Country of Origin FAQ

The purpose of this document is to provide an overview and resources for the spice industry on country of origin disclosure requirements. The document will discuss the different requirements enforced by various regulatory agencies in the United States that have jurisdiction over country of origin regulations. The focus is on the U.S. Customs and Border Protection (CBP) agency marking requirements, as these are most relevant to the importation of spices. This document also provides an overview of exemptions from CBP marking requirements, and discusses the interplay of country of origin requirements with other relevant rules and regulations.

What U.S. agencies have jurisdiction over country of origin (COO) requirements in the United States?

The U.S. Customs and Border Protection Agency (CBP) sets requirements for marking of country of origin on imports into the United States. Every article of foreign origin entering the U.S. must be legibly marked with the English name of the country of origin unless an exception from marking is provided for in the law. CBP's marking statute, 19 U.S.C. § 1304, provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin. CBP's marking statute applies to all spices and herbs unless otherwise noted, and a chart of those spices and herbs that are not required to be marked with a country of origin appears later in this document.

U.S. Customs and Border Protection

The U.S. Department of Agriculture (USDA) COOL Requirements cover only certain commodities, such as raw agricultural commodities, such as meat and poultry products, fruits, and vegetables, but are not applicable to dried spices or herbs.

The U.S. Food and Drug Administration (FDA) has a COOL compliance policy guide, which states that food labeling statements regarding geographical origin must not be false or misleading. Under U.S. statute, a food is considered misbranded if the label does not have a truthful representation of geographical origin, or if any ingredient of the food is mislabeled.

The Federal Trade Commission (FTC) has jurisdiction over Made in America/Made in USA labeling claims, as well as other country of origin mislabeling claims. The FTC guidance also provides some general information about the U.S. Customs Service's requirement that all products of foreign origin imported into the U.S. be marked with the name of the country of origin.

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Each of these agencies has jurisdiction in the U.S. over specific products for country of origin purposes. While some agency jurisdictions may overlap, many others are entirely separate. For example, the USDA does not have jurisdiction over dried herbs and spices, so USDA country of origin labeling regulations are not applicable to spices and herbs. This paper will focus on the CBP regulations and exceptions.

Are there any exemptions to CBP's COOL requirements?

There are specific exemptions from COOL in the U.S. statute at 19 USC § 1304. The two types of exemptions outlined below include specifically exempted spices and products that have undergone substantial transformation in the United States, which may require marking upon entry, but do not require marking to the subsequent customer.

Exemptions of Specific Spice Products

Section 19 USC §1304(g) provides an exemption for COOL for specific spices based on the official tariff classification of the imported spices. If the spice tariff code is referenced, the exemption applies. If it is not specifically included in a referenced number, the exemption does not apply. A list of the tariff codes as published in the statute is below. For a 6 or 8-digit Harmonized Tariff Schedule (HTS) numbers, the exemption covers all items in the specified 6-digit category or 8-digit category. For the 10-digit level, the exemption covers only the specified 10-digit category.

The table on the following pges outlines the list of spice tariff codes from the United States Harmonized Tariff Schedule (HTS) that are exempt from CBP's COOL requirements under 19 USC §1304(g). The list of exemptions were published with reference to the 1995 HTS, which has been updated since, and several of the tariff codes published in § 1304(g) no longer exist. However, if the spice was covered by an exempted tariff number listed in the HTS in 1995, then it continues to be covered by the exemption, even if the tariff number for that item has changed.

United States Harmonized Tariff Schedule (HTS)

2020 HTS	1995 HTS in 1304(g)	Name of Spice / Tariff Line Description
0904.11.	0904.11.	Black or white pepper
0904.12.	0904.12.	Crushed or ground pepper, black or white
0904.21.	0904.20.	Fruits of the genus Capsicum or of the genus Pimenta: Dried, neither crushed nor ground: Of the genus Capsicum (including cayenne pepper, paprika and red pepper)
0905.00.	0905.00.	Vanilla
0906.11.	0906.10.	Cinnamon, neither crushed nor ground
0906.20.	0906.20.	Crushed or ground cinnamon

United States Harmonized Tariff Schedule (HTS)

