Approved: 2-19-99
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Steve Morris at 10:00 a.m. on February 18, 1999 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nancy Kippes, Committee Secretary

Conferees appearing before the committee:
Senator Edward Pugh
Representative Bruce Larkin
Dr. Lyman Kruckenberg, Kansas Department of Agriculture
Roy Niehues, Kansas Farmers Union
Malcolm Moore, Kansas Cattlemen's Association
Roy Dixon, Highlands Livestock
Tim Benton, Garnett, Kansas
Catherine McClay, Ottawa, Kansas
Stephen Paige, Director, Bureau of Consumer Health, Kansas Department of Health and Environment
Mike Beam, Kansas Livestock Association

Others attending: (See Attached)

Senator Umbarger made a motion to approve the minutes of the February 17, 1999 meeting as submitted. Senator Tyson seconded. Motion carried.

SB 292 - an act concerning imported meat, poultry or dairy products labeling; providing for enforcement by Attorney General

Senator Edward Pugh testified in support of **SB 292**, stating this statute is on the books but is not being enforced (Attachment 1). Senator Pugh stated this bill would protect the consumer by having labeling identifying foreign origin and also help the farmers trying to compete with foods of unknown origin.

Representative Bruce Larkin appeared in support of **SB 292**, advising that enforcement of country of origin labeling is of great importance to the integrity of meat products sold to U.S. consumers (Attachment 2).

Dr. Lyman Kruckenberg, Kansas Department of Agriculture, provided informational testimony regarding the process of imported products entering the United States (Attachment 3). He stated that in order to effectively execute K.S.A. 65-6a47, the statute requiring labeling of all imported products, it would be necessary for the federal government to require country of origin labeling.

Roy Niehues, Kansas Farmers Union, provided testimony on behalf of Ivan Wyatt, President, Kansas Farmers Union, in support of **SB 292** (Attachment 4). Mr. Niehues stated that the Kansas Farmers Union believes that if we do nothing about unlabeled meat entering the U. S. markets, it will not only hurt our producers who produce quality products that people will buy, but it will also be an injustice to our consumers, who should be given the opportunity to make an informed decision.

Malcolm Moore, Kansas Cattlemen's Association, testified in support of **SB 292** saying that the enforcement of this labeling law would help level the playing field between the packer and cowman (Attachment 5). Mr. Moore stated that Florida does have a country of origin labeling law that has been successfully enforced. It was requested that Research Staff provide information to the committee concerning this.

Roy Dixon, Highlands Livestock, appeared in support of **SB 292**, pointing out that most foreign country's livestock pharmaceutical regulation standards are less restrictive than regulations of the United States. He stated the consumer needs meat which is wholesome, nutritional, and drug residue free (Attachment 6).

Tim Benton, Garnett, Kansas, testified in support of **SB 292** because it would require the enforcement by the Attorney General of a statute that is already on the books in Kansas but not being enforced (Attachment 7).

Catherine McClay, Ottawa, Kansas, testified in support of **SB 292**, stating she believes we live in a label-conscious society and therefore would support the labeling of all meat as to country of origin (Attachment 8).

Stephen Paige, Director, Bureau of Consumer Health, Kansas Department of Health and Environment, provided informational testimony on **SB 292** (Attachment 9). Mr. Paige noted that Attorney General Opinion 73-3 had concluded the law passed in 1970 requiring country of origin labeling of certain food products to be in conflict with the United States Constitution and was void and unenforceable.

Mike Beam, Kansas Livestock Association, testified on **SB 292**, taking no position. He said the Tariff Act requires every imported item be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. That is why you find such labeling on all individual, retail-ready packages of imported meat products. However, when live cattle destined for slaughter enter this country in sealed trucks as non-retail items, USDA inspection laws consider them to be domestic products. The processing plant receiving imported beef or live animals is considered the "ultimate purchaser" and USDA no longer requires import labeling of this meat or its container (Attachment 10).

The Office of the Attorney General provided written testimony stating that as worthwhile as **SB 292** is, it may only be constitutionally permissible and enforceable if enacted by Congress to apply nationwide (Attachment 11). Also provided was a copy of Part 134 of the Regulations of the U. S. Customs Service (Attachment 11).

The hearing on **SB 292** was closed.

The next meeting will be February 19, 1999.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-18-99

NAME	REPRESENTING
Don Snodgrass	Ks Food Dealers Assoc
Roy G. Diehues	Ks Farmers Union
John Berge	Ks Farmers Union
[illegible] Cole	Sen. Tyson - Intern
Catherine McClay	Sen. Tyson - Legislative
Roy E. Peterson Highlands	Collins Feeds, RCAL F, Highlands Livestock, Kansas Cattlemen's Assoc
Ernie J. Mushrush	Kansas Farmers Union
Malcolm Moore	Kansas Cattlemen Assoc
Tim Benton	Myself
Dr. [illegible]	KDA MKP Insp.
Stephen M. Paige	KDHE
Mike Beam	Ks Pork. Assn.

STATE OF KANSAS

EDWARD W. PUGH
SENATOR, 1ST DISTRICT
625 LINCOLN AVE.
WAMEGO, KANSAS 66547
(913) 456-9377

ROOM 143-N, CAPITOL BLDG.
TOPEKA, KANSAS 66612-1504
(913) 296-7379

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER ENERGY AND NATURAL RESOURCES
JUDICIARY
UTILITIES
RULES AND REGULATIONS

February 18, 1999

TESTIMONY PRESENTED TO SENATE AGRICULTURE COMMITTEE
by
Senator Edward W. Pugh

Mr. Chairman, members of the Committee. I appear before you this morning in support of Senate Bill 292. For over 20 years, Kansas law has required that the country of origin for meat products produced abroad be boldly labeled on retail packages. For over 20 years, this law has not been enforced. The reason for non-enforcement, I do not know, though I do believe that the enforcement process in the law, requiring the cooperation of the Kansas Department of Health and Environment and county attorneys, contributed to the non-enforcement. Senate Bill 292 remedies this problem by placing enforcement responsibility in the hands of the Attorney General, a person and an office noted for concern about consumers' rights. I believe that such emphasis is necessary in the matters covered by Senate Bill 292.

By enforcing the labeling of the products covered by the law, two principal benefits will be achieved. Both are intertwined. First, consumers will know whether or not the product is produced abroad. This is important as the conditions under which it was produced are in all likelihood not the strictly maintained and inspected conditions that are imposed on Kansas meat producers. As you know, Kansas producers have to meet rigorous standards - many small processors have been under the gun to comply, pushing them to their survival limits. Consumers should be able to make their own decisions whether they buy foreign products or U.S. products. Second, as you know, our farmers and ranchers are experiencing some of the toughest times in Kansas history, yet they produce the safest and best foods in the world. Our Kansas products should not have to compete with foreign foods that have their origin hidden from the consumer. State government should not be a party to this deception.

Thirty-four Senators, in a rare show of bipartisan agreement, have signed on as sponsors of Senate Bill 292. I think I could have gotten more if I could of tracked them down in the waning minutes before the bill's printing deadline. I ask that you continue this support by your peers of the Kansas consumer and the Kansas livestock industry. I ask that you report this bill favorably to the Senate.

Thank you for your attention - I stand for any questions you may have.

Edward W. Pugh

Senate Agriculture
2-18-99
Attachment 1

STATE OF KANSAS

BRUCE F. LARKIN
REPRESENTATIVE, DISTRICT SIXTY-THREE
R.R. 1
BAILEYVILLE, KANSAS 66404

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: TRANSPORTATION
MEMBER: FINANCIAL INSTITUTIONS

Testimony before the Senate Agriculture Committee

Mr. Chairman and members of the Committee. I am here to speak in favor of SB 292. I wanted to inform you the States of Colorado, Nebraska, South Dakota, Minnesota, and Iowa, are discussing "country of origin labeling" as a producer and consumer protection issue.

Enforcement of "country of origin labeling" is of great importance to the integrity of meat products sold to U.S. consumers. At this time, boxed beef is being imported into the United States through Canada and Mexico that originates in other foreign countries. Many countries use hormones and feed additives that have been banned in the United States, and the meat is processed in plants that would fail to meet our standards for cleanliness and safety. A case in point; the infamous "Jack in the Box" restaurant chain. The meat involved was imported from Canada with a foreign country of origin.

Enforcement of this law would allow consumers to choose which product they prefer to buy.

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Attachment 2

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture
901 S. Kansas Avenue
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(913) 296-3558
FAX: (913) 296-8389

KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY
TO THE

SENATE AGRICULTURE COMMITTEE

SENATE BILL 292

BY

Dr. Lyman Kruckenberg
Kansas Department of Agriculture
February 18, 1999

Good morning Chairman Morris and members of the committee. Thank you for giving me this opportunity to discuss Senate Bill 292 with you.

In reviewing Senate Bill 292 dealing with the enforcement of K.S.A 65-6a47, the following items should be considered.

1. Imported product entering into the United States bears the country of origin labeling on the immediate container. After entry into the United States, imported product is treated the same as domestic product (Federal Policy). As such, imported products may enter an USDA-inspected establishment for further processing.

2. After the product has been reinspected and passed by FSIS import inspectors and then removed from its original immediate container for further processing, FSIS policy does not require a country of origin statement.

3. When an imported product has been further processed in an official establishment, labeling requirements are the same as for a domestic product, addition of a country-of-origin statement is not required by USDA-FSIS.

4. In order to effectively execute K.S.A. 65-6a47 it would be necessary for the Federal government to require country of origin labeling. Unless members of the Attorney General's office monitored the country of origin on every box shipped into the state, enforcement of the law would be impractical, and very likely impossible.

5. There have been other incidences of states trying to add requirements that are more stringent than USDA's on imported products in the past. California for instance tried to add restrictions

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Attachment 2

on the labeling of "fresh poultry" that were more stringent than USDA's. The additional requirements were not allowed.

6. The basic purpose for K.S.A. 65-6a47 is sound, but unless there is a nationwide policy the effects of enforcement will be small.

7. There is movement on the national level to require country of origin labeling. If there is a federal policy requiring country of origin labeling than it might become practical and possible to enforce the law in Kansas.

