NATIONAL CATTLEMEN'S BEEF ASSOCIATION

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October 9, 2001

1007

FSIS Docket Clerk
Department of Agriculture
Food Safety and Inspection Service
Room 102, Cotton Annex Building,
30012th Street, SW
Washington DC 20250-3700

00-036A
00-036A-1007
Lynn Cornell
George Swan
George Hall
Bob Stallman

Re: Docket #00-036A; Product Labeling: Defining United States Cattle and United States Fresh Beef Products

Producer-directed and consumer-focused, the National Cattlemen's Beef Association (NCBA) is the trade association of America's cattle farmers and ranchers and the marketing organization for the largest segment of the nation's food and fiber industry.

The issue of country of origin labeling (COL) is highly emotional, controversial and deeply divisive throughout NCBA membership and the beef industry, with strongly held positions on all sides. Some members from some regions strongly support COL labeling, some strongly oppose COL labeling, and frankly, some don't see what all the uproar is about. Even among the strong COL supporters there is a division about the appropriate definition with one side adamantly stating that only product from livestock born, raised and processed in the U.S. should qualify for a U.S. label. The other side would follow more of a "domestic content" approach to allow product primarily produced in the U.S. to qualify for the U.S. label. The COL issue is also highly controversial among various beef industry processing and marketing sectors.

Legislative Climate:
FSIS currently defines "Product of the U.S." as any product processed in U.S. inspected processing plants. FSIS has also approved a voluntary label for product produced from livestock "Born and Raised in the USA." AMS currently applies a definition for U.S. products purchased for school lunch and other food programs as "products that do not include imported product or product produced from livestock imported for immediate slaughter." AMS has also indicated that it is authorized and willing to certify additional labels defining U.S. product that can be verified and audited by AMS and approved by FSIS.

It is important to recall that initial legislation requesting FSIS to promulgate rules defining United States Cattle and United States Fresh Beef Products was contained in report language attached to the 2000 agricultural appropriations legislation. Much more recently, this issue has been further complicated by an amendment mandating labeling of imported fresh fruits and vegetables from Representative Mary Bono. The amendment was approved by the House and included in the House Farm Bill adopted October 5, 2001.

Passage of the Bono amendment has changed the divisive political climate regarding country of origin labeling of meat considerably, as it is now possible that legislation may also be passed to mandate country of origin labeling of meat. In light of this recent legislative development, NCBA questions the appropriateness of USDA developing regulatory rulemaking for a definition of U.S. Cattle and U.S. Fresh Beef Products at this time. Congress -- which originally passed this controversial issue to USDA more than two years ago via report language in appropriations legislation -- may ultimately resolve the issue through authorizing Farm Bill legislation later this year. In light of all these activities there is currently no need for FSIS to rush to develop a definition through the regulatory process.

Industry Initiatives:
NCBA is striving to develop consensus regarding a workable definition of U.S. Cattle and U.S. Fresh Beef Products. To that end, NCBA has conducted meetings within our own membership and met frequently with other key agricultural organizations to build consensus around a position that the entire beef industry could accept. Consistent with policy adopted during the 2001 NCBA Summer Conference a one-day working group to address various aspects of country of origin labeling and USDA grading of imported product was hosted in Denver on September 24, 2001. In addition to participants from NCBA state and breed affiliate organizations resource contributors were asked to provide perspective from other industry sectors and to assure that concerns from various industry segments were heard.

It should be stated and emphasized that, while there was general agreement regarding the following points, there were also several qualifying statements and conditions from individual affiliates. Among the most prominent qualifying positions were: 1) That NCBA policy supporting mandatory country of origin labeling remain as policy. 2) That the position contained in this consensus report is **acceptable for a voluntary labeling program**, however, it would be **unacceptable as a mandatory program**. 3) The move to a voluntary program constitutes a change in NCBA position from a definition of "raised 100 days in the U.S." to "born and raised in the U.S." and 4), any position requiring mandatory county-of-origin labeling remains unacceptable to several states.

