC news story estimates that 15,000 children were sold for \$30 per child to become cocoa-producing slaves on the Ivory coast, where half of the worlds chocolate is produced.<sup>33</sup> "People who are drinking cocoa or coffee are drinking our [children's] blood. It is the blood of young children carrying 6 kilograms of cocoa sacks so heavy that they have wounds all over their shoulders."<sup>34</sup> About 16 slaves were rescued from the slavery.<sup>35</sup> "When we found them they were unrecognizable as human beings" due to their brutal beatings.<sup>36</sup> "[T]he hands of slaves have

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<sup>29</sup> *Id.* at ch 11, 1 (citing FDCA, Pub. L. No. 75-717, 52 Stat. 1040 (1938), as amended, 21 U.S.C. §§ 301-387 (2000)).

<sup>30</sup> *Id.* at 3 (citing 21 U.S.C. § 381).

<sup>31</sup> *Id.*

<sup>32</sup> *Mali's Children in Chocolate Slavery*, BBC NEWS, Apr. 12, 2001, available at <http://news.bbc.co.uk/1/hi/world/africa/1272522.stm>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* (quoting Malick Doumbia, an escaped slave who tells the story).

<sup>35</sup> Brian Woods & Kate Blewett, *Essay: Slavery: The Ivory Coast, West Africa*, 17 N.Y.L.SCH. J. HUM. RTS. 869, 870 (2001).

<sup>36</sup> *Id.*



touched almost half the world's chocolate."<sup>37</sup> Sixteen of the slaves were asked if they had ever tasted chocolate.<sup>38</sup> None of them had.<sup>39</sup>

A slave was informed that millions of people in the developed world eat chocolate everyday and he was asked what he would say to those millions if he had the chance.<sup>40</sup> He responded, "They buy something that I suffer to make. They are eating my flesh."<sup>41</sup> Should not citizens of the U.S. have the right and the ability to identify chocolate that was not made at the hands of a child slave?<sup>42</sup>

As cliché as it may be, consumers can make a difference. Boycotts and other episodes of commercial activism "proved essential to the success of the civil rights movement throughout the twentieth century."<sup>43</sup> The consumer behavior was a means of reforming the economic and moral character of market processes.<sup>44</sup> "Throughout Northern cities in the late 1920s and 1930s, consumer protests sought to widen options for African-American laborers by appealing, "Don't Buy Where You Can't Work," or "Spend Your Money Where You Can Work."<sup>45</sup>

Each dollar the consumer spends is a small symbol of support. Knowing where a food originated from allows a consumer to purposefully put his or her dollar of support into that country's practices. Not knowing where the food originated from places a blindfold over the hungry consumer's eyes, disabling him or her of being able to decide to boycott child slavery cocoa beans. Consumers may feel that they can have only limited influence in a world, but

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<sup>37</sup> *Id.* at 872.

<sup>38</sup> *Id.* at 873.

<sup>39</sup> *Id.* at 872.

<sup>40</sup> *Id.* at 873.

<sup>41</sup> *Id.*

<sup>42</sup> Douglas, A. Kysar, *Article: Preferences For Processes: The Process/Product Distinction and the Regulation of Consumer Choice*, 118 HARV. L. REV. 525, 616-17 (2004). One may suggest in response to this that fair trade labels allow consumer to avoid chocolate made by child slaves. But, this answer misses the point that as knowledge on a given issue is disseminated in the media or through another medium, the reason for wanting to avoid a food from a given place changes.

<sup>43</sup> *Id.* at 588.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

nevertheless seek "resigned solace in the knowledge that they are not complicit with practices that they regard as immoral."<sup>46</sup> The lack of disclosure leaves consumers no choice but to be "complicit with practices."

### *C. Addressing Some Counterarguments*

One may object that the answer to child slavery is not country-of-origin disclosure. Rather, it is ending the slavery. This response is right. However, child slavery on the Ivory Coast is a mere example of the thousands of reasons one would care to know where his or her food is from. The purpose of this Essay is to explore some of the usefulness of the information, not to solve the problems linked to the country that a food originated from.

One might also object that even if country-of-origins were indicated on the labels, such information would be used by only about 10% of the population, and in the meantime would be a great hardship for all parties involved with the production and sale of food. Thus, practically speaking, using cost benefit analysis, country-of-origin labels fail. This Essay responds that in fact much more than 10% of the population would care during a given food crisis such as the Chinese pet food of 2007.<sup>47</sup>

The historical data on the movement to protect the ozone layer illustrates that the media can educate the public to care greatly about an issue and cause it to buy products accordingly. Massive numbers of people cared about protecting the ozone because of the media, and stopped buying ozone depleting products because they truly perceived the products threatened the world with skin cancer.<sup>48</sup> When the public learns threatening news about a product, it changes its buying patterns, but only if the label gives enough information to allow the consumer to change.

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<sup>46</sup> *Id.* at 616-17.

<sup>47</sup> *See supra* Introduction.

<sup>48</sup> Russell E. Train, Statement at a Public Meeting on Chlorofluocarbons, EPA Statement (Dec. 3, 1976) *available a*

## II. THE LAWS RELATING TO COUNTRY-OF-ORIGIN FOOD LABELING

Despite these legitimate reasons for desiring to know the country-of-origin, the Tariff Act of 1930, the FDA and the Codex Alimentarius fail to require that foods sold to consumers be labeled with country-of-origin.