I would be glad to stand for any questions that you may have regarding this bill.

STATEMENT
OF
IVAN W. WYATT, PRESIDENT, KANSAS FARMERS UNION

ON
SB-292

BEFORE
SENATE AGRICULTURE COMMITTEE

FEBRUARY 18, 1999

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM IVAN W. WYATT, PRESIDENT, KANSAS FARMERS UNION.

THE KANSAS FARMERS UNION RISES IN SUPPORT OF SENATE BILL 292. I WANT TO COMMEND THE SPONSORS OF SENATE BILL 292.

ORIGINALLY, THIS LEGISLATION WAS PROBABLY ADEQUATE TO PROTECT AND INFORM THE CONSUMING PUBLIC IN PRIOR YEARS.

TODAY, WE ARE DEALING WITH TRANS-NATIONAL CORPORATIONS, WHO ARE INVOLVED IN TRANS-SHIPMENTS OF MEATS THROUGH THE NEIGHBORING COUNTRIES OF CANADA AND MEXICO.

I THINK EVERYONE IS AWARE OF THE BORDER CROSSING SHIPMENTS OF MEATS AT SWEETWATER, MONTANA. THIS INDICATES THAT THE INSPECTION OF IMPORTED PROCESSED MEATS IN THIS COUNTRY IS A SHAM.

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Attachment 4

IF WE CAN'T STOP DRUGS FROM ENTERING THIS COUNTRY AT THE MEXICAN BORDER, WE CERTAINLY CAN'T CONTROL WHAT TYPES OF MEATS ARE ENTERING THIS COUNTRY, OR WHAT CONDITIONS THEY WERE RAISED AND/OR PROCESSED UNDER.

THE MEAT CONSUMING PUBLIC CAN NO LONGER FEEL CONFIDENT THAT WHAT THEY ARE CONSUMING IS U.S. PRODUCED AND PROCESSED MEAT. WITH MORE AND MORE MEATS BEING MARKETED AS A "BRAND" PRODUCT, TRANS-NATIONAL CORPORATIONS CAN NOW FEED, PROCESS AND "BRAND" LABEL THEIR PRODUCT IN A COUNTRY UNDER LESS STRINGENT SANITATION AND HEALTH CODES AND EXPORT IT INTO THE U.S. MARKET WITHOUT A COUNTRY OF ORIGIN LABELING. THE AMERICAN CONSUMERS HAVE NOT A CLUE WHAT THEY MAY BE CONSUMING.

WE HAVE A COUNTRY OF ORIGIN LABELING ON WHAT WE PUT ON THE OUTSIDE OF OUR BODY. SURELY IT IS EQUALLY IMPORTANT TO KNOW WHAT WE PUT IN OUR BODY.

IF THIS IS ALLOWED TO CONTINUE, WE CAN EXPECT TO SEE THE CATTLE FEEDING INDUSTRY OF KANSAS FOLLOW THESE TRANS-

NATIONAL PACKERS AND PROCESSORS ACROSS THE BORDER. EVEN SOME OF OUR MEMBERS OF CONGRESS ALREADY ADMIT TO THAT.

WITH THE COMING OF IRRADIATION, IT IS NOT UNREASONABLE TO EXPECT TO SEE HYGIENIC PROCESSING SUFFER. THERE WILL BE A GREATER LIKELIHOOD WE WILL SEE THE EFFECT OF FOREIGN MATERIALS IN THE PRODUCT, FROM BACTERIA TO FECES MATERIAL MASKED WITH IRRADIATION. PERHAPS WE WILL EVEN SEE IMPORTED KANGAROO FROM AUSTRALIA AGAIN.

IT WOULD BE UNREASONABLE TO EXPECT THAT A COUNTY AND THEIR COUNTY ATTORNEY SHOULD TRY TO TAKE ON THESE TRANS-NATIONAL CORPORATIONS. OUR STATE ATTORNEY GENERAL SHOULD HAVE A BETTER CHANCE OF EFFECTIVE ENFORCEMENT.

THIS IS ONE OF THOSE ISSUES THAT OUR CONGRESS HAS REFUSED TO DEAL WITH THE REAL PROBLEM.

THEREFORE, THE KANSAS FARMERS UNION COMMENDS THE SPONSORS OF THIS LEGISLATION AND YOUR EFFORT TO COURAGEOUSLY TAKE ON THIS ISSUE, INSTEAD OF PROCRASTINATING AND SAYING NOTHING CAN BE DONE.

THE KANSAS FARMERS UNION BELIEVES THAT IF WE DO NOTHING ABOUT UNLABELED MEAT ENTERING THE U.S. MARKETS, IT WILL NOT ONLY HURT OUR PRODUCERS WHO PRODUCE QUALITY PRODUCTS THAT PEOPLE WILL BUY, BUT IT WILL ALSO BE AN INJUSTICE TO OUR CONSUMERS, WHO SHOULD BE GIVEN THE OPPORTUNITY TO MAKE AN INFORMED BUYING DECISION.

THANK YOU.

SENATE AG COMMITTEE

STEPHEN MORRIS, CH.

My name is Malcolm Moore and I represent the Kansas Cattlemen's Association this morning.

I am a farmer from Shawnee County. Our farm is located between Wanamaker and Urish Roads south of 69th Street. The farm has been in the family since 1859 and we've had continuous cattle on it since then.

I run a cow-calf operation and have spent the last 25 years trying to improve and upgrade our cattle. We A.I. embryo transfer and buy bulls from registered breeders.

I guess that is why it is so upsetting to me when we get blamed for poor quality meat in the supermarket. I believe labeling the meat to the country of origin would help identify our product and help the consumer in his decision on which meat to buy. We are not afraid of competition from other countries. We feel we have the best product.

Farmers and Ranchers believe it is no coincidence that problems the industry has been encountering during the past several years have occurred simultaneously with the increased imports of live cattle and beef that are at historically high levels. Imports of live cattle for slaughter, for example, have exceeded one million head each year for the past three years, and this does not include the additional imports of feeder cattle , which in recent

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years have exceeded 1.3 million head, displacing domestic feeders at the feedlots.

According to USDA figures, the cow-calf producer:

made	+$15.28	per	cow	in	1993
lost	- 22.86	"	"	"	1994
"	- 78.73	"	"	"	1995
"	-209.96	"	"	"	1996
"	-130.42	"	"	"	1997
"	-200.00	"	"	"	1998

Why, if we have such terrible demand for beef in this country, have our live cattle imports doubled in the last 10 years?

We need this labeling law to be enforced to help level the playing field between the packer and cowman. The packer has absolutely no regard for the farmer or rancher. This was illustrated this winter when they paid the hogman 8¢ per lb. for his hogs but didn't lower the retail price of pork!

A majority of the products in the grocery store already labeled as country of origin: grapes from Chili, Kipper herring from Norway, canned beef from Argentina, wine from the Napa Valley, California, cigars from Cuba, tomatoes from Mexico. It is at the meat case that we are lost for direction.

COUNTRY OF ORIGIN labeling on meat will help the Kansas Cattle Producer and the Kansas consumer equally.

Florida has a country of origin labeling law that has been successfully enforced and there is no reason why Kansas can't also have one.

SENATE BILL No. 292: 17 February 1999 Senate Testimony

Mr. Chairman, members of the Senate Agriculture Committee:

I am Roy Dixon, owner and manager of Highlands Livestock, a member of the Kansas Cattlemen's Association.

Today, more and more, consumers have been exposed to such alarming news and experiences such as kangaroo meat, horsemeat being blended into American ground meats and prepared over the counter meal items. Soy meal blended into American hamburger without a consumer awareness that would allow the option to choose between a full meat product and a blended meat product.

E-coli, salmonella, and fecal contamination of meats have been a tremendous concern for the consumer. The media and scientific community has also brought to the attention of consumers various antibiotic residues showing up in meats or the fact of certain antibiotic usage in livestock production causing a lower efficiency of prescription medicine used in human ailments.

Most foreign country's livestock pharmaceutical regulation standards are greatly lower than regulations of the United States.

There are many livestock pharmaceuticals that pose tremendous risks for humans who eat meat contaminated with drug residues.

Chloriphenical, that can shut down the human immune system rather abruptly and has lead to death of individuals, furazolidon – which research has proven to be carcinogenic, Ifropan that has shown extreme negative results toward human health, are just a few of the drugs the FDA has banned from use in our livestock industry due to its adverse effect on human health when consumed

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in our diets. Yet many of these drugs are used in imported meat and livestock from foreign countries.

For a drug to be approved for use in the United States, the average cost of research and application with the FDA is $33 million dollars. This is just a part of our country's quality assurance safety programs. No other country in the world imposes such standards for the protection of its consumers. No other country has the stringent health regulations that our meat processing firms have imposed upon them.

There have been reported cases of imported meats, when thoroughly tested, that have shown a presence of antibiotic residues and other medication residue. These meats get through the system here in the United States.

A gentleman with a large feed additive company expressed the following to me yesterday:

"Here in the state's, we don't have a disease resistance tolerance to the diseases that exist in other foreign countries. Simply, we are not exposed to them. For example, when we drink the same water in parts of Mexico that doesn't have any adverse affect on the locals, we become sick due to the fact we haven't built up an immunity to diseases common to that area."

For those who travel overseas remember how we have to get certain immunization shots for the countries we intend to visit?

The concern my friend had is that imported livestock and meats carry these microorganisms in their tissues. This can expose the American consumer to disease that we have not built up a tolerance to in our systems.

Consumers need the assured safety that all imported meats be subject to an inspection standard that is equal to that prescribed for domestically produced beef. They want to know the meats they purchase are clean, free from bacterial contamination, free from virulent contamination, and drug residue free. They want a good, wholesome, quality product to meet their dietary needs.

If meats don't get tested and meet the standards of U.S. produced meat, they should not be allowed into the United States.

That brings us to **Point of Origin Labeling.** For food safety, we need to be able to trace back the origin of a product if a health concern arises, so as to resolve and then prevent such a situation from occurring in the future.

Point of Origin Labeling also provides the consumer with the option of purchasing US produced meats, blended meats with country of origin labeling, or totally foreign meats.