NCBA Consensus Points:
The working group recommended the following consensus points with respect to a **voluntary** labeling program that were subsequently adopted by the NCBA Executive Committee October 5, 2001:

- NCBA will serve as a catalyst to facilitate and endorse voluntary USA beef labeling in the private sector for "born, raised & processed" USA beef. At the end of 2003 the status of availability and application of voluntary labeling will be evaluated by NCBA and a status report will be presented to appropriate committees at the 2004 Cattle Industry Convention for further action. During this timeframe NCBA will not pursue action requiring mandatory country of origin labeling.

- Voluntary labeling of USA beef will be market-driven in private sector retail and foodservice channels.

- USDA Food Safety Inspection Service (FSIS) will oversee compliance, or if applicable USDA Agricultural Marketing Service (AMS) will conduct process verification and certification for USA beef labeling.

- NCBA will submit to USDA Secretary Veneman a petition previously accepted by Secretary Glickmen requesting that USDA immediately stop the application of the USDA quality grade on imported beef carcasses.

- NCBA will facilitate introduction of legislation requiring that USDA immediately stop the application of the USDA quality grade on all carcasses produced from cattle imported for immediate slaughter to determine the legality of this legislation within the framework of WTO, GATT and other international trade obligations.

Significant Transformation:
Federal law requires most imports, including beef, to bear labels indicating their country of origin when they enter the United States. Under provisions of the Tariff Act of 1930, as amended, every imported item must 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 requirement, and generally defines the "ultimate purchaser" as the last U.S. person who will receive the article in the form in which it was imported. Such labeling must appear on all individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami).

The U.S. Customs Service has authorized USDA to oversee labeling regulations for imported meat products, including carcasses, carcass parts, or large containers of meat or poultry parts destined for U.S. plants for further processing. These products must also bear country-of-origin marks when they pass through ports of entry. Live cattle destined for slaughter may enter the U.S. with health tests waived, but must be shipped in sealed trucks -- with the seal to remain intact until the truck reaches the plant of destination.

However, once these non-retail items enter the country, USDA meat and poultry inspection laws consider them to be domestic products. When these products are further-processed in a domestic USDA-inspected meat or poultry establishment -- considered by USDA to be the ultimate purchaser for purposes of country-of-origin labeling -- USDA no longer requires such labeling on either the new product or its container.

Over time, USDA has more liberally interpreted country-of-origin labeling requirements than has the U.S. Customs Service. For example, the U.S. Customs Service has determined that imported broccoli that has been cut, cooked, frozen and packaged has not been "significantly transformed." Conversely, USDA considers even minimal processing, such as cutting a larger piece of meat into smaller pieces, enough of a transformation so that country markings are no longer necessary. For example, if a U.S. processor imports beef and processes it into sausage or lunchmeat, or uses it in a soup or stew, neither that processor nor the retailer is required to label the finished product to indicate that it contains imported meat. Even if the imported meat container was clearly marked with the country of origin.

NCBA requests that USDA bring "significant transformation" requirements back into line with definitions enforced by the U.S. Customs Service. We would agree that converting a live animal into a carcass is significant transformation. However, further-processed products must be required to have more value added than just cutting, grinding or repackaging to be defined as "significantly transformed."

USDA Grade Use:
Under USDA regulations all carcasses from cattle produced in the U.S. can only receive a USDA quality grade at the point of slaughter or at the point of original chill. However, a special exception to this regulation has been adopted to allow carcasses from Canada to be imported and graded with the USDA quality grade. These carcasses must also be identified as "product of Canada," but this identity may be trimmed away as the carcass is further fabricated into retail cuts. Beef producers have increasingly criticized this liberal interpretation regarding use of USDA grades.

NCBA initially petitioned Secretary Glickman for elimination of USDA grading for imported beef carcasses on June 30, 1999. (See Attachment 1). We restated this request in formal communications with Secretary Glickman on March 14, 2000. (See Attachment 2). USDA's Agricultural Marketing Service issued an Advance Notice of Proposed Rulemaking on February 1, 2000 requesting comments from producers on the grading practices by the AMS.