### *A. The Tariff Act of 1930*

Section 304 of the Tariff Act of 1930, as amended, requires imported articles or containers to be marked with country-of-origin labels, such as "made in Japan," to indicate the country-of-origin to the "ultimate purchaser" in the U.S.<sup>49</sup> The Act does not require that retailers inform consumers of the country-of-origin because the term "ultimate purchaser(s)" means "the person who receives the [article] in form in which it was imported" and does not necessarily include the consumer.<sup>50</sup> "For example, if a retailer sells apples, which arrive in a container marked product of Japan, but does not sell apples in the original container, the retailer has no duty to inform consumers of the apples origin."<sup>51</sup>

The Tariff Act of 1930 does require that imported articles have labels, which provide the country-of-origin<sup>52</sup> to the ultimate purchaser but even that information is limited. In a world

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<http://www.epa.gov/history/topics/ozone/04.htm> ("[T]he depletion of the ozone layer does lead to an increase in ultraviolet radiation on the surface of the earth, and that this will increase the incidents of skin cancer in humans as well as having effects still not quantified on vegetation."); Barbara Blum, Statement at International meeting on Chlorofluorocarbons, EPA Press Release, April 15, 1980 *available at* <http://www.epa.gov/history/topics/ozone/05.htm> ("We in the U.S. are taking this step because of continuing studies showing that worldwide chlorofluorocarbon emissions jeopardize public health and the environment.") After hearing this news, individuals boycotted ozone depleting products and pressured their elected officials. See Louis P. Oliva, *The International Struggle to Save the Ozone Layer*, 7 PACE ENVTL. L. REV. 213, 257 (1989).

<sup>49</sup> Daisuke Kojo, *Essay: The Importance of the Geographical Origin of Agricultural Products: A Comparison of Japanese and American Approaches*, 14 Mo. Envtl. L. & Pol'y Rev. 275, 282-87 (2007). "Ultimate purchaser" is defined generally as "the last person in the United States who will receive the [article] in the form in which it was imported." The National Agricultural Law Center, Country-of-origin Labeling (COOL), *available at* <http://www.nationalaglawcenter.org/assets/overviews/cool.html>; 19 U.S.C. § 1304 (a), (b) (2007).

<sup>50</sup> Kojo *supra* note 49.

<sup>51</sup> *Id.* (internal citations omitted).

<sup>52</sup> 19 U.S.C. § 1304 (a) (2007) ("[E]very article of foreign origin . . . shall be marked in a conspicuous place . . . as to indicate to an ultimate purchaser in the United States the English name of the country-of-origin of the article.").

where pieces of a product can come from many countries, "country-of-origin" is not simple. Country-of-origin labels, as intended by Congress in 19 U.S.C. § 1304(a), were to mark goods with the name of the country "controlling the area of production" of the goods at the time of importation.<sup>53</sup> Point of production is not always the country-of-origin that matters if the concern is with the ethical practice or even at times with the safety of the food.<sup>54</sup> For instance, in the case where the consumer desires to avoid Ivory Coast cocoa beans, information as to where a candy bar is "produced" may not be helpful. Ideally in fact, the consumer would know where each significant ingredient came from and where the product was primarily produced. This information about additives, as far as 19 U.S.C. § 1304 indicates, does not currently reach the retailer, let alone the consumer. Some legislation has begun confronting the issue.

The Farm Security and Rural Investment Act of 2002 recognized the importance of country-of-origin labeling and gave a mandatory labeling program to label USDA regulated foods<sup>55</sup>, meat, poultry and egg products, with country-of-origin labels (COOL).<sup>56</sup> The Act provides, "[A] retailer of a covered commodity shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country-of-origin of the covered commodity."<sup>57</sup>

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<sup>53</sup> See *United States v. Friedlaender & Co.*, 1940 C.C.P.A. LEXIS 17, \*2 (1940); *Koru North America v. United States*, 1988 Ct. Intl. Trade LEXIS 342, \*16 (1988) (Imported packaged fish were improperly marked "product of New Zealand" and should have been marked "product of Korea" where fish were caught in New Zealand and further processed in South Korea, because skinning, boning, and repackaging in Korea results in substantial transformation of product, such that Korea became "country-of-origin" within meaning of 19 USCS § 1304(a)).

<sup>54</sup> For instance, if a single ingredient/import such as the spinach in a packed salad contains *E. coli*, then the point of production does not indicate the country where the problem arose, and is unhelpful for one seeking to buy safe products.

<sup>55</sup> See USDA FOOD STANDARDS AND LABELING POLICY BOOK, 6 (2005) *available at* [http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\\_Policy\\_Book\\_082005.pdf](http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf) (offering detailed list of foods regulated by the USDA).

<sup>56</sup> 7 U.S.C. 1638 (2002). See also Farm Bill Provisions, Country-of-origin Labeling, <http://www.ams.usda.gov/cool/> (July 11, 2007). Whether fish will have the cool labeling is still going through an Essay and rule making procedure. See USDA Reopens Essay Period For Interim Final Rule For Mandatory Country-of-origin Labeling of Fish and Shellfish, <http://www.ams.usda.gov/news/124-07.htm> (last visited Sep. 28, 2007).

