

The Plaintiff, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (“R-CALF USA”), through its attorneys, brings this action for a preliminary injunction and declaratory relief against the United States Department of Agriculture (“USDA”), Animal and Plant Health Inspection Service (“APHIS”) to prevent implementation of a decision that would increase the risk of importing contaminated beef products from cattle infected with bovine spongiform encephalopathy (“BSE”) into the United States. On May 29, 2003, after a Canadian BSE-infected beef cow was discovered in northern Alberta, APHIS added Canada to the list of regions where BSE exists. Pursuant to 9 C.F.R. § 94.18(b), USDA’s May 29, 2003 action prohibited imports of meat and other edible beef byproducts from Canada. On August 8, 2003, the Secretary of Agriculture announced that USDA would begin accepting applications for import permits for boneless beef from cattle under 30 months of age from Canada. Without any notice, or opportunity to comment, on April 19, 2004, USDA further relaxed restrictions on beef imports from Canada to allow virtually all edible bovine meat products (including bone-in, ground meat, processed meat and organs such as tongue, heart, kidneys and tripe) with no restriction on the age of the cattle slaughtered. Unless restrained by this Court, imports of these new meat products, which pose a substantially higher risk of BSE infection than boneless beef from younger cattle, can start immediately.

PARTIES

1. Ranchers Cattlemen Action Legal Fund United Stockgrowers of America is a non-profit cattle association representing approximately 8,700 U.S. cattle producers on issues concerning international trade and marketing. R-CALF USA’s membership consists of cattle producers, cattle backgrounders, and independent feedlot owners. Its members are located in 46 states, and

the organization has 58 local and state cattle and farm association affiliates representing several thousand more producers in 18 states. R-CALF USA's purposes include representing its members' interest before agencies of the federal government and in court.

2. R-CALF USA has standing to bring this action on behalf of its members. The market for R-CALF USA members' cattle will be adversely affected by the increased risk of BSE-contaminated meat being introduced into the United States, as well as by the increased supply of beef in the U.S. R-CALF USA members will also be adversely affected by the increased risk of disease they face when Canadian beef enters the U.S. meat supply. These injuries are caused by USDA's decision to allow importation of all Canadian edible bovine meat products, and the injuries could be mitigated or eliminated by an order enjoining that decision.

3. The United States Department of Agriculture is an agency of the United States Government.

4. The Animal and Plant Health Inspection Service is an agency within the United States Department of Agriculture.

5. Ann M. Veneman is Secretary of the United States Department of Agriculture.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction); § 1346 (United States as Defendant); 5 U.S.C. §§ 702-703 (Administrative Procedure Act); and may issue a declaratory judgment under 28 U.S.C. §§ 2201-02.

7. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Plaintiff resides in the State of Montana, R-CALF USA's principal place of business is in Montana, and the defendant is an agency of the United States.

FACTS GIVING RISE TO THIS CAUSE OF ACTION

8. Bovine spongiform encephalopathy (BSE), commonly known as "mad cow disease," is a fatal neurological degenerative disease that causes progressive degeneration of the brain and central nervous system of cattle. BSE is a member of a notorious family of diseases, known as transmissible spongiform encephalopathies (TSE), that are generally believed to be caused by transmissible agents called prions. Prions are abnormal proteins that seem to cause normal cellular protein to convert to the abnormal form.

9. In addition to BSE, TSE diseases include scrapie, which affects sheep, chronic wasting disease, which affects deer and elk, and kuru, a human disease identified in Papua New Guinea, which scientists discovered was transmitted by ritual cannibalism involving consumption of brains. All TSE diseases affect the central nervous system and are characterized by damage to the brain when prions accumulate causing sponge-like holes in brain tissue. The agent that transmits BSE does not respond to immunization, and it is extremely resistant to sterilization, remaining infectious after being heated to 600 degrees C. Transmission of BSE can occur when cattle consume feed or supplements that contain bovine protein, typically meat and bone meal.

