

Congressional-Executive Commission on China
Hearing
Pet Treats and Processed Chicken from China: Concerns for American Consumers and Pets
June 17, 2014

Testimony of Christopher J. D'Urso
Student and Consumer Advocate

Introduction

According to President John F. Kennedy in his “Special Message to the Congress on Protecting the Consumer Interest”, “If the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers” (Kennedy). Unfortunately, this key tenet of consumer rights has been undermined by weak country of origin labeling (COOL) laws. Under the Tariff Act of 1930 and the Farm Bills of 2002 and 2008, imported products must be clearly labeled with country of origin. However, these laws contain a disturbing exemption which has been exploited and misconstrued by businesses: any imported product that is processed in the U.S. is not required to have COOL. Consequently, the majority of products remain unlabeled (Jurenas). As imports continue to increase, these inadequate laws not only compromise the consumer’s right to know but also pose a threat to the public health and economy of the U.S. Thus, COOL must be required for all food products (defined as both human and pet), pharmaceuticals, and dietary supplements.

Issues with Current COOL Laws

The aforementioned COOL laws do not define what constitutes processing. Thus, U.S. Customs and Border Patrol, which enforces the Tariff Act for pharmaceuticals and dietary supplements, has broadly defined processing to be any method which results in the substantial transformation of a product whereby the product experiences a change in name, character, or use (Country of Origin Marking). On the other hand, the Agricultural Marketing Service (AMS),

which enforces the Farm Bills for food products, has defined processing to be any type of cooking, curing, mixing, smoking, or restructuring (e.g. emulsifying and extruding). The interpretations of these agencies are highly subjective, loosely defined, and possibly contradictory. For instance, AMS has broadly construed their interpretation of processing to include mixing peas with carrots, roasting peanuts or pecans, and breading meat (Jurenas). Equally disturbing, chicken that is slaughtered in the U.S. can be exported to China for processing and subsequently re-exported to the U.S. as a nugget or soup without COOL (Strom). As a result of such loose standards, only 11% of pork, 30% of beef, 39% of chicken, and 40% of fruits and vegetables may be required to have COOL (Jurenas). The balances are either produced in the U.S. or imported and processed in the U.S. However, consumers will not know which is the reason. Therefore, Secretary of Agriculture Tom Vilsack has acknowledged that COOL exemptions “may be too broadly drafted” (qtd. in Jurenas).

Imports to the U.S.

Compounding the issue of weak COOL laws, imports in pharmaceuticals, dietary supplements, and foods have reached all-time highs and are rapidly increasing. In the U.S. pharmaceutical industry, growth in the prescription drug market has flattened and the rate of return on pharmaceutical investments has dropped to just above the cost of capital. Coupled with demand for lower-cost products, these trends have caused a relocation of production to less developed nations such as China and India where the cost of formulation of an active pharmaceutical ingredient (API) can be 15-40% cheaper. Consequently, imports of pharmaceuticals increased by 13% annually from 2004 to 2011. Especially distressing, 10-15% of all food, including 60% of fruits and vegetables and 80% of seafood are imported (Pathway).

As imports continue to rise so does the need for explicitly defining exemptions and strengthening COOL laws.

Consumers' Right to Know

Weak COOL laws significantly undermine the right of consumers to be informed and make educated decisions. President Kennedy recognized this inalienable right as part of the Consumer Bill of Rights he presented in his Special Message to the Congress on Protecting the Consumer in 1962 (Kennedy). These rights were later codified in the United Nations Guidelines for Consumer Protection which affirm the consumer's right to "adequate information to enable them to make informed choices according to individual wishes and needs" (Guidelines).

Without strong COOL laws, consumers are stripped of their right to know and thus their ability to avoid products from countries with poor quality or workmanship, inadequate safety regulations, human rights violations, or environmental concerns.

Safety and Public Health Concerns

Weak COOL laws place American public health at undue risk. According to the Food and Drug Administration (FDA), imports from developing countries such as China are increasing faster than imports from developed countries. Specifically, China is expected to see a 40% increase in exports by 2020 and 9% annual growth in food exports between 2010 and 2020 (Pathway). Unfortunately, China suffers from lower quality standards and compliance, lack of government oversight and regulation, and inadequate or inconsistent testing procedures.