<sup>57</sup> 7 U.S.C. 1638 (a) (1).

Consumer advocates of USDA COOL say the labels will give grocery shoppers yet another piece of information to help them make food-buying decisions.<sup>58</sup>

### ***B. The FDA Does Not Mandate Country-of-origin Food Labels***

The FDA regulates food labeling pursuant to its authority under the Federal Food, Drug and Cosmetic Act (FFDCA):<sup>59</sup>

Section 403(i) of the act (21 U.S.C. 343(i)) requires that a producer of a food product describe the product by its common or usual name or in the absence thereof, an appropriately descriptive term (21 U.S.C. part 101.3) and reveal all facts that are material in light of representations made or suggested by labeling or with respect to consequences which may result from use (21 U.S.C. 343(a); 21 U.S.C. 321(n)).

The FDA has promulgated no law that food labels list the country where the food originated from or was imported from.<sup>60</sup> The FDA has not made a law that food labels list the country where all the individual ingredients within a food came from, and it is unlikely that the FDA will promulgate either such rule. Usually, the FDA “will find labeling information ‘material’ in three general circumstances” which are:

when (1) the product poses “special health or environmental risks,” (2) the product label may mislead the consumer “in light of other statements made on the label,” or (3) the consumer is prone to think that because a certain food has certain similarities to another food that they are the same, when they are in fact not the same.<sup>61</sup>

Under Prong (1), the country where a food originated from could indicate the health or environmental risks to some extent, and Under Prong (2) a food that purports to be “all American,” but was in fact imported from Norway could be considered to mislead the

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<sup>58</sup> *Hurst, supra* note 11.

<sup>59</sup> 21 U.S.C. § 301 (2007).

<sup>60</sup> The five major misbranding requirements include: “1) Mandatory labeling of the name of the food, ingredient statement, net quantity, and the name and address of the manufacturer or distributor; 2) Mandatory standards of identity; 3) labeling of imitation foods; 4) Nutrition information for special dietary foods and 5) Prohibition of any false or misleading claims. See FORTIN, *infra* note 73, at ch. 3, 2-3.

<sup>61</sup> Emily Robertson, *Finding A Compromise in the Debate Over Genetically Modified Food: An Introduction to a Model State Consumer Right-To-Know*, 9 B.U. J. SCI. & TECH. L. 156, 159-60 (2003) (quoting Food and Drug Administration, Center for Food Safety and Applied Nutrition Website, Draft Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering (2001), <http://www.cfsan.fda.gov/~biolabgu.html>).

consumer.<sup>62</sup> Despite this reasoning, the FDA appears unlikely to label its foods with country-of-origin because it traditionally narrowly construes the labeling section of the Act.<sup>63</sup>

An overarching "right to know" information in the United States has existed at least since 1962 when President Kennedy declared the four basic consumer rights: 1) the right to safety, 2) the right to be informed, 3) the right to choose, 4) and the right to be heard.<sup>64</sup> Yet, in the context of food, the United States has declined to embrace the "right to know." Despite any right to know that may or may not exist, the case law in the context of Food indicates, there is no such right.

In *Stauber v. Shalala*, a consumer claimed the FDA should have to label the milk products that are treated with a growth hormone, but the Court determined that consumer demand to know did not in itself require a label and that the performance characteristics (physical properties, flavor) of the milk with and without the hormone were the same, and that therefore no label could be required under the FDCA.<sup>65</sup>

Under *Stauber* the FDA would claim it should not label its foods with country-of-origin because there is no performance characteristic difference between imported foods and domestic foods.<sup>66</sup> Again in *Alliance for Bio-Integrity v. Shalala*, the court found that the FDA had no requirement to have genetically modified food labels because there was no material difference

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<sup>62</sup> These arguments would likely fail under the FDA as it has interpreted the misleading labels standard strictly. *See FORTIN infra* note 73, ch 3, 25.

<sup>63</sup> This conservative construction is further expounded on in below paragraphs.

<sup>64</sup> Steve Keane, *Trandafir Competition Winner: Can a Consumer's Right to Know Survive the WTO?: The Case of Food Labeling*, 16 *TRANSNAT'L L. & CONTEMP. PROBS.* 291. 301 (2006) (citing John F. Kennedy, Congressional Address, Consumer Bill of Rights, Special Message on Protecting the Consumer Interest, Cong. Q. 458 (1962)).

<sup>65</sup> *Stauber v. Shalala*, 895 F. Supp. 1178, 1192-93 (W.D. Wis. 1995) (citing 21 U.S.C. § 343(a)(1) and 21 U.S.C. § 321(n)).

<sup>66</sup> Perhaps potentially one could try to illustrate that a higher percentage of unsafe food consists of imports rather than domestic food and that therefore there is a difference in "performance characteristics." This is likely too far reaching of an argument to win.

between genetically modified foods and those not genetically modified.<sup>67</sup> *Alliance* and *Stauber* indicate that the FDA does not find information as to food process necessary to give to consumers so long as the food product is the same in composition. In sum, the FDA has interpreted its food-labeling jurisdiction conservatively, and does not show any signs of expanding its labeling information in the near future.