Don't we do the same in other industries? Remember the automobile ads, as well as other products promoting – AMERICAN MADE – THE CHOICE IS YOURS!

Look at the cloths you wear ~ doesn't it say made in the U.S.A., or made in Taiwan, or made in Japan. **These labels give you point of origin. They give you options**. Options to buy American made or foreign made. They give you, the consumer a choice.

We need meat safety. We need wholesome nutritional drug residue free meats. **We need freedom of choice as consumers.**

I encourage you to support Senate Bill #292.

Thank you for the opportunity and privilege in speaking here today.

SB 292
Testimony of Tim Benton
Senate Agriculture Committee
February 18, 1999

Mr. Chairman and members of the Agriculture Committee:

I appreciate this opportunity to address your committee with my thoughts regarding Senate Bill #292. My name is Tim Benton and I'm a cattle rancher from Garnett. As you know, this bill would require the enforcement by the Attorney General of a statute that is already on the books in Kansas but not being enforced.

As a beef cattle seedstock breeder, I spend a great deal of effort to select and reproduce beef cattle genetics that will produce an efficient, high quality food product for my ultimate customer – the individual consumer of food. My family and I take a great deal of pride in the cattle we breed and sell. Our purebred seedstock are used by commercial cow/calf producers to propagate the cattle that then are fed out and eventually enter the human food chain as beef in the supermarket meat counter. It is important to me, and I think only fair to the Kansas consumer, that we identify the quality product we produce here in this country, as well as the beef produced and processed in foreign lands.

As you probably know, we have in this country and in this state, a very tough and thorough meat inspection system. This allows consumers to have a high degree of assurance that the meat products they buy are extremely safe to consume. I am not an expert on inspection systems in other countries, but I have been told by people that are, that our system is more involved and our regulations are much more stringent than most, if not all, of the countries we import meat from. Once this foreign product enters this country, however, it loses its identity and can be mingled and sold with our high-quality, wholesome American product. It should be required to be labeled. As far as I know, we require all other types of product, from clothes to cars, to carry country of origin labels. Why not food products? Our consumers have a right to know.

This bill only makes sense, doesn't it? It is not opening up new territory by putting new regulations and controls of industry on the books. It only provides for enforcement of a statute that has been on the books for over twenty years. I hope you will see fit to recommend SB 292 for passage and help give Kansas consumers the information they need to make logical choices regarding the safety and quality of food they eat.

Thank you.

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Attachment 7

Catherine A. McClay
Testimony before the Senate Agriculture Committee
February 18, 1999

Chairman Morris and members of the committee. I support Senate Bill 292 requiring the Attorney General to enforce the provisions of K.S.A. 65-6a47.

My name is Cathy McClay. I live just south of Ottawa and have been a long time Kansas resident. As a consumer who is responsible for purchasing the food for my family for many years, I have long been concerned about the cleanliness of the food I purchase. With our stringent food processing laws and with what I hear in the news about our ever-vigilant government cracking down on cleanliness violators, I have felt confident that the meat I purchase in the store is American processed and American inspected. That it is clean, pure and free of harmful contaminants and bacteria. I trust that I am protected.

I do not have this confidence in meat produced and processed south of the border or in many other foreign countries. We see others experiencing mad cow disease and e-coli scares. When visiting some of these countries I am not even comfortable drinking their water. I was not aware and am shocked to discover that many of the meat products that are offered for sale in my stores may have come from foreign countries. I assumed that all unmarked meat was American meat. All of this meat that is produced and processed outside of the U.S. should be clearly marked so when I make a purchase I have a choice. I do not have this choice if the product is not labeled.

I am from a farm family and I want to support our farmers by buying the products they produce. Our Ag economy is hurting. I feel very strongly that we should support our farmers. They are in touch with our heritage and seem to share the ideals and values of our founding fathers. They deserve our support.

I am surprised that K.S.A. 65-6a47 requiring labeling of foreign food imported into the U.S. has been on the books for over 20 years and has never been enforced.

For the protection of all of us it is important that we know where our food comes from. I am pleased this labeling law exists and I feel it is my right as a Kansas consumer to get full protection of the laws on our books. Please do not change this law – enforce it.

I urge you to support for S.B. 292. Thank you.

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2-18-99
Attachment 8

Testimony presented to

Senate Agriculture Committee

February 18, 1999

by

Stephen N. Paige
Director, Bureau of Consumer Health
Kansas Department of Health and Environment

Senate Bill 292

K.S.A 65-6a47 was passed in 1970 to require country of origin labeling of certain food products. Authority for enforcement of that law was given to the Board of Health and subsequently to the Secretary, Department of Health and Environment. In 1970, the department began monitoring for compliance with the law during routine inspections of food establishments. Orders for noncompliance were written by the food and drug inspectors. Passage of SB 292 will transfer the authority for enforcement of the country of origin labeling requirement from the Kansas Department of Health and Environment to the Attorney General.

In Opinion 73-3, the Attorney General concluded the law to be in conflict with the United States Constitution and was void and unenforceable. Following the Attorney General's opinion, the department ceased writing orders for violations of this law. A review of the department's files indicates no complaints or correspondence regarding this law since 1981.

In addition to the Kansas law, 19 CFR Part 134, with few exceptions, requires every article of foreign origin imported into the United States to be marked as to the country of origin. This federal mandate is enforced by the United States Customs Service.

KANSAS LIVESTOCK ASSOCIATION

Since 1894

To: The Senate Agriculture Committee
Senator Steve Morris, Chairman

From: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

Subject: **SB 292** - Imported Meat, Poultry, or Dairy Products Labeling

Date: February 18, 1999

Thanks for giving us the opportunity to provide information regarding labeling requirements for imported meat. In recent years most of the debate on this issue has surfaced at the national level in Washington, D.C. Our national affiliate, the National Cattlemen's Beef Association (NCBA), has actively pushed for legislation requiring the labeling of imported meat. However, KLA members have yet to establish policy on this issue. They will consider this bill next week during our annual Legislative and Board of Directors meetings. Our purpose for appearing before the committee this morning is to share with you information regarding the current federal labeling requirements and discussions underway for federal legislation in 1999.

A special NCBA task force looked extensively at the existing labeling requirements in 1997. They found the federal law requires ***most*** imports, including beef, to bear labels indicating their country of origin when they enter the United States. The Tariff Act requires every imported item be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. The U.S. Customs Service administers and enforces this act. Customs generally defines the ultimate purchaser as the last U.S. person who will receive the article in the form in which it was imported. That is why you will find such labeling on all individual, retail-ready packages of imported meat products.

NCBA also learned imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry parts destined for U.S. plants for further processing, must also bear country-of-origin marks. Live cattle destined for slaughter may enter this country in sealed trucks. Once these non-retail items enter the country, USDA inspection laws consider them to be domestic products. A processing plant receiving imported beef or live animals is considered the ultimate purchaser. USDA no longer requires import labeling of this meat or its container. For example, after a U.S. processor imports beef and processes it into sausage or soup, the processor and retailer are not required to label the finished product as imported beef.

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2-18-99
Attachment 10

6031 SW 37th Street Topeka, KS 66614-5129 (785) 273-5115 Fax (785) 273-3399 E-mail: kla@kla.org

Last year, NCBA and other national organizations lobbied Congress for legislation forcing more stringent import labeling requirements. It was not a "clear cut" issue. Much of the debate was on the labeling of ground beef that has a percentage of imported lean mixed with U.S. trimmings. Some asked who would bear the added costs of maintaining the identity of imported and domestic products and the added enforcement of the proposal.

Before Congress adjourned last fall, the appropriations bill included a provision requiring USDA to research this issue. This study is intended to determine the costs of implementing a more stringent labeling law and who will bear these costs. The report from this research project is due this April.

In the meantime, the push for new federal import labeling laws is gaining momentum. I've attached a summary of bills introduced thus far in the 106th Congress.

I am also attaching excerpts from a report titled "Final 1998 Review". These charts provide an overview of beef imports and exports and are part of a report prepared by NCBA's Chief Economist, Chuck Lambert.

I hope this information is helpful as you consider this legislation. We would be happy to provide further information on this topic upon request. I'd also be happy to respond to any questions or comments. Thank you.

Overview of 1999 Federal Bills Containing Meat Import Labeling Provisions

- S. 19, sponsored by Senators Tom Daschle (D-SD) and ten Democratic Senators, contains a provision requiring country-of-origin labeling of beef, pork, and lamb and restricts the use of USDA quality grade to domestically produced meat.

- H.R. 222, sponsored by Helen Chenoweth (R-ID), Earl Pomeroy (D-ND) and 31 other cosponsors, requires country of origin labeling for whole muscle cuts, ground meats and processed products containing meat.

- S. 251, sponsored by Senators Conrad Burns (R-MT), Larry Craig (R-ID), Craig Thomas (R-WY) and Mike Enzi (R-WY), requires country of origin labeling for retail whole muscle cuts, requires mandatory labeling for ground meat that may contain imported meat and establishes guidelines for the verification and labeling of 100 percent U.S. ground beef.

- S. 242, sponsored by Senators Tim Johnson (D-SD), Mike Enzi (R-WY), Craig Thomas (R-WY), Max Baucus (D-MT) and Harry Reid (D-NV), requires country of origin labeling for retail whole muscle cuts, requires mandatory labeling for ground meat that may contain imported meat and establishes an audit verification system for USDA to monitor meat labeling compliance.