According to Dr. Peter Ben Embarek, food safety expert with the World Health Organization, "[Chinese food safety inspectors have] no clue what are the major food-borne diseases that need to be addressed or what are the major contaminants in the food process". Dr. Embarek elaborates that China uses a long-discredited method of randomly sampling and testing products (qtd. in

LaFraniere). Furthermore, the U.S. Department of Agriculture notes that “refusals of food shipments from China suggest recurring problems with filth, unsafe additives ... and veterinary drug residues” (Gale and Buzby).

Alarming, the FDA inspects only 1% of foreign shipments destined for the U.S. (Gale and Buzby). Equally distressing, the FDA admits that it “does not—nor will it—have the resources to adequately keep pace with the pressures of globalization”. Specifically, it does not have sufficient resources to fully inspect foreign facilities, and it is impossible for them to meet the recommendations of the Government Accountability Office. In fact, the FDA has only inspected 1.5% of Chinese seafood processors selling to the U.S. At the current rate, it would take nine years for the FDA to inspect every high-priority, foreign pharmaceutical facility just once (Pathway).

Without FDA oversight and inspection, consumers are left vulnerable and are forced to protect themselves. This can be achieved through the use of COOL where consumers can avoid products from countries with known health and safety issues. Additionally, COOL provides traceability which may make it easier to address recalls and mitigate outbreaks of food-borne illnesses. For instance, COOL could have been implemented to combat the outbreak of mad cow disease in 2003-2005 since consumers would have had the information to avoid Canadian meat (Jurenas).

Economic Impact

Weak COOL laws may cause consumers to unknowingly purchase foreign products. Consequently, U.S. companies may lose business, American jobs may be eliminated, tax revenues may be reduced, dependency on imports may increase, and the U.S. trade imbalance may be exacerbated. On the other hand, U.S. companies will benefit from strengthened COOL

laws since consumers will be more likely to purchase products labeled *Made in USA*. For example, a Florida Department of Agriculture and Consumer Services survey revealed 62% of consumers would purchase a product labeled *Made in USA* (VanSickle, et al.). As a result of the implementation of COOL in 2008, Canadian hog imports decreased 31% in the first year while Canadian and Mexican cattle imports decreased 10% each year from 2007 to 2009 (Jurenas).

Equally important, consumers may also be willing to pay a premium for products labeled *Made in USA*. In a study published by Colorado State University, 73% of consumers were willing to pay a 19% premium for “USA Guaranteed” steak and a 24% premium for “USA Guaranteed” ground beef due to safety concerns regarding imported beef, a strong desire to support U.S. producers, or beliefs that U.S. beef is of higher quality (Umberger, et al.). Based on these findings, the University of Florida estimated that implementing COOL would increase annual profits by \$900 million for the U.S. steak industry and \$3 billion for the U.S. ground beef industry (VanSickle, et al.). Similarly, in a study by The Boston Consulting Group, 80% of consumers were willing to pay 10-60% more for a variety of products labeled *Made in USA* even when imported products were cheaper (U.S. and Chinese Consumers). In another study published by Colorado State University, consumers were also willing to pay an increase in taxes of \$183.77 per year to support mandatory COOL (Loureiro and Umberger). As a result of strong consumer preference for products labeled *Made in USA*, strengthened COOL laws will bestow undeniable benefits on American businesses and the economy.

International Trade Laws

Despite charges of protectionism, the World Trade Organization (WTO) has recently affirmed the right of countries to mandate COOL, especially for food products. Under Article IX of the General Agreement on Tariffs and Trade, WTO members are allowed to adopt laws

requiring COOL to protect consumers (General Agreement). This provision was the subject of a WTO dispute in November 2009 when Canada and Mexico challenged U.S. COOL laws as unfairly discriminating against their products, causing their hog exports to the U.S. to decline (Jurenas). The Appellate Body ruled that mandatory COOL does not violate the Technical Barriers to Trade (TBT) Agreement. According to the Appellate Body, it did not matter if COOL laws “have a detrimental impact on imports”. Instead, the determining factor is if COOL laws “stem exclusively from a regulatory distinction rather than reflecting discrimination against the group of imported products”. Based on this reasoning, the Appellate Body ruled that U.S. COOL laws needed to be rewritten since “COOL’s recordkeeping and verification requirements ... impose a burden on upstream producers and processors that is disproportionate to the level of origin information conveyed to consumers” (qtd. in Ray and Schaffer). Originally, the labeling requirements at issue were weak since they did not require the disclosure of where the meat was born, raised, and slaughtered. As a result of this ruling, the U.S. was forced to enact stronger laws that required the explicit statement of where the aforementioned stages or steps occurred (Ray and Schaffer).

