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March 5, 2003

Ms. Donna Reifschneider
Administrator
USDA Grain Inspection,
Packers and Stockyards Administration
STOP 3601
1400 Independence Ave., SW
Washington, D.C. 20250-3601

Sent Via Facsimile and e-mail: 202-205-9237, donna.reifschneider@usda.gov

Re: Request for Investigation

Dear Ms. Reifschneider:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) is a non-profit association that represents approximately 8,000 U.S. cattle producers on issues concerning international trade and marketing. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and independent feedlot owners. Its members are located in 43 states, and the organization has 36 local and state cattle and farm association affiliates. Various main street businesses are associate members of R-CALF USA.

Pursuant to the Farm Security and Rural Investment Act of 2002 (Act), the Agricultural Marketing Service, United States Department of Agriculture (AMS-USDA) issued guidelines for the interim voluntary country of origin labeling of beef and other commodities (Guidelines) on October 11, 2002. Subsequent to the issuance of these Guidelines, a number of United States beef packers sent either letters or flyers to many United States cattle producers containing false information, misleading information, and outright threats.

R-CALF USA believes the attached letters and flyers circulated by various U.S. meat packers are intended to purposely mislead, misinform, and threaten U.S. producers and that such acts constitute unfair, unjustly discriminatory, and deceptive practices

actionable under the Packers and Stockyards Act (P&S Act). Therefore, R-CALF USA urges the Packers and Stockyards Administration to immediately investigate these practices and to take immediate corrective action to prevent further harm from accruing to U.S. producers.

Specific allegations of misinformation, misleading information and threats contained in the attached flyers and letters which R-CALF USA believes constitute unfair, unjustly discriminatory, and deceptive practices actionable under the P&S Act include the following:

The undated flyer issued by IBP, “IBP Feedback-Helpful Facts for Cattle & Hog Producers: A COOL \$2 Billion:”

This IBP flyer threatens U.S. producers with the following statement: “If the documentation is not adequate, meat from that livestock CANNOT be sold in U.S. retail food stores.” IBP uses this false and misleading statement to unfairly and deceptively threaten U.S. producers with financial harm if the mandatory Act goes into effect. IBP issued this statement in a definitive manner, leaving no ambiguity regarding its accuracy. There is no foundation for this statement in either the Act or in the Guidelines.

Further, IBP informs U.S. producers that, “Since there is no real evidence consumers are willing to pay higher prices for meat from livestock born and raised in the U.S., the bill for this expensive, new law will ultimately be handed down to livestock producers.” In addition to the fact that there is no foundation for this threat in either the Act or the Guidelines, this threat is immensely troublesome. If a competitive packer can label its products at less cost than IBP, how could IBP force its higher costs, in the form of a “bill” for labeling, down to producers within a fully competitive marketplace? Is this not a threat or admission by IBP that it has the ability to exercise significant buying power in the upstream, live cattle market, an indication of significant control and/or manipulation of the market itself? The Packers and Stockyards Administration should investigate this statement with an eye toward charging IBP with controlling and manipulating the otherwise competitive live cattle market.

IBP used this deceptive flyer to expressly encourage U.S. producers to contact their Congressional representatives to “either repeal this damaging law [mandatory country of origin labeling law] or amend it and make it permanently voluntary.”

The San Angelo Packing Company, Inc., Letter Dated February 6, 2003:

San Angelo Packing Company, Inc., also uses false and misleading statements to unfairly and deceptively threaten U.S. producers with financial harm if the mandatory Act goes into effect. In the attached February 6, 2003, letter from San Angelo Packing Company, Inc., customers were informed that, “Products resulting from cattle that do not have verifiable documentation of Country of Origin will have to be marketed directly into food service or products where identification is not required. This market will have an overabundance of products, which will lead to unmarketable products or at heavily discounted prices.” Again, there is no foundation for this statement in either the Act or in the Guidelines.

The Swift & Company and Swift & Company/EA Miller, Inc., Blue Ribbon Beef Letters:

The attached Swift & Company letter dated February 3, 2003, and the attached Swift & Company/EA Miller, Inc., Blue Ribbon Beef letter dated February 6, 2003, unfairly and deceptively threatens producers with unauthorized “random producer audits.” The letters state, “Swift and Company will perform random producer audits verifying that an accurate audit trail is in place that will comply with Country of Origin, and that it has been approved by a USDA certified third-party.” Swift & Company does not currently have the authority, and is afforded no authority by either the Act or the Guidelines to conduct either premise audits or any other form of audits on producers. Moreover, neither the Act nor the Guidelines authorize the use of a “USDA certified third-party.” Swift & Company is using this false, misleading, and threatening information to unfairly and deceptively coerce U.S. producers into supporting Swift & Companies position relative to the Act.

Furthermore, the two Swift & Company letters state that Swift & Company will assess producers with any fines or penalties issued to it from producer noncompliance. The letters state, “If Swift & Company is issued a fine or penalty resulting from producer noncompliance, that fine will be assessed to the party responsible.” Again, there is no authority or foundation for this threatening and deceptive statement in either the Act or the Guidelines.

Additionally, the Swift & Company letters implicitly, if not explicitly, notify producers that producers must meet the four listed arbitrary and capricious conditions as a precondition to Swift & Companies’ purchase of producers’ livestock. Included in this list is the arbitrary and capricious condition that producers will be forced to sign a “legal affidavit with each load.” Because neither the Act nor the Guidelines authorize Swift & Company to impose such arbitrary and capricious conditions upon U.S. producers as a prerequisite to marketing their cattle, its conduct constitutes an unjustly discriminatory practice.

The News Article by Pork News Source:

As evidenced by the attached E-mail containing a February 4, 2003, news article by Pork News Source, “Hormel Publicizes Policies for COOL Compliance,” Hormel has adopted the same arbitrary and capricious conditions as Swift & Company and it, too, is propagating false, misleading, and threatening information which constitutes unjustly discriminatory conduct.

It is clear to R-CALF USA that the aforementioned packers are deliberately using false and misleading information, along with threats of financial harm, company surveillance, and refusal to purchase livestock unless certain unauthorized preconditions are met, to scare, and otherwise coerce U.S. producers into supporting the packers’ political position relative to the Act. R-CALF USA believes these actions constitute unfair, unjustly discriminatory, and deceptive practices actionable under the P&S Act.

Ms. Donna Reifschneider
March 5, 2003

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On behalf of the approximately 8,000 cattle producing members of R-CALF USA, and its 36 affiliates representing many thousands more producers, I urge you to undertake an immediate and thorough investigation of this complaint and to take appropriate actions to prevent further harm from accruing to U.S. producers. In addition, please inform me as soon as possible regarding the specific actions the Packers and Stockyards Administration will undertake pursuant to this request for an investigation.

Sincerely,

A handwritten signature in blue ink that reads "Leo R. McDonnell, Jr." The signature is written in a cursive, flowing style.

Leo R. McDonnell, Jr.
President
R-CALF United Stockgrowers of America

CC: The Honorable Ann Veneman
The Honorable Thad Cochran
The Honorable Tom Harkin
The Honorable Bob Goodlatte
The Honorable Charles Stenholm
The Honorable Mary Bono
The Honorable Tim Johnson

Attachments: 6