10. Scientists generally agree that the agent that causes BSE in cattle may cause a similar condition in humans known as variant Creutzfeldt-Jakob Disease ("vCJD"). Although it has not been proven, most experts believe that consumption of meat contaminated with the BSE agent is thought to be the most likely way humans contract vCJD. According to the UK Creutzfeldt-Jakob

Disease Surveillance Unit at the University of Edinburgh, as of April 5, 2004, 140 people have died of confirmed or suspected cases of vCJD in the UK since 1995. According to the United States Centers for Disease Control and Prevention, as of December 1, 2003, a total of 153 cases of vCJD had been reported in the world: 143 from the United Kingdom, six from France, and one each from Canada, Ireland, Italy, and the United States. Recently, health officials in the U.S. have begun to re-examine several clusters of CJD cases in the U.S., including one in New Jersey, that were previously thought to be unrelated to BSE.

11. The BSE epidemic began in the United Kingdom, possibly as early as the 1970's. Scientists have speculated that the epidemic began when dairy cow consumed feed containing brains from scrapie-infected sheep. BSE was not recognized as a disease until 1986, by which point it had spread widely in UK cattle herds. As of December 31, 2003, 183,803 head of BSE-infected cattle have been found in more than 35,000 herds across the UK. It appears that the epidemic peaked in the UK during 1992 when new cases were being diagnosed at a rate of up to 1,000 per month. Although the UK epidemic has declined, during 2003, 612 new BSE cases were discovered in the UK.

12. BSE has spread from the UK to native-born cattle in 26 other countries: Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and Switzerland. In addition, BSE was found in imported cattle in the Falkland Islands, Oman and the United States. According to data maintained by the Office International des Epizooties (“OIE”), the World Organization for Animal Health, the total number of BSE cases reported outside the UK, as of April 20, 2004, stands at 4,730. The relatively low number of

BSE cases outside of the UK is attributed to rigorous disease control measures that were put into place in response to the UK epidemic.

13. Since 1986, BSE has been a reportable disease in the United States and regulatory safeguards have been established to prevent the introduction of BSE into the United States. Importation of ruminants, ruminant products and ruminant meat from countries known to have BSE has been prohibited. A feed ban was instituted in 1996 to prevent the recycling of potentially infectious cattle tissue. In addition, active disease surveillance methods have been put in place to detect BSE. No case of BSE has been found in native U.S. cattle.

14. The Animal and Plant Health Inspection Service of the United States Department of Agriculture regulates the importation into the United States of animals and animal products to protect against the introduction of animal diseases. APHIS is responsible for protecting the economic interest of the livestock industry and the health and welfare of the people of the United States. APHIS regulations prohibit or restrict the importation of meat and other edible products of ruminants from countries that are listed as regions in which BSE exists.

15. Under USDA regulations, no person may import ruminants or ruminant products from a region where a communicable disease such as BSE exists or from a region that presents risk of introducing communicable diseases into the United States, unless the Administrator of APHIS issues a permit in a "specific case." The regulations list the regions in which BSE exists, and Canada was placed on this list in May 2003. In addition, the regulations list the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because those regions have inadequate surveillance.

16. In accordance with the disease mitigation recommendations of the OIE, USDA commissioned the Harvard Center for Risk Analysis in 1998 to determine “the robustness of U.S. measures to prevent the spread of mad cow disease to animals and humans if it were to arise in this country.” The Harvard analysis was completed three years later in 2001. The Harvard analysis concluded that the feed ban implemented in the U.S. in 1997 and the 1989 ban on the imports of live ruminants and ruminant meat and bone meal were the most effective measures at reducing the spread of BSE.

17. USDA has assured Congress that the U.S. has robust controls in place to limit the spread of BSE, most notably by way of the USDA’s January 2003 BSE report to Congress in which the USDA touted the longstanding policy of prohibiting imports from countries known to have BSE. This report stated that, “Since 1989, APHIS has prohibited the importation of live ruminants from countries where BSE is known to exist in native cattle. Other products derived from ruminants (for example, meat and meat products, fetal bovine serum, meat-and-bone meal, blood meal, offal, fats and glands are also prohibited from entry, except under special conditions or under USDA permit for scientific or research purposes.”

18. In 1993, Canada announced its first case of a BSE-infected cow. This cow was imported from Great Britain. In accordance with OIE guidelines, Canada’s BSE risk classification did not change because the case was known to have originated in an imported animal. Canada was thereafter placed on the OIE’s list of countries with BSE in imported animals only and Canada continued to meet the OIE criteria of a BSE provisionally free country.