- S. 241, sponsored by Senators Tim Johnson (D-SD), Mike Enzi (R-WY), Craig Thomas (R-WY), Max Baucus (D-MT) and Harry Reid (D-NV), rescinds USDA quality grade eligibility from all imported meats.

f:/users/testimon/1999/sb292b

Excerpts from "Final 1998 Review"

by

Chuck Lambert
Chief Economist

National Cattlemen's Beef Association

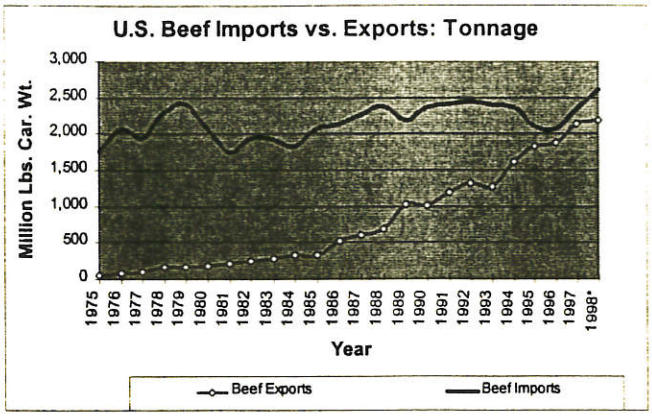
First 11 Months Beef Imports from Primary Suppliers: 1997 vs.1998

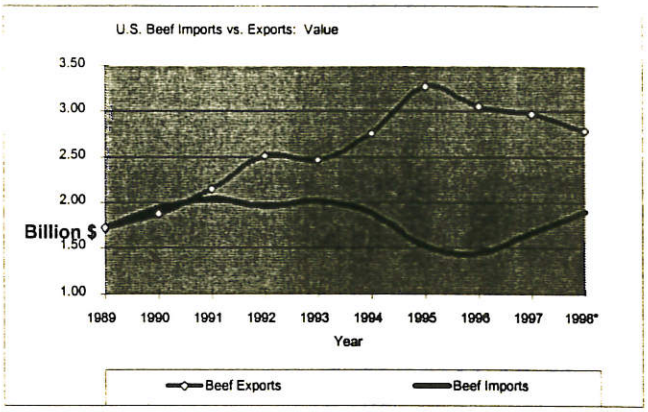
Volume (Thousand Metric Tons)				Value (Million Dollars)		
	1997	1998	% Change	1997	1998	% Change
Canada	247.40	280.26	13.29	553.10	671.19	21.35
Australia	201.86	261.71	29.65	334.67	430.95	28.77
New Zealand	180.27	185.68	3.01	309.69	309.85	0.05
Brazil	21.44	30.57	42.53	60.46	93.44	54.55
Argentina	31.09	27.12	-12.77	104.88	102.08	-2.67
Uruguay	19.50	13.62	-30.16	39.76	32.08	-19.31
Mexico	3.57	3.69	3.48	10.00	11.74	17.38
Other	29.24	15.19	-48.04	63.11	32.95	-47.79
Total US Beef Imports						
	734.36	817.85	11.37	1,475.67	1,684.28	14.14
Variety Meats	27.82	28.23	1.49	57.72	54.62	-5.38
Total US Imports: Beef + Variety Meats						
	762.18	846.08	11.01	1,533.39	1,738.90	13.40

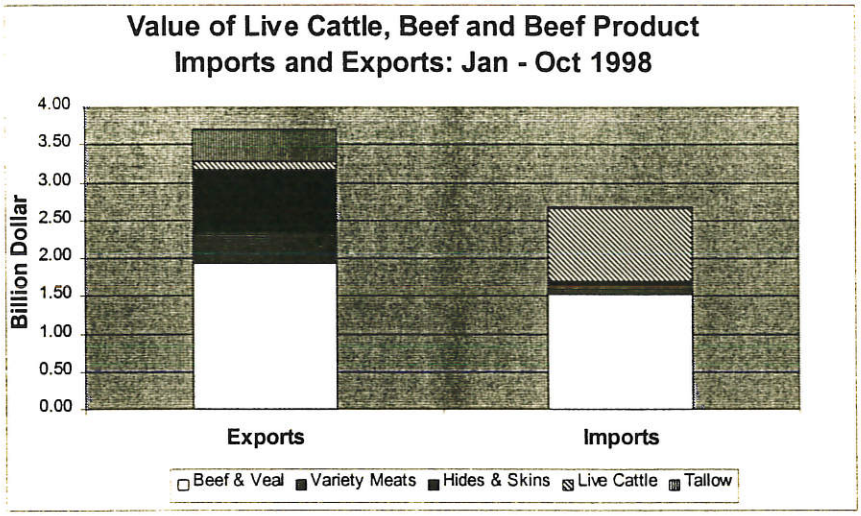
First 11 Months U.S. Beef Exports to Primary Markets: 1997 vs.1998

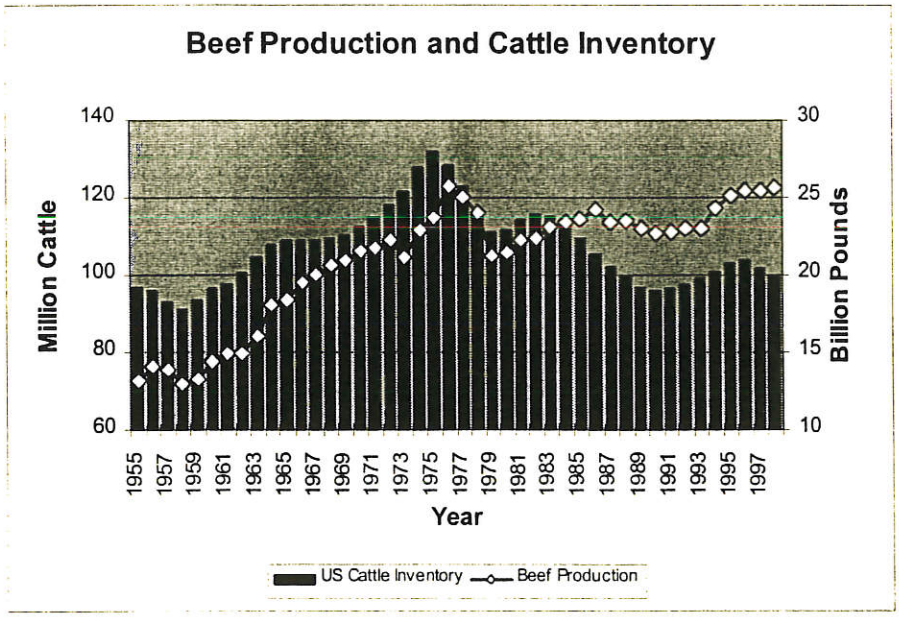
Volume (Thousand Metric Tons)				Value (Million Dollars)		
Beef						
	1997	**1998**	**% Change**	**1997**	**1998**	**% Change**
Japan	319.93	342.65	7.10	1,288.96	1,213.65	-5.84
Mexico	94.36	127.40	35.01	266.03	356.05	33.84
Canada	85.70	78.76	-8.09	283.12	258.48	-8.70
S. Korea	85.85	46.94	-45.33	278.64	125.92	-54.81
All U.S.	635.61	651.59	2.51	2,306.40	2,130.28	-7.64
Variety Meats						
	1997	**1998**	**% Change**	**1997**	**1998**	**% Change**
Japan	80.82	92.92	14.98	233.74	250.20	7.04
Mexico	35.73	40.59	13.58	40.59	48.51	19.52
Canada	10.49	9.55	-9.01	9.31	8.28	-11.11
S. Korea	5.33	3.15	-41.01	7.90	4.99	-36.81
Russian Fed.	51.92	39.83	-23.29	49.06	37.78	-22.99
Egypt	23.92	18.03	-24.64	19.27	17.45	-9.46
All U.S.	258.08	283.99	10.04	428.43	437.57	2.13
Beef Plus Variety Meats						
	1997	**1998**	**% Change**	**1997**	**1998**	**% Change**
Japan	400.75	435.57	8.69	1,522.70	1,463.85	-3.86
Mexico	130.10	167.98	29.12	306.62	404.56	31.94
Canada	96.19	88.31	-8.19	291.39	266.76	-8.45
S. Korea	91.18	50.08	-45.07	286.54	130.91	-54.31
All U.S.	893.69	935.58	4.69	2,734.84	2,567.85	-6.11

Note: % Change is change from 1997 in percent, i.e., beef volume exported to Canada in 1998 decreased by 9.1 percent; beef volume exported to Mexico increased 35 percent, etc.


U.S. Beef Imports vs. Exports: Tonnage
Million Lbs. Car. Wt.
3,000
2,500
2,000
1,500
1,000
500
0
1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998*
Year
Beef Exports
Beef Imports


U.S. Beef Imports vs. Exports: Value
Billion $
3.50
3.00
2.50
2.00
1.50
1.00
1989 1990 1991 1992 1993 1994 1995 1996 1997 1998*
Year
Beef Exports
Beef Imports


Value of Live Cattle, Beef and Beef Product Imports and Exports: Jan - Oct 1998
Billion Dollar
4.00
3.50
3.00
2.50
2.00
1.50
1.00
0.50
0.00
Exports
Imports
Beef & Veal
Variety Meats
Hides & Skins
Live Cattle
Tallow


Beef Production and Cattle Inventory
Million Cattle
140
120
100
80
60
Billion Pounds
30
25
20
15
10
1955 1957 1959 1961 1963 1965 1967 1969 1971 1973 1975 1977 1979 1981 1983 1985 1987 1989 1991 1993 1995 1997
Year
US Cattle Inventory
Beef Production

State of Kansas
Office of the Attorney General
301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

February 18, 1999

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The Honorable Stephen R. Morris
State Senator, 39th District
Chairman, Senate Agriculture Committee
State Capitol, Room 143-N
Topeka, Kansas 66612

Dear Senator Morris:

I have concerns that 1999 Senate Bill No. 292, as worthwhile as it is, may only be constitutionally permissible and enforceable if enacted by Congress to apply nationwide.

Kansas Attorney General Vern Miller opined in 1973 that K.S.A. 65-6a47 through 65-6a52 conflict with the Commerce Clause of the United States Constitution and are therefore void and unenforceable. Attorney General Opinion No. 73-3 is attached for your perusal. At my direction, my staff has done some preliminary research which shows that because the standard for finding a violation of the Commerce Clause has not changed, the bill before you may not survive a court challenge on this basis. I have instructed my staff to continue their research to see if there is a way to fix the constitutional problems of this legislation. However, even if the legislation is deemed constitutional, the State Department of Agriculture informs me that implementation of its requirements would be problematic.