Despite the reluctance the FDA would have in this matter, it should acknowledge that interpreting its labeling authority such that only the composition of the food is taken into consideration is to ignore ethical, cultural, and environmental concerns "as a matter of definition, rather than as a result of reasoned analysis."<sup>68</sup> Therefore, the FDA should interpret that under prong (3) (the consumer is prone to think that because a certain food has certain similarities to another food that they are the same, when they are in fact not the same) the country-of-origin labels are required so as to not mislead a consumer into thinking two foods are from the same country when in fact they are from opposite sides of the world, therefore the food is believed to be similar to another food, and it in fact is different.<sup>69</sup> This Essay now turns from the domestic to the international regime to assess its laws on country-of-origin.

### ***C. CODEX ALIMENTARIUS—International Food Standards Guideline Programme***

The Codex Alimentarius<sup>70</sup> (Codex) is the global reference point for consumers, food producers and processors, national food control agencies and international food trade.<sup>71</sup> Codex

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<sup>67</sup> *Alliance for Bio-Integrity v. Shalala*, 116 F. Supp. 2d 166, 178 (D.D.C. 2000).

<sup>68</sup> Kysar, *supra* note 42, at 594.

<sup>69</sup> *See supra* Part III.B.2 (addressing potential trade barrier concerns).

<sup>70</sup> Codex Alimentarius Commission was created in 1963 by the Food and Agriculture Organization (FAO) and by the World Health Organization (WHO). "The main purposes of this Program are protecting health of the consumers and ensuring fair trade practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations." Codex Alimentarius, Welcomes [http://www.codexalimentarius.net/web/index\\_en.jsp](http://www.codexalimentarius.net/web/index_en.jsp) (2007). Codex provides all of its current standards on the

gives its top priority to protecting the interests of consumers in the formulation of food standards and related activities.<sup>72</sup> Codex Alimentarius is an international food standards code used for the purposes of World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA), and other international trade treaties.<sup>73</sup> The Codex Alimentarius addresses food production issues including food additives, limits on pesticide residues, food labeling requirements, food composition, food processing techniques, and inspection procedures. Codex has at least 162 member countries (98% of the world's population), and is based in Rome.<sup>74</sup>

Codex has not promulgated any standard that would have the country-of-origin food labels, but this it does seek to harmonize worldwide food standards. Theoretically, if foods standards internationally were as high as they are in the United States, then country-of-origin food labels would be less useful.<sup>75</sup>

The goal of Codex is to minimize trade barriers and to have freer movement of food products among countries. The Codex Alimentarius Committee on Food Import and Export Inspection And Certification Systems set a meeting for the 26-30 November 2007 to discuss eleven issues including a discussion on a need for further guidance on traceability and product

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internet. Current Official Standards, [http://www.codexalimentarius.net/web/standard\\_list.do?lang=en](http://www.codexalimentarius.net/web/standard_list.do?lang=en) (last visited Sep. 28, 2007).

<sup>71</sup> Understanding The Codex Alimentarius (3rd ed. 2006) ix, available at: <http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2007-0042.htm> [hereinafter Understanding Codex].

<sup>72</sup> *Id.* at 33.

<sup>73</sup> NEAL D. FORTIN, FOOD REGULATION: LAW, SCIENCE, POLICY AND PRACTICE ch. 8, 41-42 (2006) (forthcoming 2008) (on file with author)

<sup>74</sup> Mark King, Article: The Dilemma of Genetically Modified Products at Home and Abroad, 6 DRAKE J. AGRIC. L. 241, 244 (2001).

<sup>75</sup> *But See* Emily Lee, Article: *The World Health Organization's Global Strategy on Diet, Physical Activity, and Health: Turning Strategy Into Action*, 60 FOOD DRUG L. J. 569, 576 (2005) ("Codex . . . standards tend to be set at a minimally protective "floor" of international health and safety standards."); Robert F. Housman & Paul M. Orbuch, Article: *Integrating Labor and Environmental Concerns into the North American Free Trade Agreement: A look Back and Look Ahead*, 8 AM. U.J. INT'L & POL'Y 719 (1993) (stating standards in Codex are not as stringent as U.S. standards).



tracing.<sup>76</sup> The Discussion Paper on the Need for Further Guidance on Traceability/Product Tracing informs that traceability/product tracing does not itself make food safe but as a risk management tool it can be used to improve the reliability of information provided to consumers.<sup>77</sup> Codex emphasized in one agenda, describing what will be discussed in this meeting on food imports, that it potentially did not want to make traceability of a product an implemented principle in Codex because it would become a barrier to trade.<sup>78</sup> This Codex agenda did concede that traceability has been proven useful to a number of countries, which have incorporated the traceability/product tracing tool into food legislative framework.<sup>79</sup>

The Proposal for the New Work to Develop Guidelines on Traceability/Product Tracing informs that Codex guidelines on traceability would assist countries to facilitate fair practices in food trade, and "deliver reliable information to consumers."<sup>80</sup> The traceability mechanism could be used to identify specific hazards and allow a rapid withdrawal or recall of a food item, minimizing health impact.<sup>81</sup>

Importantly, traceability is not the same as labeling the food with a country-of-origin, but labeling a product with country-of-origin automatically enables some traceability. There does not appear to be any live discussion in Codex Alimentarius of the possibility of recommending country-of-origin food labels. This traceability discussion is raised as it is the closest topic to country-of-origin labels Codex is considering and it therefore indirectly offers insight into the position Codex would have on the country-of-origin labels. Likely, because of the potential

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<sup>76</sup> Joint FAO/WHO Food Standards Programme Codex Committee on Food Import and Export Inspection And Certification Systems, Sixteenth Session, Provisional Agenda (2007).

