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May 30, 2003

The Honorable Thad Cochran, Chair
Senate Agriculture, Nutrition and Forestry Committee
United States Senate
Washington, D.C. 29510

The Honorable Tom Harkin, Ranking Member
Senate Agriculture, Nutrition and Forestry Committee
United States Senate
Washington, D.C. 29510

The Honorable Bob Goodlatte, Chair
House Agriculture Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Charles W. Stenholm
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House Agriculture Committee
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The Honorable Thad Cochran, Chair
Senate Appropriations Subcommittee on Homeland Security
United States Senate
Washington, D.C. 29510

The Honorable Harold Rogers, Chair
House Appropriations Subcommittee on Homeland Security
United States House of Representatives
Washington, D.C. 20515

Sent via facsimile and e-mail

Re: Strengthening the United State's Resistance to BSE

Dear Chairmen and Ranking Members:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) 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 cow-calf operators, cattle backgrounders, and independent feedlot owners. Its members are located in 43 states, and the organization has 43 local

and state cattle and farm association affiliates representing several thousand more producers in 17 states. Various main street businesses are associate members of R-CALF USA.

As a national representative for the U.S. live cattle industry, the goal of R-CALF USA, with respect to the United States' response to the recent BSE case in Canada, is to safeguard our primary customer—the U.S. consumer, along with our U.S. cattle herd from BSE.

Before the ban is lifted on imports of ruminants or ruminant products from Canada, R-CALF USA recommends the U.S. implement several preventive steps to further strengthen our nation's resistance to BSE. The circumstances surrounding the Canadian BSE case serve to highlight prudent, remedial steps that the United States should immediately implement to better protect its citizens and its cattle herd.

R-CALF USA offers the following proposed framework that will (A) strengthen our resistance to BSE, (B) maintain long-term consumer confidence in our U.S. beef supply, and (C) conform to existing law, without necessitating new legislation. Immediately following our suggested framework is a narrative demonstrating the seriousness of this specific BSE threat as well as identifying the weaknesses associated with both the United States' and Canada's initial response. Specifically, the narrative following our proposed framework will demonstrate:

1. The World Organization for Animal Health established a seven-year waiting period following a confirmed BSE case in native cattle before a BSE Free status is reinstated.
2. Past experience shows that the finding of only a single case of BSE within a year's time provides little assurance that the disease is contained.
3. The frequency of BSE outbreaks outside the United Kingdom has increased significantly and BSE has spread to 12 new countries, including Canada, since 2000.
4. The USDA has maintained public confidence in its ability to protect its citizens from BSE by assuring the public that it has prohibited the importation of ruminant animals from countries where BSE is known to exist in native cattle since 1989.
5. The United States does not now have the ability to identify all foreign livestock within the United States or to recall or otherwise segregate foreign meat products should the need arise to do so.
6. The current BSE detection and notification procedures of our trading partners need to be tightened.

Our proposed framework recognizes the foregoing facts and weakness in our current system and is designed to bolster our logistical ability to resist BSE.

R-CALF USA's Proposed Framework for Strengthening U.S. Resistance to BSE

1. The United States should enter into a formal agreement with Canada and all other trading partners obligating them to:
 - a. Notify the U.S. upon even a preliminary finding of BSE; and
 - b. authorizes USDA to send its investigative team to the relevant country at the time of a preliminary finding of BSE; and

- c. obligates our trading partners to immediately cease all exports and to immediately begin the quarantining process upon a preliminary finding of BSE.
2. The United States should require permanent marks of origin on all livestock imported into the U.S. from Canada and all other trading partners thereby giving the U.S. the ability to immediately identify foreign cattle originating from a specific foreign country that may have a future case of BSE. R-CALF USA has recently suggested to the Secretary of Agriculture, Secretary of Homeland Security, Secretary of Treasury, and Secretary of Health and Human Services that livestock should be excluded from the Secretary of the Treasury's list of products presently excluded from the general requirement that all imported products be marked with their country of origin (known as the J-List).¹
3. The United States should immediately implement the infrastructural components of its mandatory country of origin labeling law, thereby enabling the tracking of all imported beef and all beef derived from imported livestock from the point of slaughter to the retailer. This is not a difficult task and R-CALF USA has submitted numerous comments to USDA on how to achieve this tracking/tracing ability at minimal cost. Briefly, the USDA should require that all persons who prepare, store, handle, and distribute muscle cuts of beef and ground beef to retailers to immediately inform retailers of the country of origin of all muscle cuts of beef and ground beef ²(this affords the United States the ability to identify all muscle cuts of beef and ground beef within the stream of commerce, up to but not including the final consumer, in the event that a future case of BSE necessitates a recall of such products.):
 - a. The person who slaughters live cattle should be the first person responsible for communicating the country of origin of all resulting muscle cuts of beef and ground beef, thus beginning at the point of slaughter and continuing to each downstream segment of the production chain³; and
 - b. the determination of origin should be based solely upon the foreign marks or lack thereof on each live animal as described in (2.) above; and
 - i. all meat derived from live animals marked with a foreign marking shall be identified as originating from the country with which the animal is marked; and

¹ Letter from R-CALF USA to Secretaries Tom Ridge, John Snow, Tommy Thompson, and Ann Veneman, May 23, 2003, available at www.r-calfusa.com.

² Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 282(d). Congress included only those who prepare, store, handle or distribute muscle cuts of beef and ground beef as subject to the Act. While the Act doesn't take effect until September 30, 2004, R-CALF USA believes USDA has sufficient authority under the Act to mandate the transference of country of origin information from the point of slaughter to the retailer, provided it does not mandate that retailers begin labeling until the Act's effective date.

³ Comments to USDA on Notice of Request for Emergency Approval of a New Information Collection, R-CALF USA, February 21, 2003, at 6, available at <http://rcalf.com/COOL/02-21-03%20R-CALF%20USA%20Comments%20to%20AMS%20on%20COOL.pdf>. R-CALF USA has previously recommended this methodology for identifying the origins of livestock and believes Congress intended this methodology be used to implement mandatory country of origin labeling.

- ii. all meat derived from live animals not bearing a foreign marking shall be identified as born and raised in the U.S. and of exclusive U.S. origin;⁴ and
 - c. retailers may voluntarily affix country of origin labels on muscle cuts of beef and ground beef in accordance with the information provided by the upstream preparers, storers, handlers, and distributors of muscle cuts of beef and ground beef until September 30, 2004, at which time the country of origin labels for retailers becomes mandatory⁵; and,
 - d. because the communication of country of origin information applies to all muscle cuts of beef and ground beef, retailers in food service establishments, while not subject to the September 30, 2004, mandatory labeling requirements, can choose to immediately begin accurately labeling their products with a country of origin label.⁶
- 4. As a minimum, the United States should prohibit the importation of live ruminants from Canada and any other country where BSE is known to exist in native cattle unless:
 - a. The exact source of the BSE infection is definitively identified; the entire source of the BSE contamination has been completely eradicated; and every animal exposed to the source has been identified and destroyed; and
 - b. the affected country or zone⁷ complies, in all respects, with the International Animal Health Code-2002 and with existing United States policy and is recognized by both the OIE and the United States as BSE Free; and
 - c. the United States has in place the requirements in 1 through 3 above, which provide for permanent marks of origin on all imported livestock; provide U.S. retailers with the logistical means of affixing country of origin labels on all muscle cuts of beef and ground beef through the transference of country of origin information from the point of slaughter to the retailer (the retailers decision to affix such labels on consumer products shall be voluntary until September 30, 2004, and thereafter mandatory); provide U.S. food service establishments the logistical means of notifying customers of the country of origin of all meat products through the transference of information from the point of slaughter to the food service establishment, though the decision to communicate said country of origin information to the final consumer will be voluntary.

Implementation of the foregoing framework will enable the United States to immediately track all imported livestock and beef as to their country of origin from the time they enter the U.S. until their delivery to the final retailer, thus providing the logistical means of recalling all products from retail outlets should the need arise. The framework comports with existing law,

⁴ Comments to USDA on Notice of Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946, April 9, 2003, at 7. R-CALF USA has previously encouraged USDA to adopt this methodology when implementing country of origin labeling and has offered an exception for animals with multi countries of origin.

⁵ Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling. The requirement for retailers to label covered commodities is voluntary until September 30, 2004, at which time it becomes mandatory.

⁶ Id. Food service establishments are exempt from the Act.

⁷ See narrative wherein "zone" is defined.

including the country of origin labeling law that goes into effect on September 30, 2004⁸, and thus lacks enforcement capability at the retail level (until September 30, 2004) and at food service establishments (the law does not affect food service establishments). Notwithstanding this deficiency, this framework will significantly increase the United States' reach of imported products well into the stream of commerce without necessitating new legislation.

Narrative in Support of R-CALF USA's Proposed Framework

R-CALF USA's proposed framework is a measured response to the following facts, concerns, and questions arising from the single case of BSE discovered in Canada on or before May 20, 2003.

The World Organization for Animal Health (OIE) sets international standards for managing the human and animal health risks associated with BSE. The OIE uses seven years as the period in which a country or zone must have no case of BSE in indigenous cattle in order to achieve a BSE Free status, representing the lowest level of risk.⁹ The OIE defines a zone as a "clearly defined part of the territory of a country with a distinct animal health statues. The following types of zones are recognized: *free zone, infected zone, surveillance zone and buffer zone.*"¹⁰

It is noteworthy that USDA-APHIS reported during its May 21, 2003, teleconference with the cattle and beef industries that during the height of the BSE crisis in the U.K., it was not unusual to find only one infected animal in each of the herds tested.