The Department of Agriculture advises that enforcement of a state law requiring naming the country of origin on the label of all products whether frozen, canned or cured would be an overwhelming task. When a product enters the United States from a foreign country, the federal government requires that it must be labeled as such. However once the product passes through the United States Department of Agriculture (U.S.D.A.) importation facility, it is treated as any domestic product under U.S.D.A. requirements and loses any identity as foreign in origin. The foreign product may be further processed in an official federal establishment which also is not required to identify the country of origin. Foreign meat products are a common ingredient in many foods such as bologna, T.V. dinners, burritos, meatballs, etc. To enforce the labeling requirement on these products would involve tracing the product back through the original port of entry, because, as indicated, once foreign meat passes the port of inspection, it loses all national identity.

Senate Agriculture
2-18-99
Attachment 11

A possible alternative, although one with significant burdens to smaller processors, would be to require labeling of meat that is still in its original packaging and that is distributed and processed by Kansas processors. Personnel with the Kansas Department of Health and Environment (KDHE) or the Kansas Department of Agriculture could identify the meat products that are in the original package and inform management that Kansas law requires the country of origin be named on the label. The inspectors of KDHE or Department of Agriculture could administer this requirement, turning over suspected violations to my office for prosecution. While this requirement would impose a greater burden on our smaller meat processors, as indicated, it would be a less onerous requirement than that imposed by the existing legislation and would comport with the U.S.D.A., Division of the Food Safety Inspection Service (FSIS) policy. Country of Origin Labeling, Directive 30-94 dated 7/20/94. Additionally, meat products that are produced and processed in Kansas may be required to be labeled as Kansas products.

Otherwise, in order for country of origin labeling legislation such as K.S.A. 65-6a47 *et seq*. to clearly survive a Commerce Clause challenge, it will have to be passed at the federal level such as was done with legislation regarding labeling of content of clothing and with automobiles. Currently the FSIS does not require that the label on a foreign meat product contain a country of origin statement. I have written our Kansas Congressional Delegation requesting that they consider supporting federal legislation which requires such labeling.

Very truly yours,

Carla J. Stovall
Attorney General of Kansas

CJS:GE:jm
Enclosure

Public Health

Chapter 65

OPINION 73-3, January 4, 1973, to Robert M. Corbett, Attorney, Department of Health

Re: SAME—*Labeling Imported Meats at Retail Level*

You inquire whether K. S. A. 1971 Supp. 65-6a47 through 65-6a52, requiring the labeling as such of certain imported meats, poultry and dairy products, is enforceable in light of the Commerce Clause of the United States Constitution. We conclude that it conflicts with the Commerce Clause and is void and unenforceable.

Numerous states in the last several years have passed laws requiring the labeling of imported meats and other products. Four cases have been filed in federal courts challenging the constitutionality of four such laws, and in each case the laws have been held in violation of the Commerce Clause and void. One of the four was appealed to the Supreme Court where the decision was summarily affirmed. *Armour and Company v. State of Nebraska,* 270 F. Supp. 941 (1967), *Tupman Thurlow Company v. Moss,* 252 F. Supp. 641 (1966), *International Packers v. Hughes,* 271 F. Supp. 430 (1967), *Ness Produce Co. v. Short,* 263 F. Supp. 586 (1966), *aff'd* 385 U. S. 537, 87 S. Ct. 742, 17 L. Ed. 2d 591 (1967).

We find no substantial ground upon which to distinguish the Kansas Law from those found constitutionally deficient.

While the Kansas law requires labeling as "imported" only those meats which are "either canned, frozen, or cured" and "the products of any country foreign to the United States," the act clearly requires the labeling of such products as bologna, wieners and sausage, if they contain solely imported meat, or a combination of domestic and imported meat. Discussing the corresponding provision of the Tennessee law, the court point out:

"The Labeling Act would require such products to be labeled to show the fact of co-mingling and the country in which the foreign meat had its origin. It would be necessary for Tennessee handlers of plaintiff's meat or meat products to keep track of or trace the origin of such meat, purchased either directly or through wholesalers or manufacturers, in order that the ultimate product sold to consumers in the State of Tennessee could be identified and labeled with the country of origin, or labeled in such way as to indicate that foreign and domestic meats both had been used. That these requirements of labeling are exceedingly burdensome is self-evident. Indeed, it is reasonable to infer that in comingling domestic and foreign meats, compliance with the Act would be a practical impossibility. Yet these onerous burdens apply

under the Act only to foreign meat and to products in which foreign meat is used as an ingredient. Meats produced anywhere within the United States are exempt, with the result that the discriminatory burden on interstate and foreign commerce is unmistakably clear." *Tupman Thurlow Company,* supra, 645-646.

In *International Packers* the court pointed out that a law burdening or restricting interstate commerce was free from conflict with the Commerce Clause only if it "advance[s the state's] inherent police power to protect the life, liberty, health or property of its citizens" and even then only if it does not "unreasonably burden interstate commerce when evaluated in terms of the local or state interests it was designed to advance." (*supra,* p. 432) Citing authority, the court in *Ness* stated flatly, "We hold that a State exceeds the limits of the police power when it acts to insulate its citizens from outside competition." (*supra,* p. 589) Despite the objection of the defendants in each case, the courts found protection of local livestock interests from foreign competition the dominant purpose of the acts. Although we are without the benefit of records elaborating the legislative history of the Kansas act, it may be fairly presumed that such was the object of its enactment.

Nevertheless, should it be argued that the act's protection of the consumer from deceit, surely a legitimate exercise of the state's inherent police power, is sufficient to vindicate it, the courts have uniformly found otherwise. No attempt was made in any of the four cases to show that foreign meats, inspected as they are by the federal government, are in any way qualitatively inferior to or different from domestic meat. Indeed, foreign and domestic meats are chemically indistinguishable. The "deception" alleged was that the consumer may believe he is purchasing domestic meats when such may not be wholly the case.

In any event, the court in *Armour and Company* noted that "what the labeling requirements were intended to accomplish was not merely to give the housewife information that she was buying in part imported meat and to allow her to make a choice on that simple basis, but [the labeling requirements, including the size of the lettering] would seem to be clearly designed to have the capacity to make a housewife feel that the product was something to be shunned, as a matter either of stimulated reaction against it from its labeling, or uncertainty as to what might be the implication thereof as to its food significance and purchase." (*supra,* 945-946)

Therefore, the act, failing as have acts of other states to have redeeming object of consumer protection, and imposing a sub-

stantial burden on interstate commerce, runs afoul of the Commerce Clause of the United States Constitution and is in our opinion unconstitutional and unenforceable.

JRM

OPINION 73-14, January 11, 1973, to Robert M. Corbett, Attorney, Department of Health

Re: SAME—*County Health Programs, Funds for*

K. S. A. 65-204 provides in pertinent part thus:

"The board of county commissioners of any county of the state may levy a tax upon all taxable tangible property in such county, not in excess of one-half (½) mill on the dollar of assessed valuation of such property, and all the proceeds thereof shall be placed into a separate fund designated as 'the county health fund,' which fund is hereby created, and shall be used only to defray the cost of:

(1) For the assisting in the carrying out of the health laws, rules and regulations of the state within such county;

(2) paying the salary of the county health officer;

(3) the employment of additional personnel to assist the county health officer and other health authorities within such counties. . . . *Provided further, That the provisions of this act shall not abrogate or amend any other existing health law, or laws incidental thereto.*" [Emphasis supplied.]

You request my opinion whether counties may lawfully finance county public health programs from the general fund, or whether the levy authorized by the foregoing provision must be relied upon as the exclusive source of funds for such programs.

Counties have long been authorized to contract "for the protection and promotion of the public health and welfare." K. S. A. 19-212 In 1885, the Legislature constituted the county commissioners of the several counties the local board of health for their respective jurisdictions, and provided for election of a county health officer. Ch. 129, § 7, L. 1885. In 1929, the levy in question was authorized. Ch. 289, L. 1929. Nothing in the language of this enactment suggests that the levy was intended to be the sole and exclusive source of public funds for public health programs conducted by the counties. Prior to its enactment, and the underscored language clearly implies that the levy thereby authorized was intended to supplement, not supplant, then-existing authority for the conduct of county health programs, and the financing thereof.

As stated in *State ex rel. Smith v. Board of County Comm'rs of Thomas County*, 122 Kan. 850 (1927),

"The principal purposes of the county general fund are well understood. It is the fund out of which the ordinary current expenses of conducting the

county government are met . . . Incidental expenses pertaining ther are likewise properly paid out of this fund. . . ."

Certainly, the conduct of public health programs is an ordina and indeed necessary incident of county government, the exper of which is properly borne by the general fund. If, however, county should require additional funds for its health programs, t levy authorized by K. S. A. 65-204 may be imposed, the proce thereof to be expended for the purposes recited in that provisi Moneys from the general revenue fund which are devoted to pub health purposes are not restricted to the objects cited K. S. 25-204, and may be expended for any program falling within t authority of the county in the interest of public health.

JRM

OPINION 73-20, January 15, 1973, to Phillip L. Harris, City Attorney, Junct City

Re: SAME—*Massage Parlors*

You advise that the City of Junction City is considering the ad tion of an ordinance licensing and regulating places of busin which are held out to the public as massage parlors. You inqu whether K. S. A. 65-2901 *et seq.*, applies to such establishments a the operators thereof, and whether the state has preempted regu tion in this field so as to prohibit municipal licensing and regulati of such establishments.

Art. 29, ch. 65, K. S. A. provides the qualifications, examinati and licensing of physical therapists. K. S. A. 65-2901 (defi "physical therapy" as follows:

"As used in this act, the term 'physical therapy' means the *treatment of disability, injury, disease or other conditions of health and rehabilitation related thereto* by the use of the physical, chemical and other properties of cold, heat, electricity, exercise, *massage*, radiant energy, including ultravi visible and infrared rays, ultrasound, water and apparatus and equipment u in the application of the foregoing or related thereto." [Emphasis suppli

A "physical thereapist" is one "who applies physical therapy defined" in the act, which further prescribes that

"[h]e shall practice physical therapy upon the prescription, and under direct supervision of a physician licensed and registered in this state to p tice medicine and surgery and whose license is in good standing."

The practice of physical therapy which is regulated the includes use for therapeutic purposes of the devices, ume and media of treatment enumerated in K. S. A. 65-2901, *su* The underscored language of that provision indicates that an ess

PART 134
COUNTRY OF ORIGIN MARKING

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

Source: T.D. 72–262, 37 FR 20318, Sept. 29, 1972, unless otherwise noted.