<sup>77</sup> Discussion on Traceability *infra* note 71, at 2.

<sup>78</sup> Agenda Memorandum Letter on the Need for Further Guidance on Traceability/Product Tracing (2007), available at [ftp://ftp.fao.org/codex/ccfics16/fc16\\_07e.pdf](ftp://ftp.fao.org/codex/ccfics16/fc16_07e.pdf) [hereinafter Discussion on Traceability]. This citation is to a posted Codex PDF that offers the planned discussion on Traceability to take place forthcoming in Nov. 2007.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

barrier to trade that country-of-origin labels could indirectly cause (i.e., not buying chocolate from the Ivory Coast), Codex would not likely embrace the idea. Nonetheless, Codex does produce product and process standards that could help reduce some of the human rights issues, environmental issues and safety issues that can come with the origin of a food.

However, Codex Alimentarius is not binding Law. Even if Codex offered standards sufficient to alleviate any and all concerns a consumer may have with a food's country-of-origin, Codex is soft law, and thus is voluntarily complied with by members.<sup>82</sup> "[I]n practice it is difficult for many countries to accept Codex standards in the statutory sense."<sup>83</sup>

However, governments are extremely conscious of the political consequences should they fail to heed consumer's concern regarding the food they eat.<sup>84</sup> Also, a 2002 evaluation of Codex by independent experts found that Codex food standards are given "very high importance" by members.<sup>85</sup> One Internet posting on the FDA website indicated that while Codex standards are voluntary, countries that do not follow Codex "could lose any trade dispute over food brought before the World Trade Organization."<sup>86</sup> Developed countries found it to be most beneficial for purposes of ensuring safety of food imports.<sup>87</sup> Because of the developing deference Codex receives, the best remedy to the potential concerns consumers have with country-of-origin may be to raise the safety, environmental and socioeconomic standards globally. This is a good long-term goal. In the short term, the Essay proposes that country-of-origin labels are in order.

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<sup>82</sup> JOHN J. KIRTON, & MICHAEL J. TREBILCOCK, *HARD CHOICES, SOFT LAW: VOLUNTARY STANDARDS IN GLOBAL TRADE ENVIRONMENT*, 5 (2007); Claire R. Kelly, *Article: Power, Linkage and Accommodation: The WTO as an International Actor and Its Influence on Other Actors and Regimes*, 24 *BERKELEY J. INT'L.* 79 (2006) (stating Codex is non-binding law); Cindy Joffe Hyman, *Comment: Food For Thought: Defending the Organic Foods Production Act of 1990 Against Claims of Protectionism*, 14 *EMORY INT'L L. REV.* 1719, 1735 (2000) (stating Codex is non-binding law).

<sup>83</sup> Understanding Codex, *supra* note 64.

<sup>84</sup> *Id.* at 9.

<sup>85</sup> Understanding Codex, *supra* note 64, at 11.

<sup>86</sup> Jeffrey P. Cohn, *The International Flow of Food: FDA Takes on Growing Responsibilities for Imported Food Safety*, *FDA CONSUMER MAGAZINE* (Jan.-Feb. 2001), available at [http://www.fda.gov/fdac/features/2001/101\\_food.html](http://www.fda.gov/fdac/features/2001/101_food.html).

<sup>87</sup> Understanding Codex *supra* note 64, at 11.

### ***D. World Trade Organization (WTO) and General Agreement on Tariffs and Trade (GATT)***

WTO rules treat products that have the same physical composition as "like" products<sup>88</sup> even if the products are produced in very different ways.<sup>89</sup> The WTO does not allow trading practices that discriminate based on production process of a product.<sup>90</sup> GATT's Article I principle requires any privilege or advantage given to the product of one WTO member to be extended unconditionally to "like products" of all other members, and that way countries are prevented from playing favorites between trading partners<sup>91</sup>

However, the WTO has recognized certain circumstances that are exempt from the rule of non-discrimination based on process. It enacted the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS agreement) which governs the application of food safety and animal and plant health regulations.<sup>92</sup> "The Agreement recognizes the right of member states to take such measure but demands that a measure is applied only to the extent necessary to protect human, animal and plant life or health based on scientific principles."<sup>93</sup>

Whether the WTO or GATT would oppose this labeling proposal is unclear.<sup>94</sup> The argument against the labeling would be that the country-of-origin labels may treat the products equally in that all countries are listed, but that the result of providing the information would be

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<sup>88</sup> Factors in deciding whether products are alike are: 1) properties, nature and quality, 2) the end-uses of the products, 3) consumer's tastes and habits, 4) the tariff classification of the product. Hunter *infra* note 95, at 1273.