On January 19, 2001 USDA announced intentions to advance rulemaking, but on January 20 the White House suspended indefinitely all rules that had been announced but not published. NCBA and the American Farm Bureau Federation, with support from the American Sheep Industry Association, formally requested Secretary Veneman to finalize the rulemaking process. (See Attachment 3).

NCBA requests that USDA focus on publishing the final rule to eliminate USDA grading for imported beef carcasses -- an issue where there is general industry consensus. NCBA further requests that USDA refrain from further complicating the highly charged and emotional issue of defining United States Cattle and United States Fresh Beef Products at least until the end of the 2003 legislative session and until voluntary programs have been tested in the marketplace.

Summary:

- NCBA believes that there is currently no need for FSIS to rush to develop definition through the regulatory process. Congress -- which originally passed this controversial issue to USDA more than two years ago via report language in appropriations legislation -- may ultimately resolve the issue through authorizing Farm Bill legislation later this year.

- NCBA recommends that USDA join us in serving as a catalyst to facilitate voluntary USA beef labeling in the private sector through certification and verification programs. Voluntary labeling of USA beef should be market-driven in private sector retail and foodservice channels. If consumers truly demand, and are willing to pay for U.S. product, market forces will determine that this product receives a premium adequate to pay for costs of segregating and certifying the product.

- NCBA recommends that, given the emotional and divisive nature of this issue, USDA provide certification and audit services for alternative U.S. labels and allow competitive market forces to determine the merit of various labels in the marketplace.

- NCBA requests that USDA bring "significant transformation" requirements into line with definitions enforced by the U.S. Customs Service. NCBA believes there are "significant" and "non-significant" transformations that must be re-defined. We would agree that converting a live animal into a carcass is significant transformation. However, further-processed products must be required to have more value added than just cutting, grinding or repackaging to be defined as "significantly transformed."

- NCBA requests that USDA focus on publishing the final rule to eliminate USDA grading for imported beef carcasses -- an issue where there is general industry consensus. NCBA further requests that USDA refrain from further complicating the highly charged and emotional issue of defining United States Cattle and United States Fresh Beef Products at least until the end of the 2003 legislative session and until voluntary programs have been tested in the marketplace.

We greatly appreciate your consideration of our comments and look forward to working with you on future developments.

Sincerely,

Lynn Cornwell

Lynn Cornwell
President

Cc:
The Honorable Jim Mosley
The Honorable Bill Hawks
The Honorable J.B. Penn
Beef Caucus Members
Senate Agriculture Committee
House Agriculture Committee

Attachment 1

June 30, 1999

The Honorable Dan Glickman
Secretary of Agriculture
200-A Administration
Washington, DC 20250

Dear Secretary Glickman:

The Agricultural Marketing Act of 1946 provided the United States Department of Agriculture (USDA) the authority to establish standards for the grading and classification of U.S. agricultural products. These standards have become recognized around the world as the mark of U.S. excellence and quality and hence, provide a distinct marketing advantage for our products.

NCBA and the US beef industry believe that USDA grades have brand equity and strongly object to the continued application of these grades on imported beef carcasses. We support grading equivalency whereby other countries meet standards comparable to USDA grades. However, we feel that it is inappropriate to allow imported beef to receive USDA grades and then be marketed to US consumers as if it is produced in the United States.

The Code of Federal Regulations, specifically 7 CFR Part 54, details the requirements for "Meats, Prepared Meats, and Meat Products Grading and Certification." It is within this regulatory framework that beef is graded under the voluntary program administered by the Agricultural Marketing Service (AMS).

Mr. Secretary, NCBA hereby formally petitions USDA under the authority granted by the Agricultural Marketing Act of 1946, and within the regulatory criteria as defined in 7 CFR Part 54 to take action to enforce this regulation. Specifically, we formally request that USDA immediately cease use of the USDA Grade on any imported beef carcasses.

The Code of Federal Regulations, 7 CFR Part 54.13, states "Meat of all eligible species shall be graded only in the establishment where the animal was slaughtered or initially chilled." Therefore, allowing carcasses slaughtered and initially chilled in plants in foreign countries to be exported and subsequently graded in the U.S. is in direct violation of 7 CFR Part 54.13.