§ 134.0 Scope.

This part sets forth regulations implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). The consequences and procedures to be followed when articles are not legally marked are set forth in this part. The consequences and procedures to be followed when articles are falsely marked are set forth in § 11.13 of this chapter. Special marking and labeling requirements are covered elsewhere. Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

[T.D. 81–290, 46 FR 58070, Nov. 30, 1981, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

Subpart A—General Provisions

§ 134.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Country.* "Country" means the political entity known as a nation. Colonies, possessions, or protectorates outside the boundaries of the mother country are considered separate countries.

(b) *Country of origin.* "Country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

(c) *Foreign origin.* "Foreign origin" refers to a country of origin other than the United States, as defined in paragraph (e) of this section, or its possessions and territories.

(d) *Ultimate purchaser.* The "ultimate purchaser" is generally the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA country, the "ultimate purchaser" is the last person in the United States who purchases the good in the form in which it was imported. It is not feasible to state who will be the "ultimate purchaser" in every circumstance. The following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article, or for a good of a NAFTA country, a process which results in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the "ultimate purchaser." With respect to a good of a NAFTA country, if the manufacturing process does not result in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the

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article after processing will be regarded as the ultimate purchaser.

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the "ultimate purchaser."

(4) If the imported article is distributed as a gift the recipient is the "ultimate purchaser", unless the good is a good of a NAFTA country. In that case, the purchaser of the gift is the ultimate purchaser.

(e) *United States.* "United States" includes all territories and possessions of the United States, except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(f) *Customs territory of the United States.* "Customs territory of the United States," as used in this chapter includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(g) *Good of a NAFTA country.* A "good of a NAFTA country" is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

(h) *NAFTA.* "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on December 17, 1992.

(i) *NAFTA country.* "NAFTA country" means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of the NAFTA.

(j) *NAFTA Marking Rules.* The "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.

(k) *Conspicuous.* "Conspicuous" means capable of being easily seen with normal handling of the article or container.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69471, Dec. 30, 1993; T.D. 95–68, 60 FR 46362, Sept. 6, 1995]

§ 134.2 Additional duties.

Articles not marked as required by this part shall be subject to additional duties of 10 percent of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry, as provided in 19 U.S.C. 1304(f). The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 90–51, 55 FR 28190, July 10, 1990]

§ 134.3 Delivery withheld until marked and redelivery ordered.

(a) Any imported article (or its container) held in Customs custody for inspection, examination, or appraisement shall not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(f), or adequate security for those duties (see § 134.53(a)(2)), are deposited.

(b) The port director may demand redelivery to Customs custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked. a demand for redelivery shall be made, as required under § 141.113(a) of this chapter, not later than 30 days after—

(1) The date of entry, in the case of merchandise examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(2) The date of examination, in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director.

(c) Nothing in this part shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

[T.D. 80–68, 45 FR 18921, Mar. 24, 1980, as amended by T.D. 90–51, 55 FR 28190, July 10, 1990; T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

§ 134.4 Penalties for removal, defacement, or alteration of marking.

Any intentional removal, defacement, destruction, or alteration of a marking of the country of origin required by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and this part in order to conceal this information may result in criminal penalties of up to $5,000 and/or imprisonment for 1 year, as provided in 19 U.S.C. 1304(h).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 90–51, 55 FR 28191, July 10, 1990]

Subpart B—Articles Subject to Marking

§ 134.11 Country of origin marking required.

Unless excepted by law, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article, at the time of importation into the Customs territory of the United States. Containers of articles excepted from marking shall be marked with the name of the country of origin of the article unless the container is also excepted from marking.

§ 134.12 Foreign articles reshipped from a U.S. possession.

Articles of foreign origin imported into any possession of the United States outside its Customs territory and reshipped to the United States are subject to all marking requirements applicable to like articles of foreign origin imported directly from a foreign country to the United States.

§ 134.13 Imported articles repacked or manipulated.

(a) *Marking requirement.* An article within the provisions of this section shall be marked with the name of the country of origin at the time the article is withdrawn for consumption unless the article and its container are exempted from marking under provisions of subpart D of this part at the time of importation.

(b) *Applicability.* The provisions of this section are applicable to the following articles:

(1) Articles repacked in a bonded warehouse under § 19.8 of this chapter;

(2) Articles manipulated under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter;

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(3) Articles manipulated, but not manufactured, in a foreign-trade zone under § 146.32 of this chapter.

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser.* When an imported article is of a kind which is usually combined with another article after importation but before delivery to an ultimate purchaser and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation.

(b) *Example.* Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as "Label made (or printed) in (name of country)" or words of similar meaning. See subpart C of this part for marking of bottles, drums, or other containers.

(c) *Applicability.* This section shall not apply to articles of a kind which are ordinarily so substantially changed in the United States that the articles in their changed condition become products of the United States. An article excepted from marking under subpart D of this part is not within the scope of section 304(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(2)), and is not subject to the requirements of this section.

Subpart C—Marking of Containers or Holders

§ 134.21 Special marking.

This subpart includes only country of origin marking requirements and exceptions under section 304(b), Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), for containers or holders. Special marking may be required by the Internal Revenue Service on alcoholic beverage bottles and other requirements may be imposed by reason of the nature of the contents by other Government agencies.

§ 134.22 General rules for marking of containers or holders.

(a) *Contents excepted from marking.* When an article is excepted from the marking requirements by subpart D of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article whether or not the article is marked to indicate its country of origin.

(b) *Containers or holders treated as imported articles.* Containers or holders for imported merchandise which are subject to treatment as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents; however, no marking is required for any good of a NAFTA country which is a usual container.

(c) *Containers or holders bearing a U.S. address.* Containers or holders of imported merchandise bearing the name and address of an importer, distributor, or other person or company in the United States shall be marked in close proximity to the U.S. address to indicate clearly the country of origin of the contents with a marking such as "Contents made in France" or "Contents Product of Spain."

(d) *Usual containers*—(1) *"Usual container" defined.* For purposes of this subpart, a usual container means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

(2) *A good of a NAFTA country which is a usual container.* A good of a NAFTA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

(e) *Exceptions.* Containers or holders of imported articles are not required to be marked if:

(1) *Excepted articles.* They are containers or holders of articles within the exceptions set forth in paragraph (f), (g), or (h) in § 134.32 or they are containers of a good of a NAFTA country within the exceptions set forth in paragraph (e), (f), (g), (h), (i), (p) or (q) of § 134.32.

(2) *Excepted containers or holders.* The container or holder itself is within an exception set forth in subpart D of this part.

(3) *To be filled by the importer.* The container or holder is within the exception set forth in § 134.24(c).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

§ 134.23 Containers or holders designed for or capable of reuse.

(a) *Usual and ordinary reusable containers or holders.* Except for goods of a NAFTA country which are usual containers, containers or holders designed for or capable of reuse after the contents have been consumed, whether imported full or empty, must be individually marked to indicate the country of their own origin with a marking such as, "Container Made in (name of country)." Examples of the containers or holders contemplated are heavy duty steel drums, tanks, and other similar shipping, storage, transportation containers or holders capable of reuse. These containers or holders are subject to the treatment specified in General Rule of Interpretation 5(b), Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Other reusable containers or holders.* Containers or holders which give the whole importation its essential character, as described in General Rule of Interpretation 5(a) (19 U.S.C. 1202), must be individually marked to clearly indicate their own origin with a marking such as, "Container made in (name of country)." Examples of the containers contemplated are mustard jars reusable as beer mugs; shaving soap con-

tainers reusable as shaving mugs; fancy cologne bottles reusable as flower vases, and other containers which have a lasting value or decorative use.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

§ 134.24 Containers or holders not designed for or capable of reuse.

(a) *Containers ordinarily discarded after use.* Disposable containers or holders subject to the provisions of this section are the usual ordinary types of containers or holders, including cans, bottles, paper or polyethylene bags, paperboard boxes, and similar containers or holders which are ordinarily discarded after the contents have been consumed.

(b) *Imported empty.* Disposable containers or holders imported for distribution or sale are subject to treatment as imported articles in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and shall be marked to indicate clearly the country of their own origin. However, when the containers are packed and sold in multiple units (dozens, gross, etc.), this requirement ordinarily may be met by marking the outermost container which reaches the ultimate purchaser.

(c) *Imported to be filled*—(1) *If unmarked.* When disposable containers or holders or usual containers which are goods of a NAFTA country are imported by persons or firms who fill or package them with various products which they sell, these persons or firms are the "ultimate purchasers" of these containers or holders or usual containers which are goods of a NAFTA country and they may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D). The outside wrappings or packages containing the containers shall be clearly marked to indicate the country of origin.

(2) *If marked.* If the disposable containers or holders or the usual containers which are goods of a NAFTA country are marked with the country of origin at the time of importation and the marking will be visible after they are filled, the marking shall clearly indicate that the container only and not the contents were made in the named country. For example, bottles, drums, or other containers imported empty, to be filled in the United States, shall be marked with such words as "Bottle (or container) made in (name of country)."

(d) *Imported full*—(1) *When contents are excepted from marking.* Usual disposable containers in use as such at the time of importation shall not be required to be marked to show the country of their own origin, but shall be marked to indicate the origin of their contents regardless of the fact that the contents are excepted from marking requirements; however, such marking is not required if the contents are excepted from marking requirements under paragraph (f), (g), or (h) of § 134.32 or, in the case of a good of a NAFTA country, under paragraph (e), (f), (g), (h), (i), (p) or (q) of that section.

(2) *Sealed containers or holders.* Disposable containers or holders of imported merchandise, which are sold without normally being opened by the ultimate purchaser (e.g., individually wrapped soap bars or tennis balls in a vacuum sealed can), shall be marked to indicate the country of origin of their contents.