<sup>89</sup> Yuhong Zhao, *Article: Trade and Environment: Challenged After China's WTO Accession*, 32 Colum. J. ENV'T'L. L. 41, 59 (2007).

<sup>90</sup> HUNTER *supra* note 95, at 1259.

<sup>91</sup> *Id.* at 1269.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See Michele M. Compton, *Article: Applying World Trade Organization Rules to the Labeling of Genetically Modified Foods*, 15 PACE INT'L L. REV. 359, 370-408 (2003) (offering an analysis of GM label proposal under GATT and WTO, concluding whether they would approve such labeling is unclear). The author was unable to locate whether the USDA COOL labeling was considered to comply with GATT and the WTO. The author also could not find information as to whether Japan faced any WTO or GATT issues when implementing its country-of-origin food labels. See *infra* Part III.A (discussing Japan's COOL labeling).

discriminatory. Citizens of the U.S. would consume more products from the U.S. potentially. The FDA could argue that the country-of-origin is for human, animal and plant health under the SPS exception. They would have to prove that the food from certain countries is probabilistically more likely to be safe (healthy for the person) and more likely to be made in an environmentally sound manner (plant health). Because the issue does not appear to have been raised in the WTO or GATT, it is simply not clear whether it would raise a serious international trade issue.<sup>95</sup>

### III. ADDRESSING OTHER POTENTIAL OBSTACLES TO THIS COUNTRY-OF-ORIGIN LABELING

This Essay recommends that the FDA add to its food labeling requirements by requiring country-of-origin food labels. The Essay recognizes that it has not been the policy of the FDA to broadly construe its labeling jurisdiction. The best way to change a law is to begin an active discussion on what the law should be despite the obstacles in the way. A good first step in implementing this new labeling requirement is to look abroad at another country's process and result of endorsing a country-of-origin food-labeling law.

#### ***A. A Strong Lobbying Effort Would Oppose COOL Labeling of FDA Foods***

The requirement for "country-of-origin labeling" (COOL) for USDA regulated foods, was postponed a year after its adoption, due to heavy lobbying from interest groups saying the law was unnecessary and expensive.<sup>96</sup> The meat industry and other large producers are not

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<sup>95</sup> See *supra* Part IV (explaining that Japan implemented a county-of-origin labeling law without apparent problems from the WTO or GATT).

<sup>96</sup> Stephen J. Hedges, *Food-origin Law is Back From Oblivion*, CHICAGO TRIBUNE, June 10, 2007, available at <http://www.chicagotribune.com/business/chi-060710label-story,1,6159286.story>.

happy with the COOL mandate.<sup>97</sup> They claim that the mandate would be "confusing for customers because Animals slaughtered in the U.S. were not necessarily born in the U.S., and under the current proposal, the labels would have to reveal everywhere they have been."<sup>98</sup> "The labels could end up looking like passports."<sup>99</sup> Likewise, there would be a strong lobbying effort against the labeling of FDA regulated foods for the same reasons.

### ***B. Implementation will be Expensive and the Benefits are not Proven***

Further, the USDA has admitted that the implementation of this rule could cost the U.S. 6.2 million each year, and has even said that the U.S. economy will be worse off after implementing the COOL rule.<sup>100</sup> The USDA also admits that it has little tangible evidence as to how the rule will affect demands for covered commodities.<sup>101</sup> The central argument against the country-of-origin labels are that they would be expensive and would offer unused information for the strong majority of consumers.

Further, this Essay suggests much more work is necessary for the FDA country-of-origin labels if ingredients are to be labeled with country-of-origin as well. Because the Tariff act mandates that food imports have country-shipping labels, retailers under the USDA regulation must basically create stickers that copy the information the retailer receives on its import box and

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<sup>97</sup> Hurst, *supra* note 11.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Agric. Mktg. Serv., U.S. Dep't of Agric., Comparison Between Voluntary Guidelines and Proposed Rule, <http://www.ams.usda.gov/cool/talkingpoints.htm> (last visited Nov. 28, 2004) ("USDA also finds little evidence that consumers are likely to increase their purchase of food items bearing the U.S. origin label as a result of this rulemaking."). *But see* Hurst, *supra* note 11 ("Consumer advocates dispute that, pointing to a Government Accountability Office report last year that stated the USDA numbers were overestimated and that only a few cents was likely to be added to a product's processing cost.").

<sup>101</sup> Agric. Mktg. Serv., U.S. Dep't of Agric., Comparison Between Voluntary Guidelines and Proposed Rule, ("USDA also finds little evidence that consumers are likely to increase their purchase of food items bearing the U.S. origin label as a result of this rulemaking."), at <http://www.ams.usda.gov/cool/talkingpoints.htm> (last visited Nov. 28, 2004).

place it on the food. Yet, foods that arrive with several ingredients do not provide country-of-origin information even to the retailer, and therefore become an entirely new obstacle.<sup>102</sup>

### ***C. COOL Poses a Potential Trade Barrier***

Some may oppose COOL requirements because of their potential to be trade barriers--that implementing COOL would cause trading partners to retaliate and drive up costs of products.<sup>103</sup> There are four central reasons why barriers to international trade are negatively looked upon: (1) makes armed conflict less likely because countries that trade together are less likely to fight, (2) allows countries to efficiently use the world's scarce resources, (3) trade generates wealth, and (4) it causes technology and information sharing.<sup>104</sup>

Yet, there are arguments against liberalized trade as well. Historically, trade has led to greater consumption, which is harmful to limited world resources and the environment.<sup>105</sup> "We may wish to opt for local solidarity over the opportunity to purchase cheaper imported products."<sup>106</sup> In response to the foreign competition, we may engage in a "race to the bottom," where domestic producers seek lower standards to maintain competitiveness in the global market.<sup>107</sup> "Free trade has long been the 'default position,' presumed good unless proven

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<sup>102</sup> See *infra* Part II.A (offering a more detailed account of what the ultimate purchaser receives in regard to country-of-origin).