2020 HTS	1995 HTS in 1304(g)	Name of Spice / Tariff Line Description
0907.10.	0907.00.	Cloves, neither crushed nor ground
0907.20.		Cloves, crushed or ground
0908	**0908**	Nutmeg, mace and cardamoms
0908.11.	0908.10.	Nutmeg, neither crushed nor ground
0908.12.		Nutmeg, crushed or ground
0908.21.	0908.20.	Mace, neither crushed nor ground
0908.22.		Mace, crushed or ground
0908.31.	0908.30.	Cardamoms, neither crushed nor ground
0908.32.		Cardamoms, crushed or ground
0909	**0909**	Seeds of anise, badian, fennel, coriander, cumin, or caraway; juniper berries
0909.61.	0909.10.	Seeds of anise or badian, neither crushed nor ground
0909.62.		Seeds of anise or badian, crushed or ground
0909.21.	0909.20.	Seeds of coriander, neither crushed nor ground
0909.22.		Seeds of coriander, crushed or ground
0909.31.	0909.30.	Seeds of cumin, neither crushed nor ground
0909.32.		Seeds of cumin, crushed or ground
0909.61.	0909.40.	Seeds of caraway, neither crushed nor ground
0909.62.		Seeds of caraway, crushed or ground
0909.61.	0909.50.	Seeds of fennel; juniper berries, neither crushed nor ground
0909.62.		Seeds of fennel; juniper berries, crushed or ground
0910	**0910**	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices

United States Harmonized Tariff Schedule (HTS)

2020 HTS	1995 HTS in 1304(g)	Name of Spice / Tariff Line Description
0910.11.	0910.10.	Ginger, neither crushed nor ground
0910.12.		Ginger, crushed or ground
0910.20.	0910.20.	Saffron
0910.30.	0910.30.	Turmeric (curcuma)
0910.99.	0910.40.	Thyme; bay leaves (2020 HTSUS: "Other")
0910.99.10	0910.50.	Curry (2020 HTSUS: "Other")
0910.91.	0910.91.	Other spices; mixtures referred to in Note 1(b). ***Note 1(b):*** *Mixtures of the products of headings 0904 to 0910 are to be classified as follows: Mixtures of two or more of the products of different headings are to be classified in heading 0910. The addition of other substances to the products of headings 0904 to 0910 (or to the mixtures referred to in paragraph (a) or (b) above) shall not affect their classification provided the resulting mixtures retain the essential character of the goods of those headings. Otherwise such mixtures are not classified in this chapter; those constituting mixed condiments or mixed seasonings are classified in heading 2103*
0910.99.	0910.99.	Other: origanum; dill
1106.20.	1106.20.	Flour, meal and powder of sago or of roots or tubers of heading 0714
1207.40.	1207.40.	Sesame seeds
1207.50.	1207.50.	Mustard seeds
1207.91.	1207.91.	Poppy seeds
1404.90.	1404.90.	Vegetable products not elsewhere specified or included
3302.10.	3302.10.	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: Of a kind used in the food or drink industries
0712.90.60.	0712.90.60.	Fennel, marjoram, parsley, savory and tarragon: Crude or not manufactured
0712.90.8580	0712.90.8080.	Other vegetables; mixtures of vegetables; other
1209.91.2000.	1209.91.2000.	Celery

United States Harmonized Tariff Schedule (HTS)

2020 HTS	1995 HTS in 1304(g)	Name of Spice / Tariff Line Description
1211.90.2000.	1211.90.2000.	Mint leaves, crude or not manufactured
1211.90.9240.	1211.90.8040.	Basil
1211.90.9250.	1211.90.8050.	Sage
1211.90.9290.	1211.90.8090.	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh, chilled, frozen or dried, whether or not cut, crushed or powdered: Other: Fresh or dried: Substances having anesthetic, prophylactic or therapeutic properties and principally used as medicaments or as ingredients in medicaments: Other.
2006.00.3000.	2006.00.3000.	Ginger root
2918.13.2000.	2918.13.2000.	Potassium bitartrate (Cream of tartar)
3203.00.8000.	3203.00.8000.	Coloring matter of vegetable or animal origin (including dyeing extracts but excluding animal black), whether or not chemically defined; preparations as specified in note 3 to this chapter based on coloring matter of vegetable or animal origin; other
3301.90.1010.	3301.90.1010.	Extracted oleoresins of paprika
3301.90.1020.	3301.90.1020.	Extracted oleoresins of black pepper
3301.90.1050.	3301.90.1050.	Extracted oleoresins of other

Substantial Transformation

If a spice product is not exempt from listing the country of origin as outlined above, the product is required to carry COOL marking requirements upon import. If a product is simply repackaged for retail, the COOL would be required to carry over to the retail package. Whether COOL labeling must be carried forward to the importer's customer, and/or the final consumer (via the retail packaging), depends on the degree of processing that the product undergoes.