(3) *Unsealed containers.* Unsealed disposable containers of imported merchandise normally unopened by the ultimate purchaser, may be excepted from marking if the article is so marked that the country of origin is clearly visible without unpacking the container. However, if the container is normally opened by the ultimate purchaser prior to purchase, only the article need be marked.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

§ 134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in new containers for sale to an ultimate purchaser after its release from Customs custody, or if the port director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repacking, the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

Certificate of Marking—Repacked J-List Articles and Articles Incapable of Being Marked

(Port of entry)_____

I,_____of _____, certify that if the article(s) covered by this entry (entry no.(s) _____ dated _____), is (are) repacked in a new container(s), while still in my possession, the new containers, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date_____

Importer_____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the port director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this section, the port director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

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(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT
PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR Part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

[T.D. 83–155, 48 FR 33863, July 26, 1983; T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

§ 134.26 Imported articles repacked or manipulated.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the port director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING BY IMPORTER—
REPACKED ARTICLES SUBJECT TO MARKING

(Port of entry) _____

I, ____ of ____, certify that if the article(s) covered by this entry (entry no.(s) ___ dated ___), is (are) repacked in retail container(s) e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article(s) is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the port director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the port director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT
PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR Part 134 provide that the articles in their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

(f) *Exceptions.* The requirements of this section do not apply to repackaging in a container that can readily be opened for inspection by the ultimate purchaser in the United States, unless such container bears a U.S. address or other potentially misleading marking.

[T.D. 84–127, 49 FR 22795, June 1, 1984; T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

Subpart D—Exceptions to Marking Requirements

§ 134.31 Requirements of other agencies.

Nothing in this subpart shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of any law, such as those of the Federal Trade Commission, Food and Drug Administration, and other agencies.

§ 134.32 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are excepted from marking requirements (see subpart C of this part for marking of the containers):

(a) Articles that are incapable of being marked;

(b) Articles that cannot be marked prior to shipment to the United States without injury;

(c) Articles that cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation;

(d) Articles for which the marking of the containers will reasonably indicate the origin of the articles;

(e) Articles which are crude substances;

(f) Articles imported for use by the importer and not intended for sale in their imported or any other form;

(g) Articles to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such articles and in such manner that any mark contemplated by this part would necessarily be obliterated, destroyed, or permanently concealed;

(h) Articles for which the ultimate purchaser must necessarily know, or in the case of a good of a NAFTA country, must reasonably know, the country of origin by reason of the circumstances of their importation or by reason of the character of the articles even though they are not marked to indicate their origin;

(i) Articles which were produced more than 20 years prior to their importation into the United States;

(j) Articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation;

(k) Products of American fisheries which are free of duty;

(l) Products of possessions of the United States;

(m) Products of the United States exported and returned;

(n) Articles exempt from duty under §§ 10.151 through 10.153, 145.31 or 145.32 of this chapter;

(o) Articles which cannot be marked after importation except at an expense that would be economically prohibitive unless the importer, producer, seller, or shipper failed to mark the articles before importation to avoid meeting the requirements of the law;

(p) Goods of a NAFTA country which are original works of art; and

(q) Goods of a NAFTA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73–135, 38 FR 13369, May 21, 1973; T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; T.D. 94–4, 59 FR 140, Jan. 3, 1994; T.D. 96–48, 61 FR 28932, June 6, 1996]

§ 134.33 J-List exceptions.

Articles of a class or kind listed below are excepted from the requirements of country of origin marking in accordance with the provisions of section 304(a)(3)(J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(J)). However, in the case of any article described in this list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents in accordance with the requirements of subpart C of this part. All articles are listed in Treasury Decisions 49690, 49835, and 49896. A reference different from the foregoing indicates an amendment.

Articles	*References*
Art, works of.	
Articles classified under subheadings 9810.00.15, 9810.00.25, 9810.00.40 and 9810.00.45, Harmonized Tariff Schedule of the United States	T.D. 66–153.
Articles entered in good faith as antiques and rejected as unauthentic.	
Bagging, waste.	
Bags, jute.	
Bands, steel.	
Beads, unstrung.	
Bearings, ball, 5/8–inch or less in diameter.	
Blanks, metal, to be plated.	
Bodies, harvest hat.	
Bolts, nuts, and washers.	
Briarwood in blocks.	
Briquettes, coal or coke.	
Buckles, 1 inch or less in greatest dimension.	
Burlap.	
Buttons.	
Cards, playing.	
Cellophane and celluloid in sheets, bands, or strips.	
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.	
Cigars and cigarettes.	
Covers, straw bottle.	
Dies, diamond wire, unmounted.	
Dowels, wooden.	
Effects, theatrical.	
Eggs.	
Feathers.	
Firewood.	
Flooring, not further manufactured than planed, tongued and grooved	T.D.s 49750; 50366(6).
Flowers, artificial, except bunches.	
Flowers, cut.	
Glass, cut to shape and size for use in clocks, hand, pocket, and purse mirrors, and other glass of similar shapes and sizes, not including lenses or watch crystals.	
Glides, furniture, except glides with prongs.	
Hairnets.	
Hides, raw.	
Hooks, fish (except snelled fish hooks)	T.D. 50205(3).
Hoops (wood), barrel.	
Laths.	
Leather, except finished.	
Livestock.	
Lumber, sawed	T.D.s 49750; 50366(6).
Metal bars, except concrete reinforcement bars; billets, blocks, blooms; ingots; pigs; plates; sheets, except galvanized sheets; shafting; slabs; and metal in similar forms.	
Mica not further manufactured than cut or stamped to dimensions, shape or form.	
Monuments.	

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Articles	References
Nails, spikes, and staples.	
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.	
Nets, bottle, wire.	
Paper, newsprint.	
Paper, stencil.	
Paper, stock.	
Parchment and vellum.	
Parts for machines imported from same country as parts.	
Pickets (wood).	
Pins, tuning.	
Plants, shrubs and other nursery stock.	
Plugs, tie.	
Poles, bamboo.	
Posts (wood), fence.	
Pulpwood.	
Rags (including wiping rags)	
Rails, joint bars, and tie plates covered by subheadings 7302.10.10 through 7302.90.00, Harmonized Tariff Schedule of the United States.	
Ribbon.	
Rivets.	
Rope, including wire rope; cordage; cords; twines, threads, and yarns.	
Scrap and waste.	
Screws.	
Shims, track.	
Shingles (wood), bundles of (except bundles of red-cedar shingles)	T.D. 49750.
Skins, fur, dressed or dyed.	
Skins, raw fur.	
Sponges.	
Springs, watch.	
Stamps, postage and revenue, and other articles covered in subheadings 9704.00.00 and 4807.00.00, Harmonized Tariff Schedule of the United States	T.D. 66–153.
Staves (wood), barrel.	
Steel, hoop.	
Sugar, maple.	
Ties (wood), railroad.	
Tides, not over 1 inch in greatest dimension.	
Timbers, sawed.	
Tips, penholder.	
Trees, Christmas.	
Weights, analytical and precision in sets	T.D.s 49750; 51802.
Wicking, candle.	
Wire, except barbed.	

[T.D. 72–262, 35 FR 20318, Sept. 29, 1972, as amended by T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 95–79, 60 FR 49752, Sept. 27, 1995]

§ 134.34 Certain repacked articles.

(a) *Exception for repacked articles.* An exception under § 134.32(d) may be authorized in the discretion of the port director for imported articles which are to be repacked after release from Customs custody under the following conditions:

(1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the United States.

(2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

(b) *Liquidation of entries.* The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the port director in his discretion upon written application by the importer.

[T.D. 84–127, 49 FR 22795, June 1, 1984; T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

§ 134.35 Articles substantially changed by manufacture.

(a) *Articles other than goods of a NAFTA country.* An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the "ultimate purchaser" of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

(b) *Goods of a NAFTA country.* A good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§ 134.36 Inapplicability of Marking Exception for Articles Processed by Importer.

An article which is to be processed in the United States by the importer or for his account shall not be considered to be within the specifications of section 304(a)(3)(G), of the Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(G)), if there is a reasonable method of marking which will not be obliterated, destroyed, or permanently concealed by such processing.

[T.D. 97–72, 62 FR 44211, Aug. 20, 1997]

Subpart E—Method and Location of Marking Imported Articles

§ 134.41 Methods and manner of marking.

(a) *Suggested methods of marking.* Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that the marking of the country of origin be legible, indelible, and permanent. Definite methods of marking are prescribed only for articles provided for in § 134.43 and for articles which are the objects of special rulings by the Commissioner of Customs. As a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For

example, it is suggested that the country of origin on metal articles be die sunk, molded in or etched; on earthenware or chinaware be glazed on in the process of firing; and on paper articles be imprinted.

(b) *Degree of permanence and visibility.* The degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive normal distribution and store handling. The ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

§ 134.42 Specific method may be required.

Marking merchandise by specific methods, such as die stamping, cast-in-the-mold lettering, etching, or engraving, or cloth labels may be required by the Commissioner of Customs in accordance with section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)). Notices of such rulings shall be published in the Federal Register and the Customs Bulletin.

§ 134.43 Methods of marking specific articles.

(a) *Marking previously required by certain provisions of the Tariff Act of 1930.* Except for goods of a NAFTA country, articles of a class or kind listed below shall be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets: knives, forks, steels, cleavers, clippers, shears, scissors, safety razors, blades for safety razors, surgical instruments, dental instruments, scientific and laboratory instruments, pliers, pincers, nippers and hinged hand tools for holding and splicing wire, vacuum containers, and parts of the above articles. Goods of a NAFTA country shall be marked by any reasonable method which is legible, conspicuous and permanent as otherwise provided in this part.

(b) *Watch, clock, and timing apparatus.* The country of origin marking requirements on watches, clocks, and timing apparatus are intensive and require special methods. (See § 11.9 of this chapter and Chapter 91, Additional U.S. Note 4, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)).

(c) *Native American-style jewelry*—(1) *Definition.* For the purpose of this provision, Native American-style jewelry is jewelry which incorporates traditional Native American design motifs, materials and/or construction and therefore looks like, and could possibly be mistaken for, jewelry made by Native Americans.

(2) *Method of marking.* Except as provided in 19 U.S.C. 1304(a)(3) and in paragraph (c)(3) of this section, Native American-style jewelry must be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other permanent method. The indelible marking must appear legibly on the clasp or in some other conspicuous location, or alternatively, on a metal or plastic tag indelibly marked with the country of origin and permanently attached to the article.