It is further important to note that since 1989, one-half (11) of the 22 non-U.K. countries with reported cases of BSE each reported only one case of BSE in the calendar year during which the first case was reported. Nearly two-thirds (7) of these countries reporting only a single case of BSE during the initial year of discovery had subsequent outbreaks of BSE either during the following year, or, in the case of 4 countries, several years later. For example, the period between the first case and second or more cases for Denmark was 8 years; for Germany, 2 years; for Luxembourg, 5 years; and for Canada, 10 years.¹¹

Most disconcerting, however, is the fact that the frequency of BSE cases among the 22 countries other than the U.K. that have reported one or more cases of BSE since 1989 has increased significantly over the past three years. The total numbers of BSE cases reported by the 22 non-United Kingdom countries that reported one or more cases of BSE has increased from 513 cases in 2000 to 1035 cases in 2002, an increase of more than 100 percent.¹²

⁸ Id.

⁹ Bovine Spongiform Encephalopathy, Chapter 2.3.13, International Animal Health Code -2002, World Organization for Animal Health, available at http://www.oie.int/eng/normes/mcode/A_00067.htm.

¹⁰ International Animal Health Code – 2002, Chapt. 1.1.1., Article 1.1.1.1., World Organization for Animal Health, available at http://www.oie.int/eng/normes/mcode/A_00003.htm.

¹¹ Number of Reported Cases of Bovine Spongiform Encephalopathy (BSE) Worldwide (excluding the United Kingdom, World Organization for Animal health, available at http://www.oie.int/eng/info/en_esbmonde.htm.

¹² Id.

Moreover, BSE has been rapidly spreading to new countries since 2000. In 1999 only 12 countries in addition to the U.K. had reported one or more cases of BSE. By end of year 2002, there were 22 countries in addition to the U.K. reporting one or more cases of BSE, representing an 80 percent increase in the geographical distribution of the disease.¹³

While the United States acted properly to ban the feeding of meat and bone meal to ruminants in 1997¹⁴, thus ensuring that BSE would not spread within the U.S. cattle herd, the concern remains that BSE could be introduced into the U.S. from imported cattle or beef. The worldwide spread of BSE is not yet contained. Just since 2000, the countries of Austria, Canada, Czech Republic, Denmark, Finland, Greece, Israel, Italy, Japan, Poland, Slovakia, Slovenia, and Spain have all had one or more confirmed cases of BSE originating from native cattle.¹⁵

Based on the foregoing information, our first concern is that USDA's Undersecretary J.B. Penn has already made a public statement suggesting that the Canadian border may be reopened fairly soon.¹⁶ This does little to assure U.S. consumers or producers that USDA intends to follow prudent protocols. Undersecretary Penn's sentiments were mimicked by similar statements attributed to the American Meat Institute (AMI) when J. Patrick Boyle indicated that he expects the ban on Canadian beef imports to last about one week if no new BSE cases are discovered.¹⁷ Former National Cattlemen's Beef Association (NCBA) President and trade policy advisor to the President, Wythe Willey, reportedly said that Canada's word that the beef system is safe should be sufficient for Washington to resume north-south trade in cattle.¹⁸ These ill-timed and ill-conceived remarks raise the genuine concern that tremendous pressure is being put on USDA to fast-track the lifting of the ban, without regard to the considerable risk this may pose to U.S. consumers and the U.S. cattle herd.

Notwithstanding these remarks, USDA has made numerous assurances to Congress that it is responding appropriately to the worldwide spread of BSE. Most recently, the Secretary of Agricultural, in her January 2003 BSE report to Congress, stated, "Since 1989 APHIS has prohibited the importation of live ruminants from countries where BSE is known to exist in native cattle."¹⁹ Moreover, USDA's current guidelines for the importation of cattle into the United States from countries other than Canada and Mexico require "that the animals were born, raised, and continuously resident in a country recognized by USDA as free of FMD, BSE, and

¹³ Id.

¹⁴ Backgrounder: Bovine Spongiform Encephalopathy (BSE) from the U.S. Department of Agriculture and Food and Drug Administration, Release No. bg0166.03, May 23, 2003, available at <http://www.usda.gov/news/releases/2003/05/bg0166.htm>.

¹⁵ Number of Reported Cases of Bovine Spongiform Encephalopathy (BSE) Worldwide (excluding the United Kingdom, World Organization for Animal Health, available at http://www.oie.int/eng/info/en_esbmonde.htm.