19. On May 20, 2003, the Canadian Food Inspection Agency (“CFIA”) detected BSE in a native Canadian beef cow in northern Alberta. The discovery effectively disqualified Canada

from the OIE classification as a BSE provisionally free region. Canada, thereafter, met only the OIE's BSE "moderate risk country" classification.

20. In order to prevent the introduction of BSE into the United States, the USDA published a rule in the Federal Register on May 29, 2003, that added Canada to the list of regions where BSE exists. As a result of this rule, the importation of ruminants, meat and meat products from Canada was prohibited.

21. The United States subsequently commissioned the Harvard Center for Risk Analysis to re-evaluate the United States robustness for preventing the spread of BSE if it were to arise in the United States. The Harvard update was completed in October 2003 and essentially validated its previous analysis, based on the assumption that the United States disease mitigation measures remained in force.

22. Prior to the conclusion of the updated Harvard risk analysis, the USDA relaxed its long-standing policy of banning imports of ruminant meat from countries known to have BSE. On August 8, 2003, the Secretary of Agriculture announced that USDA would begin accepting applications for import permits from Canada of boneless bovine meat from cattle under 30 months of age.

23. On November 4, 2003, APHIS published notice of its proposal to amend its regulations to recognize a category of regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products, and to add Canada to this category. This notice represented a significant departure from the U.S. long-standing BSE prevention measures. Comments on the proposed rule changes were to be received by January 5, 2004. The comment period was later extended to April 7, 2004.

24. R-CALF USA and numerous other interested groups, including States, submitted over 1,500 comments, many opposing the new rule. R-CALF USA emphasized that scientific evidence suggested that the regulation would expose the United States cattle industry to substantially greater and unnecessary risk that BSE would be introduced into the U.S. herd. In addition, U.S. consumers would be subjected to both greater and unnecessary risk if the United States deviated from its longstanding policy of prohibiting the importation of ruminants and ruminant products from any country known to have BSE.

25. On December 23, 2003, a BSE-positive Holstein cow was detected in the State of Washington. An investigation revealed that this animal was born in Canada and most likely exposed to the BSE agent in Canada. The infected animal entered the United States as part of a shipment that arrived in September 2001.

26. The export markets reacted quickly to the discovery of a BSE-infected cow in the United States. United States beef was virtually shut out of the major export markets. Major importers such as Japan and South Korea continue to ban beef exports from the United States.

27. On Wednesday, April 14, 2004 Canadian media reports quoted Canadian officials claiming that USDA would lift its restrictions on imports of beef from Canada effective Monday, April 19.

28. Based on information on the APHIS web site, on Thursday, April 15, USDA's Animal and Plant Health Inspection (APHIS) website included a link to a undated memorandum entitled, New Criteria for the Importation of Edible Bovine Meat and Bovine Meat Products, issued to Importers and Import Brokers stating that the import restrictions would be lifted effective Monday, April 19. However, USDA made no public announcements regarding that rule change.

29. On Friday, April 16, USDA spokesperson Alisa Harrison denied the reports that restrictions in imports of Canadian beef would be relaxed saying, "I have no knowledge of anything being announced. We're not at that stage with the Canadian rule."

30. On Monday, April 20, USDA Secretary Ann Veneman told CongressDaily that the decision to expand such imports was made on Friday, April 16 by a USDA technical team "charged with harmonizing meat regulations in the U.S. and Canada."

31. Nevertheless, before completing the rule-making process started on November 4, 2003, USDA has, effective April 19, 2004, expanded permissible imports of beef products from Canada to include "all edible bovine meat products," including bone-in and ground beef, processed beef, bovine tongues, hearts, kidneys, tripe and lips.

32. On April 21, 2004, R-CALF USA learned from APHIS personnel that importation of beef products from cattle over 30 months of age at time of slaughter is also now allowed. This action substantially increases the risk of introducing BSE into the United States, because there is a greater risk of the BSE agent being found in these products than in the boneless beef from cattle less than 30 months of age that was authorized for import last August.