(3) *Exception.* If it is technically or commercially infeasible to mark in the manner specified in paragraph (c)(2) of this section, or in the case of a good of a NAFTA country, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

(d) *Native American-style arts and crafts.*—(1) *Definition.* For the purpose of this provision, Native American-style arts and crafts are arts and crafts, such as pottery, rugs, kachina dolls, baskets and beadwork, which incorporate traditional Native American design motifs, materials and/or construction and therefore look like, and could possibly be mistaken for, arts and crafts made by Native Americans.

(2) *Method of Marking.* Except as provided for in 19 U.S.C. 1304(a)(3) and § 134.32 of this part, Native American-style arts and crafts must be indelibly marked with the country of origin by means of cutting, die-sinking, engraving, stamping, or some other equally permanent method. On textile articles, such as rugs, a sewn in label is considered to be an equally permanent method.

(3) *Exception.* Where it is technically or commercially infeasible to mark in the manner specified in paragraph (d)(2) of this section, or in the case of a good of a NAFTA country, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

(e) *Assembled articles.* Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

(1) Assembled in (country of final assembly);

(2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or

(3) Made in, or product of, (country of final assembly).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 89–88, 54 FR 39524, Sept. 27, 1989; T.D. 90–75, 55 FR 38317, Sept. 18, 1990; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 94–1, 58 FR 69472, Dec. 30, 1993; T.D. 94–4, 59 FR 140, Jan. 3, 1994; T.D. 96–48, 61 FR 28932, June 6, 1996]

§ 134.44 Location and other acceptable methods of marking.

(a) *Other acceptable methods.* Except for articles described in § 134.43 of this part or the subject of a ruling by the Commissioner of Customs, any method of marking at any location insuring that country of origin will conspicuously appear on the article shall be acceptable. Such marking must be legible and sufficiently permanent so that it will remain on the article (or its container when the container and not the article is required to be marked) until it reaches the ultimate purchaser unless deliberately removed.

(b) *Articles marked with paper sticker labels.* If paper sticker or pressure sensitive labels are used, they must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser.

(c) *Articles marked with tags.* When tags are used, they must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§ 134.45 Approved markings of country name.

(a) *Language.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the markings required by this part shall include the full English name of the country of origin,

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unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the full English name of the country of origin shall be published in the Federal Register and the Customs Bulletin.

(2) A good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish.

(b) *Abbreviations and variant spellings.* Abbreviations which unmistakably indicate the name of a country, such as "Gt. Britain" for "Great Britain" or "Luxemb" and "Luxembg" for "Luxembourg" are acceptable. Variant spellings which clearly indicate the English name of the country of origin, such as "Brasil" for "Brazil" and "Italie" for "Italy," are acceptable.

(c) *Adjectival form.* The adjectival form of the name of a country shall be accepted as a proper indication of the name of the country of origin of imported merchandise provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. For example, such terms as "English walnuts" or "Brazil nuts" are unacceptable.

(d) *Colonies, possessions, or protectorates.* The name of a colony, possession, or protectorate outside the boundaries of the mother country shall usually be considered acceptable marking. When the Commissioner of Customs finds that the name is not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin, or where the name appearing alone may cause confusion, deception, or mistake, clarifying words shall be required. In such cases, the Commissioner of Customs shall specify in decisions published in the Federal Register and the Customs Bulletin the additional wording to be used in conjunction with the name of the colony, possession, or protectorate.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§ 134.46 Marking when name of country or locality other than country of origin appears.

In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

[T.D. 97–72, 62 FR 44211, Aug. 20, 1997]

§ 134.47 Souvenirs and articles marked with trademarks or trade names.

When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the United States or "United States" or "America" appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by "Made in," "Product of," or other similar words, in close proximity or in some other conspicuous location.

Subpart F—Articles Found Not Legally Marked

§ 134.51 Procedure when importation found not legally marked.

(a) *Notice to mark or redeliver.* When articles or containers are found upon examination not to be legally marked, the port director shall notify the importer on Customs Form 4647 to arrange with the port director's office to properly mark the article or containers, or to return all released articles to Customs custody for marking, exportation, or destruction.

(b) *Identification of articles.* When an imported article which is not legally marked is to be exported, destroyed, or marked under Customs supervision, the identity of the imported article shall be established to the satisfaction of the port director.

(c) *Supervision.* Verification of marking, exportation, or destruction of articles found not to be legally marked shall be at the expense of the importer and shall be performed under Customs supervision unless the port director accepts a certificate of marking as provided for in § 134.52 in lieu of marking under Customs supervision.

[T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

§ 134.52 Certificate of marking.

(a) *Applicability.* Port directors may accept certificates of marking supported by samples of articles required to be marked, for which Customs Form 4647 was issued, from importers or from actual owners complying with the provision of § 141.20 of this chapter, to certify that marking of the country of origin on imported articles as required by this part has been accomplished.

(b) *Filing of certificates of marking.* The certificates of marking shall be filed in duplicate with the port director, and a sample of the marked merchandise shall accompany the certificate. The port director may waive the production of the marked sample when he is satisfied that the submission of such sample is impracticable.

(c) *Notice of acceptance.* The port director shall notify the importer or actual owner when the certificate of marking is accepted. Such notice of acceptance may be granted on the duplicate copy of the certificate of marking by use of a stamped notation of acceptance. The port director is authorized to spot check the marking of articles on which a certificate has been filed. If a spot check is performed, the approved copy of the certificate, if approval is granted, shall be returned to the importer or actual owner after the spot check is completed.

(d) *Filing of false certificate of marking.* If a false certificate of marking is filed with the port director indicating that goods have been properly marked when in fact they have not been so marked, a seizure shall be made or claim for monetary penalty reported under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In addition, in cases involving, willful deceit, a criminal case report may be made charging a violation of section 1001, title 18, United States Code, which provides for a fine up to $10,000 and/or imprisonment up to 5 years for anyone who willfully conceals a material fact or uses any document knowing the same to contain any false or fraudulent statement in connection with any matter within the jurisdiction of an agency of the United States.

(e) *Authority to require physical supervision when deemed necessary.* The port director may require physical supervision of marking as specified in § 134.51(c) in those cases in which he determines that such action is necessary to insure compliance with this part. In such cases the expenses of the Customs officer shall be reimbursed to the Government as provided for in § 134.55.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 84–18, 49 FR 1678, Jan. 13, 1984; T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

§ 134.53 Examination packages.

(a) *Site of marking*—(1) *Customs custody.* Articles (or containers) in examination packages may be marked by the importer at the place where they have been discharged from the importing or bonded carrier or in the public stores.

(2) *Importer's premises or elsewhere.* If it is impracticable to mark the articles (or containers) in examination packages as provided in paragraph (a)(1) of this section, the merchandise may be turned over to the importer after the amount of duty, estimated to be payable under 19 U.S.C. 1304(f) has been deposited to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of Customs supervision. (See § 134.55.) The port director may at his discretion accept the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter as security for the requirements of 19 U.S.C. 1304 (f) and (g).

(b) *Failure to export, destroy, or properly mark merchandise in examination packages.* If the articles (or containers) in examination packages are not exported, destroyed, or properly marked by the importer within a reasonable time (not more than 30 days), they shall be sent to general-order stores for disposition in accordance with part 127 of this chapter, unless covered by a warehouse entry. If covered by a warehouse entry, they shall be sent to the warehouse containing the rest of the shipment for marking prior to withdrawal.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978; T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 90–51, 55 FR 28191, July 10, 1990; T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

§ 134.54 Articles released from Customs custody.

(a) *Demand for liquidated damages.* If within 30 days from the date of the notice of redelivery, or such additional period as the port director may allow for good cause shown, the importer does not properly mark or redeliver all merchandise previously released to him, the port director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered, plus any estimated duty thereon as determined at the time of entry.

(b) *Failure to petition for relief.* A written petition addressed to the Commissioner of Customs for relief from the payment of liquidated damages may be filed with the Fines, Penalties, and Forfeiture Officer in accord with part 172 of this chapter. If a petition for relief from the payment of liquidated damages is not filed or payment of the liquidated damages is not made within a period of 60 days after the demand for payment, or if the liquidated damages are not paid within 60 days after the denial of the petition for relief, the Fines, Penalties, and Forfeiture Officer shall in accord with part 172 of this chapter report the matter to the U.S. attorney for collection.

(c) *Relief from full liquidated damages.* Any relief from the payment of the full liquidated damages incurred will be contingent upon the deposit of the marking duty required by 19 U.S.C. 1304(f), and the satisfaction of the Fines, Penalties, and Forfeiture Officer that the importer was not guilty of bad faith in permitting the illegally marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery of the merchandise.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 79–159, 44 FR 31969, June 4, 1979; T.D. 83–217, 48 FR 48659, Oct. 20, 1983; T.D. 90–51, 55 FR 28191, July 10, 1990; T.D. 95–78, 60 FR 50032, Sept. 27, 1995]

§ 134.55 Compensation of Customs officers and employees.

(a) *Time for which compensation is charged.* The time for which compensation is charged shall include all periods devoted to supervision and all periods during which Customs officers or employees are away from their regular posts of duty by reason of such assignment and for which compensation to such officers and employees is provided for by law.

(b) *Applicability*—(1) *Official hours.* The compensation of Customs Officers or employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with the provisions of §§ 24.16 or 24.17(a)(3), respectively, of this chapter when such supervision is performed during a regularly-scheduled tour of duty.

(2) *Overtime.* When such supervision is performed by a Customs Officer or employee in an overtime status, the compensation with respect to the overtime shall be computed in accordance with the provisions of § 24.16 or § 24.17, respectively, of this chapter.

(c) *Expenses included.* In formulating charges for expenses pertaining to supervision of exportation, destruction, or marking, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by reason of such supervision from the time the Customs officer leaves his official station until he returns thereto.

(d) *Services rendered for more than one importer.* If the importations of more than one importer are concurrently supervised, the service rendered for each importer shall be regarded as a separate assignment, but the total amount of the compensation, and any expenses properly applicable to more than one importer, shall be equitably apportioned among the importers concerned.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–74, 59 FR 46757, Sept. 12, 1994]