If a product undergoes a *substantial transformation*, which occurs if a new product with a different name, character, and use, is created, then after a substantial transformation, the original COOL requirements do not carry over to the ultimate purchaser in the United States. The traditional test that CBP uses for substantial transformation is generally that the mixing or blending of two or more different ingredients constitutes a substantial transformation, including mixtures requiring only two ingredients (e.g., celery and salt blended into celery salt).

However, not all combining operations are considered as substantial transformations. For example, no substantial transformation results from combining different products in which the identities of the original products remain intact. For example, combining different frozen vegetables frozen mixed vegetables does not substantially transform the imported vegetables. As another example, no substantial transformation results from the combining of two varieties or grades of the same item, for example, blending different colors of paprika together to control for color. Combining

various spices, such as paprika, cumin, oregano, and other materials, such as cornstarch, into a seasoning blend, such as taco seasoning, may constitute substantial transformation.

Marking Exemptions

Unlike some other packaging or labeling requirements, very small packaging still requires COOL. The CPB regulations in 19 CFR §134.32 provide general exceptions to the marking requirements, which include, among other things, products incapable of being marked, products whose containers will indicate the origin (e.g. "Spanish paprika", "French Rosemary"), and products listed in 19 CFR §134.33 on the "J-List exceptions." The J list includes: *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.* Although CBP regulations recognize that some products, including natural products in their natural state, may not be capable of being marked on the article themselves and may be exempted prior to shipment to the United States, in all of these cases, while the article itself may be excepted from marking, the packaging that reaches the consumer must still be marked with the actual COO.

How do you determine the COO for a spice or spice blend?

If a spice is a single spice from a single country, such as paprika from Spain, then Spain is the country of origin. If a company imports paprika from India into Spain, and blends the paprika from India and the paprika from Spain together in Spain, then both countries must be listed as the COO, so product of India **and** Spain. This is because no substantial transformation has taken place.

If a substantial transformation does occur in a secondary country, the country where the substantial transformation occurred becomes the new country of origin for that product. For example, a spice company takes paprika and cumin from India, oregano from Turkey, and cornstarch from China, and blends the ingredients together in Spain to create a finished taco seasoning, which is then shipped to the U.S. The finished taco seasoning is the result of substantial transformation and would be a product of Spain. If you have specific questions and concerns regarding whether substantial transformation has occurred and would change COOL, you may want to consult an expert.

Additionally, the COOL regulations also provide that if it would be clear to the ultimate purchaser where the product originated from even without being marked to indicate its origin, the product would not need to be marked to indicate origin. For example, if the product on its label is named Mexican Oregano, Madagascar Vanilla, or Indian Chili Pepper.

What are the COO labeling requirements for consumer packaging?

The purpose of the COOL marking is to inform the ultimate purchaser in the U.S. of the country in which the imported product was made. 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, and may be a consumer, retail establishment, or another business.

If the ultimate purchaser in the U.S. is a retail consumer, then the COOL requirements would apply to the finished product. Under the statute, requirements specify that every product of foreign origin, or the container it is imported into the United States in if sold to the ultimate consumer in that container, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the product, 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. A retail package of spice sold to a consumer must indicate the country of origin. For example, dried rosemary from France, imported in bulk into the U.S and then repackaged for retail sale, must be labeled *Product of France*.

If the product will be used in further manufacturing, the manufacturer or processor in the U.S. is the ultimate

purchaser, and the COOL is designed for their benefit. If, after import, additional processing results in a substantial transformation, then a new country of origin would apply.