Conclusion

Incontrovertibly, weak COOL laws not only undermine consumer rights but also pose a threat to the U.S. public health and economy. Current laws do not require domestic products or imported products that are processed in the U.S. to have COOL. These exclusions have been too broadly construed to exempt the majority of imported foods, pharmaceuticals, and dietary supplements. As imports of these products continue to increase, strong COOL laws are vital now more than ever before. Strong COOL laws preserve consumer rights by enabling people to make informed purchasing decisions. Additionally, strong COOL laws safeguard the public

health by allowing consumers to avoid potentially unsafe imports and by providing vital traceability. Furthermore, strong COOL laws will confer irrefutable benefits to American companies as a result of consumer preference and willingness to pay premiums for products labeled *Made in USA*. Despite charges of protectionism, the WTO has repeatedly affirmed the rights of countries to enforce COOL laws.

Unfortunately, the broad and inconsistent interpretations of exemptions to COOL laws increasingly affect my generation as the world becomes globalized, moving toward one market where supply chains are exceedingly complex. Moreover, my generation thrives on having immediate access to information so that we can express our preferences such as not purchasing products from countries with safety issues, human rights violations, or environmental concerns. Consequently, the processing exemption to mandatory COOL must be explicitly and objectively defined by law in order to eliminate loopholes, room for interpretation, and possible contradictions. Equally important, all food products, pharmaceuticals, and dietary supplements, both foreign and domestic, must be required to have COOL.

Works Cited

- “Country of Origin Marking.” *Electronic Code of Federal Regulations*. U.S. Government and Printing Office, n.d. Web. 2 Jun. 2014.
- Gale, Fred and Jean C. Buzby. “Imports from China and Food Safety Issues.” *Economic Research Service*. United States Department of Agriculture, Jul. 2009. Web. 2. Jun. 2014.
- “General Agreement on Tariffs and Trade.” *World Trade Organization*. World Trade Organization, Jul. 1986. Web. 14. Jul. 2013.
- Jurenas, Remy. “Country-of-Origin Labeling for Food.” *Congressional Research Service*. Library of Congress, 4 Jul. 2010. Web. 1 Jun. 2013.
- Kennedy, John F. “Special Message to the Congress on Protecting the Consumer Interest.” *The American Presidency Project*. The Regents of the University of California, n.d. Web. 19 Jul. 2013.
- LaFraniere, Sharon. “In China, Fear of Fake Eggs and ‘Recycled’ Buns.” *The New York Times*. The New York Times Company, 7 May 2011. Web. 14 Jul. 2013.
- Loureiro, Maria, and Wendy Umberger. “Estimating Consumer Willingness to Pay for Country-of-Origin Labeling.” *Journal of Agricultural and Resource Economics* 28.2 (2003): 287-301. Web. 1 Jun. 2013.
- “Pathway to Global Product Safety and Quality.” *U.S. Food and Drug Administration*. U.S. Department of Health and Human Services, 7 Jul. 2011. Web. 1 Jun. 2013.
- Ray, Daryll, and Harwood Schaffer. “COOL Itself is Not Ruled Illegal by WTO but Finds Label Wording to Be a Problem.” *Agricultural Policy Analysis Center*. The University of Tennessee, 22 Mar. 2013. Web. 19 Jul. 2013.

Strom, Stephanie. "Chinese Chicken Processors Are Cleared to Ship to U.S." *The New York Times*. The New York Times Company, 30 Aug. 2013. Web. 30 Aug. 2013.

Umberger, Wendy, et al. "Country-of-Origin Labeling of Beef Products: U.S. Consumers' Perceptions." *Journal of Food Distribution Research* 34.3 (2003): 103-116. Web. 1 Jun. 2013.

"United Nations Guidelines for Consumer Protection." *United Nations Sustainable Development Knowledge Platform*. United Nations, 2003. Web. 1 Jul. 2013.

"U.S. and Chinese Consumers Willing to Pay More for Made in USA Products." *The Boston Consulting Group*. The Boston Consulting Group, 15 Nov. 2012. Web. 19 Jul. 2013.

VanSickle, John, et al. "Country of Origin Labeling: A Legal and Economic Analysis." *Institute for Agriculture and Trade Policy*. Institute for Agriculture and Trade Policy, May 2003. Web. 1 Jun. 2013.