SNACK FOOD
ASSOCIATION
An International Trade Association

May 6, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
United States Department of Agriculture
Stop 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, D.C. 20250-0249

Re: Supplemental Comment for Docket # LS-02-13, Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling

The Snack Food Association (SFA) and the Peanut & Tree Nut Processors Association (PTNPA) respectfully submit this comment as a supplement to our comments filed on April 8, 2003. After submitting our original comments, we learned of the comments filed on April 9, 2003 by the Southern Peanut Farmers Federation, Congressman Sanford Bishop, and Senators Jeff Sessions, Richard Shelby, Saxby Chambliss, and Zell Miller. The comments were almost identical and encouraged the agency to take the untenable position that peanut butter is a commodity covered by the 2002 Farm Bill's country of origin labeling (COOL) provision. Because these comments request the agency to brazenly disregard statutory language, legislative intent, and administrative precedent, we feel compelled to supplement our comments.

In its Guidelines for Interim Voluntary Country of Origin Labeling (the "Guidelines"), AMS rightly concluded that "further processed peanut products, including such items as candy coated peanuts, peanut brittle, and peanut butter would not be covered by country of origin labeling guidelines." [1] This position regarding peanut butter is the only legally permissible conclusion.

The statutory language of the Farm Bill is clear—ingredients in a "processed food item" are exempt from COOL requirements. Peanuts are, indeed, just one ingredient among many in the final processed product of peanut butter.

1/ Guidelines, at 6.

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By the Southern Peanut Farmers Federation own admission, "peanut butter is ground and cooked," and "water, salt, flavoring or other extenders, enhancers, or additives" are added. 2/

Further, no existing federal definition of "processing" or "processed food" would exclude peanut butter. Both USDA and FDA have historically defined "processing" to mean cooking, baking, heating, mixing, grinding, and other manufacturing processes. 3/ Unless it affirmatively indicates otherwise, Congress is assumed to know the "administrative gloss given to particularly statutory language, and therefore is assumed to have adopted the existing interpretation." 4/

In the Guidelines, AMS defines a processed food item two ways: "a product with an identity that is different from the covered commodity" or "a commodity that is materially changed from that of the covered commodity." 5/ Peanut butter easily meets both of these definitions.

Like shelled, roasted, salted and flavored peanuts, the identity of peanut butter is unique and easily distinguished from raw peanuts. The two products look, smell, taste, and feel different. In fact, the FDA by regulation has established a "standard of identity" for peanut butter, legally differentiating peanut butter from peanuts. 6/ Peanut butter jars not bearing this appropriate statement of identity are considered misbranded. 7/

2/ Country of Origin Labeling Comment of the Southern Peanut Farmers Federation, April 9, 2003, p.2.

3/ See, e,g, 7 C.F.R. § 205.2; 7 C.F.R. § 54.1, and 21 U.S.C. § 321(gg).

4/ Pfizer v. FDA, 753 F. Supp. 171, 178 (D. Md. 1990). See also, United States v. Rutherford, 442 U.S. 544, 554 n.10 (1979) ("once an agency's statutory construction has been 'fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation * * *, then presumably the legislative intent has been correctly discerned"); Cannon v. University of Chicago, 441 U.S. 677, 696-698 (1979) (Court was "justified in presuming both that [Congressional] representatives were aware" of a prior statutory interpretation and "that that interpretation reflects [Congress'] intent" with respect to the legislation under challenge).

5/ Guidelines, at 4.

6/ 21 C.F.R. § 164.50.

7/ 21 U.S.C. § 343(g)(i). A food is deemed misbranded if "it purports to be or is represented as a food for which a definition and standard of identity has been prescribed" and does not comply with the standard, or if it fails to bear "the common or usual name of the food, if any there be." *Id.*

Additionally, the peanuts in peanut butter are materially changed. According to its standard of identity, peanut butter is "prepared by grinding one of the shelled and roasted peanut ingredients," adding "seasoning and stabilizing ingredients," "cut or chopped" peanuts, and oil. [8] FDA refers to this preparation as "processing." [9]

Accordingly, those parties attempting to persuade the agency to consider peanut butter a non-processed product and, thus, a covered commodity advocate an untenable and illegal position. The statutory language of the Farm Bill explicitly exempts processed products, such as peanut butter; FDA considers the transformation of peanuts into peanut butter "processing;" peanut butter fits established USDA and FDA definitions of processed; and, AMS has rightly concluded that peanut butter is a "processed food item" exempt from COOL requirements. As stated in our prior comments dated April 8, 2003, we also contend that the process of "roasting" peanuts constitutes processing as well and should exclude the food from country of origin labeling under the law.

We appreciate the opportunity to amend our comments in response to this important issue. Thank you for your consideration.

Sincerely,

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Snack Food Association

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President & CEO
Peanut & Tree Nut Processors Association

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[8] 21 C.F.R. § 164.50.
[9] *Id.*