The only exemption to the above regulation is "if the Branch was unable to provide the grading service in a timely manner." USDA Graders are not available in foreign countries to place USDA grades on foreign beef and they should never be allowed to do so.

In fact, "a timely manner" is important because long chilling periods are known to alter the amount of marbling that is exhibited, and therefore, the percentage of cattle that will attain any given grade. The longer chilling periods allowed for imported carcasses would actually be expected to increase the percentage of cattle grading USDA Choice or Prime and place US cattle at a competitive disadvantage. This is unacceptable, and in violation of the expressed intent of the regulations.

We believe that elimination of USDA grading for imported beef carcasses is consistent with Article III of the GATT 1994 agreement as well as Article 4.1 and Annex 3 of the Agreement on Technical Barriers to Trade. USDA grading is a voluntary, user fee driven service, not a requirement for marketing beef in the U.S. and by that definition restricting it's availability to product produced in the United States is not a barrier to trade.

The US beef industry realizes that we can not restrict access to the US beef market, but we strongly object to imported product being sold with the USDA grade. In fact, foreign beef could just as easily be labeled, "Canadian Choice" or "Canadian Prime" under their own voluntary programs if it meets criteria for USDA Choice or Prime. We reiterate, foreign beef is not required to use USDA grades to be marketed in this country, therefore, refusal of the USDA voluntary grade is not a violation of our trade agreements.

Mr. Secretary, we strongly urge you to fully enforce the expressed intent of 7 CFR 54 and immediately stop the application of USDA Grades on imported beef carcasses.

Sincerely,

George H. Swan

George Swan
President

Cc: Under Secretary August Schumacher
Assistant Secretary Mike Dunn
Administrator Tim Galvin
Deputy Administrator Barry Carpenter
Branch Chief Larry Meadows

Attachment 2

March 14, 2000

The Honorable Dan Glickman
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Glickman:

On June 30, 1999, NCBA president George Swan submitted a petition requesting the USDA immediately stop the application of the USDA quality grade on imported beef carcasses. It is our assessment the USDA regulation (7 CFR part 54.1) was only intended to allow the application quality grades in establishments where the animals were slaughtered and initially chilled. It is clear this was the original intent of the regulation, however, a "blanket exemption for such services for Canadian carcasses" was illegally granted in 1982.

We have conducted a more in depth analysis of this issue including a review of the "Request For Public Comments on the Official Grading of Imported Beef, Lamb, Veal and Calf Carcasses Under Authority of the Agricultural Marketing Act 1946" (Docket LS 99-21). In so doing, we have also carefully reviewed the existing legislation that provides the Secretary with the authority to promulgate such regulations. The statutory authority for such regulations resides in the Agricultural Market Act of 1946 (the Act). Therefore, development of such regulations must be consistent with the intent of this legislation. To do otherwise would be a direct violation of law. We believe the Act was never intended to apply to enhancing the marketing of foreign products by placing official USDA seals on such products and thereby giving U.S. consumers a false and misleading impression that such products were of U.S. origin. In fact, the Act lists three key intentions:

1. "continuous research to improve the marketing and handling, storage, processing, transportation and distribution of agricultural products
2. "cooperation among federal and state agencies, producers, industry organizations and others in the development and effectuation of research and marketing programs to improve distribution processes."
3. "an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aids and services and regulatory activities to the end that marketing methods and facilities may be improved, that distribution costs may be reduced and the price spread between the producer and consumer may be narrowed, that dietary and nutritional standards may be improved, that new and wider markets for **American agricultural products** may be developed, **both in the United States and in other countries, with a view to make it possible for the full production of American farms to be disposed of usefully, economically, profitably and in and orderly manner."**

Clearly, Mr. Secretary, the Act was intended to contribute to ensuring "a prosperous agriculture, maintenance of full employment, the welfare, prosperity, and health of the Nation." As such, the Act was not intended to allow other countries to gain the benefits of our public investments in such systems, nor to mislead consumers about the origin of agricultural commodities. As a result of this analysis, we believe the grading of foreign beef carcasses is in clear violation of the Act . Consequently, USDA neither had nor has the authority to promulgate regulations to allow for such treatment. Therefore, the grading of foreign carcasses must stop immediately and Docket LS 91-21must be withdrawn.