¹⁶ USDA to Resume Canada Beef Trade if No New Cases, Washington (Reuters), May 20, 2003.

¹⁷ The Daily News, Purdue Researchers Gauge Canadian BSE Impact on U.S. Beef Sales, Meatingplace.com, May 22, 2003.

¹⁸ Canada Builds Case to Lift Bans on Its Beef, Daniel Yovich, Meatingplace.com, May 29, 2003.

¹⁹ This is not inconsistent with the fact that the United States continued to import live cattle from Canada following Canada's 1993 case of BSE. The 1993 case was determined to be from an animal imported directly from a foreign country. The OIE distinguishes an "indigenous" case of BSE from a BSE case demonstrated as "originating directly from the importation of live cattle." In the latter case, the 7 year period does not apply in order for a country to retain its BSE Free status.

rinderpest.”²⁰ Further, the guidelines state, “Cattle from countries affected with bovine spongiform encephalopathy (BSE) OR foot-and-mouth disease (FMD), OR rinderpest are not permitted to be imported into the United States.”²¹ We respectfully request that Congress apply considerable weight to USDA's pronouncement and current policy when it entertains requests to prematurely reopen the Canadian border.

Our second concern is that the United States has neither the ability to track all imported cattle from the border to the point of slaughter and to the consumer, nor the ability to track all imported beef products through the stream of commerce. This current deficiency is evidenced by Congress's enactment of the Country of Origin Labeling law which helps to remedy this deficiency as well as the USDA's current efforts to require the identification of the country of origin of live animals destined for slaughter within its rulemaking process. R-CALF USA has submitted numerous comments to USDA in support of a cost-effective and efficient means of identifying the country of origin of all livestock within the United States which includes removing livestock from the J-List as previously mentioned.

The most revealing need for USDA to implement country of origin labeling as Congress intended came when one of the nation's leading food service establishments and the leading food retailer made public pronouncements in response to the Canadian BSE case. Fast food chain giant McDonalds issued a statement on the day the BSE case was announced saying “McDonald's USA does not import any raw beef or hamburger patties from Canada for McDonald's use in the United States.”²² While McDonald's may not import raw beef or hamburger patties from Canada, it cannot substantiate that it does not serve beef originating from Canada as the beef derived from live cattle and carcasses imported from Canada and processed in the United States is not differentiated from exclusively U.S. beef. It is difficult to argue that McDonalds and other industry participants don't understand the importance of distinguishing the origins of beef for U.S. consumers.

Our third concern involves the lag time between when Canada first became aware they may have a BSE problem and when USDA made the public announcement banning Canadian cattle and beef products. It is our understanding that the animal first became a suspect in late January and that tissue samples were then sent to a Canadian Provincial lab where the sample was analyzed as highly suspicious. From there the sample was sent to Winnipeg where it was confirmed the cow had BSE and tissues were subsequently transported to the U.K. for final confirmation.

This raises the question of why didn't Canada notify USDA earlier and if USDA was notified, why weren't certain precautionary steps taken? A lag time of 3 and one-half months without some kind of precautionary steps being taken, especially as the analysis progressed, seems unreasonable. The question of why Canada did not immediately quarantine its own herds

²⁰ Guidelines for the Importation of Cattle (ruminants) Into the United States (except from Canada and Mexico), USDA-APHIS, available at http://www.aphis.usda.gov/vs/ncie/cattle_ruminants.html, downloaded on May 28, 2003.

²¹ Id.

²² McDonald's Beef Safety Facts, McDonald's Corporate Press Release, May 20, 2003, available at <http://www.mcdonalds.com/corporate/press/corporate/2003/05202003a/index.html>, downloaded on May 29, 2003.

upon the initial BSE diagnose completed at the Provincial laboratory also arises. At a minimum, it must be asked why did Canada not start their tracking efforts and begin quarantining the herds of origin following the Winnipeg results?

While answers to these questions should be sought, the implementation of our proposed framework will mitigate the concerns raised by these questions and should not be delayed. Our entire membership and affiliated associations stand ready to assist in any way possible to help Congress and federal agencies strengthen our nation's resistance to BSE. We urge you to personally contact USDA Secretary Ann Veneman, USDHS Secretary Tom Ridge, USDT Secretary John Snow, and USHHS Secretary Tommy Thompson to encourage them to work cooperatively to implement our proposed framework as soon as possible.

Please let me know how we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Leo R. McDonnell, Jr." with a stylized flourish at the end.

Leo McDonnell, Jr.
President
R-CALF USA

Cc: Members of Congress
The Honorable Tom Ridge
The Honorable John Snow
The Honorable Tommy Thompson
The Honorable Ann Veneman