<sup>103</sup> Jacquelyn Trussell, *News: The Birth Place of Food Products: Do You Know Where Your Food Comes From?*, 16 LOY. CONSUMER L. REV. 285 (2004) (citing: Transcript of Remarks from a Technical Background Briefing for the Press on USDA's Proposed Rule on Mandatory Country-of-Origin Labeling (Oct. 27, 2003), available at <http://www.ams.usda.gov/cool/presstranscript.htm> (last visited Mar. 17, 2004)).

<sup>104</sup> See DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 1236-37 (3rd. ed. 2007).

<sup>105</sup> *Id.* at 1238.

<sup>106</sup> *Id.* at 1240.

<sup>107</sup> *Id.* at 1242 (citing Daniel Esty and Damien Geradin, *Market Access, Competitiveness, and Harmonization: Environmental Protection in Regional Trade Agreements*, 21 HARV. ENV. L. REV. 265, 265-73 (1997)).

otherwise . . . This presumption should be reversed."<sup>108</sup> It should especially be reversed when it comes to trading food, the products in which quality arguably matters the most.

If consumers make choices based on the desire to stop supporting child slavery or unsafe food practice, then a temporary hindrance on international trade should be acceptable. Adolf Hitler criticized a boycott of German goods by U.S. consumers saying that "it is . . . an unbearable burden for world economic relations that it should be possible in some countries from some ideological reason or other to let loose a wild boycott of agitation against other countries and their goods and so practically to eliminate them from the market."<sup>109</sup> There is an appropriate time to take action even if for "some ideological reason," and country-of-origin labels on foods would better enable consumers to do so.

#### IV. JAPAN HAS BEGUN IMPLEMENTING COOL LABELING FOR ALL FOODS

Japan gets over half of its food from other countries, so the Nation's citizens have great interest in the quality of the imported food.<sup>110</sup> Before the 1970s, Japanese citizens were not informed of imported foods' countries of origin because there was no requirement mandating retailers to label foods' place of origin for consumers.<sup>111</sup>

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<sup>108</sup> *Id.* at 1243.

<sup>109</sup> Kysar *supra* note 42, at 594 (Dec. 2004) (citing MONROE FRIEDMAN, CONSUMER BOYCOTTS: EFFECTING CHANGE THROUGH THE MARKETPLACE AND THE MEDIA 39 (1999) (quoting Adolf Hitler, Address to the Reichstag (Apr. 28, 1939)).

<sup>110</sup> Kojo, *supra* note 49, at 280 (citing Nourinbusshi no Kikakuka oyobi Hyouji no Tekiseika ni kansuru Houritsu [Law Concerning Standardization and Proper Labeling of Agricultural and Forestry Products; Japanese Agricultural Standards Act], Law No. 175 of 1950, art. 19-13, *available at* [http://www.maff.go.jp/soshiki/syokuhin/hinshitu/e\\_label/file/Law/JAS\\_law.pdf](http://www.maff.go.jp/soshiki/syokuhin/hinshitu/e_label/file/Law/JAS_law.pdf) [hereinafter JAS Act]). This Essay used limited sources for this subject as the availability of information on the Japanese food labeling requirement is limited

<sup>111</sup> *Id.*

### ***A. Japan Implements Its First Country-of-Origin Law***

An amendment to the JAS Act of 1970 authorized the Ministry of Agriculture, Forestry and Fisheries of Japan (MAFF) to enact quality-labeling standards which impose various food labeling requirements for the benefit of general consumers, and the standards imposed a country-of-origin labeling requirement on agricultural products.<sup>112</sup>

After this initial country-of-origin labeling requirement, in 1990s, the amount of imported vegetables increased significantly, and an amendment was passed which required retailers to show place of origin of nine kinds of fresh vegetables.<sup>113</sup> In 2000, Japan promulgated a requirement to have all perishable foods<sup>114</sup> labeled with country-of-origin.<sup>115</sup>

### ***B. Japan Adds Processed Foods and Additives to Its Country-of-Origin Labeling Law***

In 2001, a new quality labeling standard was finally enacted to have processed foods also label country-of-origin.<sup>116</sup> The term "processed foods" in Japan includes frozen vegetables and fruits; seasoned, boiled, steamed or grilled meats and seafood; milk; and other various processed foods.<sup>117</sup> The results of the amendments proved to be useful to consumers:

According to a survey administered by the Japanese government in 2004, more than 80% of Japanese consumers think place of origin information is necessary when selecting fresh vegetables. In addition, Japanese consumers believe that Japanese agricultural products are superior to imported agricultural products in respect to their food safety, taste and quality. Additionally, about seventy percent of Japanese consumers prefer to buy Japanese domestic agricultural products. Therefore, the mandatory POOL, which enables consumers to identify domestic products from imported products, has become indispensable for Japanese consumers.<sup>118</sup>

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<sup>112</sup> See *supra* Part II.A and accompanying notes 55-56 (discussing the USDA COOL labeling requirement for agricultural foods comparable to this Japanese law).