CLAIMS FOR RELIEF

33. Plaintiff repeats and realleges paragraphs 1-32.

34. Under the Administrative Procedure Act, this Court has authority to "hold unlawful and set aside agency actions, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706 (2)(A).

35. The USDA's decision to allow the importation of Canadian bone-in beef and ground beef, after two confirmed cases of BSE were identified in Canadian cattle during 2003, despite Canada's inadequate BSE control and safety measures, and before completing the rule-making process is arbitrary, capricious and contrary to the provisions of the Animal Health Protection Act, 7 U.S.C. § 8301(5)(B)(iii).

36. The Animal Health Protection Act specifically provides for regulation by the Secretary of Agriculture when necessary "to protect the agriculture, environment, economy, and health and welfare of the people of the United States." 7 U.S.C. § 8301(5)(B)(iii).

37. USDA's decision permitting importation of all edible bovine meat products, including bone-in and ground beef, from Canada increases the risk to human health and creates an adverse effect on the cattle industry. The USDA decision is based on a number of inaccurate assumptions.

38. USDA has significantly underestimated the prevalence of BSE in Canada. USDA has downgraded from "low" to "very low" the prevalence of BSE in Canada without any analysis, very low levels of testing for BSE by the Canadian government, and despite the discovery of a second case of BSE in a Canadian-born cow in December 2003.

39. USDA incorrectly assumes that removal of "specified risk materials" (e.g., brain, eyes, portions of the vertebral column) will assure that the agent causing BSE is not present in significant quantities in the remaining portions of an infected cow.

40. USDA incorrectly asserts that Canada's preventative measures are comparable to those in the United States.

41. USDA provides no assessment of the risk of consumers contracting vCJD from its decisions to allow imports of all edible bovine products from Canada. The lack of adequate information and the assessment of this decision on human health require that implementing the decision be prohibited.

42. The Secretary's own Advisory Committee on Foreign Animal and Poultry Diseases has cautioned against making BSE decisions until a more thorough and scientific risk assessment is completed.

43. USDA's decision permitting imports of all edible bovine meat products from Canada will result in significant adverse economic impact on ranchers and cattlemen. Many ranchers and cattlemen are small businesses that cannot withstand significant declines in U.S. beef consumption. In addition, these businesses depend heavily on export for their economic survival. The export market has already reacted adversely to the detection of a BSE-infected cow, which had been imported from Canada, in the State of Washington. Two of the largest U.S. export markets, Japan and South Korea, continue to ban exports from the United States unless rigorous criteria are met. The April 19, 2004 USDA decision to permit imports of more and higher-risk meat products (including meat from cattle over 30 months of age) from Canada will likely cause further bans on U.S. exports and delay lifting the bans already in place.

44. USDA's decision to allow importation of all edible bovine meat products from Canada should be held unlawful and set aside under the Administrative Procedure Act, 5 U.S.C. § 706(2)(D), because it was taken without observing the procedures required by the Act. USDA did not give notice of this change in its regulations and failed to provide the public an opportunity to comment on the new rule, and/or noted without considering public comments.

USDA's action also should be held unlawful and set aside under 5 U.S.C. § 706(2)(A), because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Enter judgment declaring that USDA's decision to permit imports from Canada of "all edible bovine meat products," including bone-in and ground beef, and bovine tongues, hearts, kidneys, tripe and lips, is arbitrary and capricious, an abuse of discretion, and not in accordance with law and may not lawfully be implemented or enforced;
- b. Grant a temporary restraining order and a preliminary injunction enjoining the importation of "all edible bovine meat products," including bone-in and ground beef, and bovine tongues, hearts, kidneys, tripe and lips, from Canada;
- c. Permanently enjoin USDA from implementing or enforcing its decision to allow importation into the United States of "all edible bovine meat products," including bone-in and ground beef, and bovine tongues, hearts, kidneys, tripe and lips, from Canada;
- d. Award Plaintiff its cost and reasonable attorneys' fees in this action; and
- e. Grant such other and further relief as the Court deems proper and just under the circumstances.

Dated: April ___, 2004

Respectfully submitted,

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* Motions for admission *pro hac vice* pending.