Mr. Secretary, we consider judicial action to be a last resort, but a course we have had to take in the past. However, we hope you will find, as we have, that the evidence is overwhelming and compelling that the USDA has no legislative authority to apply the USDA Grade on imported carcasses of any species nor do you have the authority to promulgate such regulations.

We also want to take this opportunity to draw your attention to several components of Docket LS 91-21 that are grossly misleading and incorrect. In the Docket it states "however the regulations do not require the retention of country of origin on the component meat cuts to the point of final purchase," and "however the regulations do not specify that the country of origin must remain on the cuts after processing." In point of fact, regulation 7CFR 54.5 states, "service under these regulations will be furnished for imported meat **only if is it marked so that the name of the country of origin appears on most of the major retail cuts."** Mr. Secretary, the term "retail" implies "to the point of final purchase." The Docket not only misrepresents the fact the country of origin is currently required to be **on most retail cuts**, but it also fails to mention the fact this component of the existing regulation has not been enforced, another violation of the law.

The Department has taken steps to ensure the full production, marketing, and profitability of American farms and ranches. We respectfully request you to continue to focus on these important objectives. The USDA must ensure the true intent of the Agriculture Marketing Act of 1946 is carried out. This requires immediately stopping grading of foreign carcasses.

NCBA leadership requests a meeting with you on Friday April 7, 2000 to discuss this and other issues of importance to the more than 1 million beef producers in the United States.

Sincerely,

George Hall
NCBA President

Cc: Richard Rominger
Enrique Figuora
Kathleen Merrigan
Mike Dunn
Barry Carpenter
Eric Olson
Ken Clayton

Attachment 3

March 26, 2001

The Honorable Ann Veneman
Secretary
United States Department of Agriculture
Room 200-A, Administration Building
Washington, D.C. 20250

Dear Madam Secretary:

The American Farm Bureau Federation and the National Cattlemen's Beef Association ask that you discontinue the official grading of all imported beef, lamb, veal and calf carcasses by the Agricultural Marketing Service (AMS.) We respectfully ask that you promulgate rules to stop the application of the USDA quality grade stamp on imported carcasses.

The USDA's Agricultural Marketing Service issued an Advance Notice of Proposed Rulemaking on February 1, 2000 requesting comments from producers on the grading practices by the AMS. On January 19, 2001 USDA announced intentions to advance rulemaking, but on January 20 the White House suspended indefinitely all rules that had been announced but not published. Legislation has been proposed that would ban grading on a more extensive basis. Our preference is to modify provision through regulatory rulemaking as proposed.

Both of the above organizations submitted comments last year asking that the USDA stop the grading of foreign carcasses because of the false impression it leaves at the meat counter. Consumers are not informed that USDA graded beef and lamb is not raised and produced in the United States. Continuing to allow imported beef and lamb to exhibit USDA quality grades is dishonest to consumers and disrespectful to American livestock producers.

The statutory authority for such regulations by AMS resides in the Agricultural Market Act of 1946. We believe this act was never intended to apply to enhancing the marketing of foreign products by placing official USDA seals on such products. Unfortunately, these seals give U.S. consumers a false and misleading impression that such products were of U.S. origin. Therefore, we adamantly oppose the application of these official grade stamps on imported carcasses.

Regulations enforcing the Agricultural Market Act of 1946 also state that country of origin of imported beef and lamb is required to be on most retail cuts. This practice is not being applied or enforced which is a violation of the law.

The USDA must ensure the true intent of the Agricultural Marketing Act of 1946 to ensure the full production, marketing and profitability of American farms and ranches. We greatly appreciate your consideration of our request to stop the grading of imported carcasses.

Sincerely,

Bob Stallman, President
American Farm Bureau Federation

Lynn Cornwell, President
National Cattlemen's Beef Association

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