<sup>113</sup> *Kojo supra* note 49, at 280 (citing *Seisen Shokuhin Hinshitsu Hyouji Kijyun*, Quality Labeling Standard for Perishable Foods, MAFF Notification No. 514 of 2000, art. 4, para. 1(2)(a), available at [http://www.maff.go.jp/soshiki/syokuhin/hinshitu/organic/eng\\_yuki\\_514.pdf](http://www.maff.go.jp/soshiki/syokuhin/hinshitu/organic/eng_yuki_514.pdf) [hereinafter *Quality Labeling Standard for Perishable Foods*]).

<sup>114</sup> The term "perishable foods" means vegetables, fruits, rice, wheat, beans, meats, eggs, and marine products. *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 281 (citing *Quality Labeling Standard for Processed Foods supra* note 104).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 287.



In 2004, there was an amendment to have country-of-origin labeling for ingredients found in twenty types of processed foods if manufactured in Japan.<sup>119</sup> In 2006, the Japanese Food Labeling Committee recommended that the regulation expand to more processed foods and ingredients depending on two factors: 1) whether consumers view the place of origin as significant in assessing the quality of the food and 2) whether the ingredient constitutes over 50% weight of the total product.

### ***C. The FDA Should Apply Lessons from Japan and Implement a Country-of-Origin Food Labeling Law***

Japan began labeling some of its foods with country-of-origin as early as 1970. As the years passed, it continuously saw the benefit of the information and progressively increased the kinds of foods that contained the labels. Last year, in 2006, a committee recommended that even food additives should have the labels if the consumer views country-of-country significant for that particular ingredient, and if the ingredient constitutes 50% of the weight of the total product. This Essay in fact proposes that all ingredients should have the country-of-origin label as an absolute rule would not subject the FDA to having to assess each ingredient and food for certain factors in determining whether the information would be useful.

## CONCLUSION

The laws of the United States and the applicable international rules do not offer the consumer the choice to buy a food based on its country-of-origin. Yet, the consumer may have many reasons why he or she would want to buy a food based on the country-of-origin. Perhaps someone seeks to avoid Chinese pet food for the year because he or she lost a pet to a Chinese

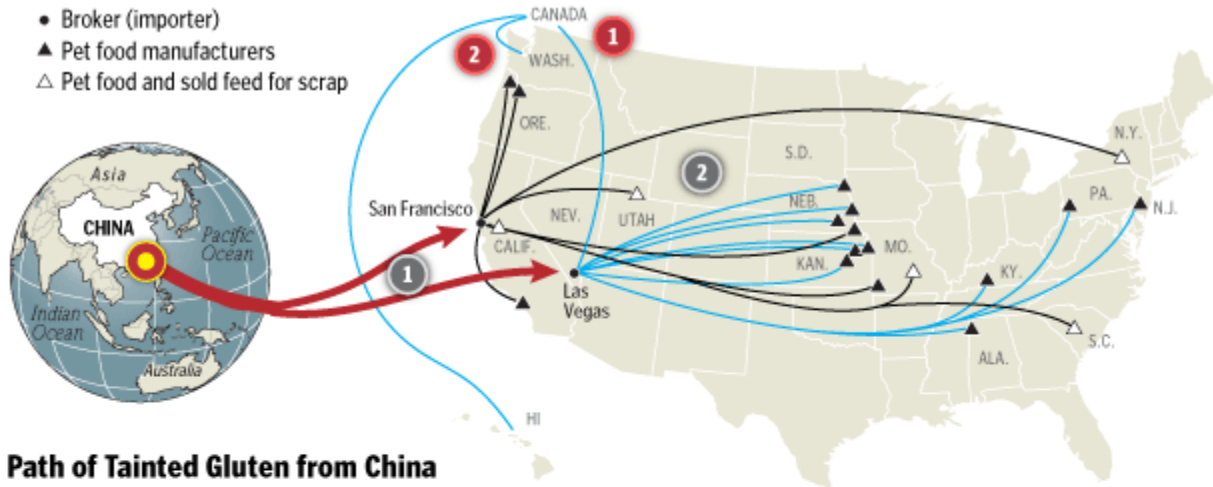
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<sup>119</sup> *Id.* at 282-83.

mishap with its food, or perhaps a person seeks to avoid chocolate from the Ivory Coast because he or she recently learned from BBC News that it makes its chocolate at the hands of child slaves. The FDA should consider these reasons for offering the country-of-origin labels and should consider their validity in our expanding world of food importation.

## Appendix A

- Broker (importer)
- ▲ Pet food manufacturers
- △ Pet food and sold feed for scrap



### Path of Tainted Gluten from China



\* Initially thought to be wheat gluten and rice protein but later found to be wheat flour.