Under the COOL requirements:

- A product must be marked with the name of the country of origin, in English.
- The name must be specific to the *country* of origin. For example, "Made in the EU" is not allowed because "EU" does not specify the country of origin. The use of "or" is also disallowed, so a product cannot say *Product of Spain* ***or*** *France* as a means of compliance. Customs made this clear in a ruling on Fleur de Sel that specifies that "Product of EU" is not acceptable because the EU Is not a country.
- Products not marked with the English name of their country of origin at the time of their importation into the United States shall be subject to additional duties unless properly marked, exported, or destroyed under CBP supervision. Marking duties for failure to properly mark imported articles are 10% of the dutiable value of the improperly marked merchandise. Customs can also demand redelivery and remarking of imported articles if they have been released from Customs custody, which can result in the imposition of liquidated damages if not complied with, as well as impose general fines and penalties for failure to comply with Customs laws and regulation, which can result in penalties as much as the full domestic value of imported merchandise if the violation constitutes fraud.
- If an imported item subject to COOL upon entry is intended to be repacked into new containers for sale to an ultimate consumer (whether by the importer or a third party) or manipulated (but not substantially transformed), then the importer must certify to Customs that the importer will comply with COOL requirements or notify a third party of COOL requirements. Language required for certification of repacking is available here and depends on the items that are being repacked or manipulated.

There are different ways to phrase compliance with COOL labeling, but the specific phrase *made in (country)* is only required where the name other than the country where the product was manufactured appears on the product, or its container, and may mislead or deceive the ultimate purchaser. For example: *Package and product designed in the USA. Made in China.* The marking *made in (country)* must appear in close proximity to, and in comparable size letters of, the other country to avoid possible confusion.

Is country of origin labeling required for salt?

The regulations provide that, unless excepted, every article of foreign origin, or its container, that is imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the product, or its container, will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. There is no specific exemption for COO labeling for salt, therefore it must be labeled with a country of origin.

Is garlic required to carry COO labeling?

As outlined above, a product is required to carry COOL on packaging unless it is explicitly exempt. Garlic is not explicitly exempt, so the country of origin must be labeled upon import. In terms of determining if the country of

origin labeling needs to be carried over to the ultimate purchaser, an importer or processing company may need to determine whether the garlic has undergone a substantial transformation for COOL purposes.

There are several CPB rulings that may provide helpful information on the various forms of garlic. According to this CBP ruling, the origin of a dehydrated vegetable is the country where the vegetable was grown. A separate CBP ruling on garlic provides that "the separation into cloves, peeling, and packing for retail sale does not result in a substantial transformation. The peeled cloves do not have a distinctive name, character or use different from the fresh garlic bulbs. The processing of the garlic bulbs into minced and chopped garlic in oil does result in a substantial

transformation. Therefore, for marking purposes, the fresh peeled garlic cloves are products of the country where the bulbs were grown…."

As with spices, the importer, processor, or retail manufacturer must determine whether the garlic has been further processed either before or after importation to the extent that a substantial transformation occurred, and if so, if the disclosure of the country of origin of the garlic resulted in a product with a distinctive or new name, character, and use. If so, the country of origin will be the country where the last substantial transformation occurred.

What are the requirements for a product to carry a *Made in America* statement on the packaging?

The Federal Trade Commission (FTC) is the agency in charge of "Made in America/ Made in the USA" labeling claims. The FTC has a practical guidance for these claims, but foremost, any marketing or manufacturers that promote their products as "Made in USA" must first meet the "all or virtually all" standard that all significant parts and processing that go into a product must be of U.S. origin. New regulations under consideration by the FTC will extend this requirement from packaging to include origin statements in other media, including online advertising.

Because spices are frequently imported, companies may have more success with qualified *Made in USA* claims. These claims are appropriate for products that include U.S. content or processing but do not meet the criteria for making an unqualified *Made in USA* claim (i.e., the amount of foreign content is above *de minimis*). For example, if a seasoning blend is created and manufactured in the U.S. but all the spices were imported, a spice company may label the product as "Made in USA with imported spices." A qualified *Made in USA* claim must be truthful and substantiated, and spice companies should avoid making any qualified *Made in USA* claims unless the product contains a significant amount of U.S. sourced ingredients and/or undergone significant processing in the United States.

A false or misleading *Made in USA* claim is a violation of U.S. law and subject to law enforcement action by the FTC. The Division of Enforcement, Bureau of Consumer Protection at the FTC handles enforcement of any suspected legal violations or illegal activity, to which anyone can call (202) 326-2996 or send in an e-mail report.

If you have any additional questions about COOL or *Made in USA* claims, please contact ASTA at (202) 331-2460 or info@astaspice.org.