



R-CALF
USA

P.O. Box 30715
Billings, MT 59107
Phone: 406-252-2516
Fax: 406-252-3176
E-mail: r-calfusa@r-calfusa.com
Website: www.rcalf.com

DIRECTORS

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Billings, MT

March 20, 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; 202-205-3941,
donna.reifschneider@usda.gov

Re: Addendum to R-CALF USA's Request for Investigation

Dear Ms. Reifschneider:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) filed a Request for Investigation with your office on March 5, 2003. In its Request for Investigation, R-CALF USA alleged that several packers were engaging in unfair, unjustly discriminatory, and deceptive practices in their efforts to influence the outcome of the USDA's implementation of mandatory country of origin labeling. Further, R-CALF USA requested the Packers and Stockyards Administration to initiate an immediate and thorough investigation of its complaint and to take appropriate actions to prevent further harm from accruing to U.S. producers.

Subsequent to R-CALF USA's filing of its Request for Investigation, the nation's largest beef packer, IBP, sent letters dated March 2003 to U.S. cattle producers requiring U.S. producers to comply with four specific IBP demands.

R-CALF USA alleges that the attached letter from IBP to producers constitutes an unfair, unjustly discriminatory and deceptive practice actionable under the Packers and Stockyards Act (P&S Act). R-CALF USA contends that IBP's March 2003 letter is more egregious than the packer letters R-CALF USA submitted in its previous, March 5, 2003, Request for Investigation.

Specific Complaints

IBP is Distributing False, Misleading and Deceptive Information to U.S. Producers.

IBP correctly tells producers, “As you know, federal law requires that country of origin labeling appear on all meat sold in the U.S. by September 30, 2004.” IBP then willfully provides U.S. producers with false, misleading and deceptive information by stating, “The labels must state where the livestock was born, raised, and slaughtered.” [Emphasis Added.] This statement is false. Neither the Country of Origin Labeling Act (COOL Act) nor the USDA Voluntary Guidelines require a label denoting where livestock was born, raised, and slaughtered.² The only label required in the Act and in the Voluntary Guidelines is a label denoting “the country of origin of the covered commodity.”³ This is not a misinterpretation of the COOL Act or of the Voluntary Guidelines. This is a willful and blatant attempt on the part of IBP to obtain point-of-birth information from all U.S. producers and IBP is deceptively using the COOL Act in its attempt to obtain this information.

IBP is Unfairly Misleading and Threatening U.S. Producers by Deceptively Claiming Authority it Does Not Have.

IBP informs U.S. producers that, “. . . it will [be] necessary for you to provide IBP with verifiable information on the place of birth and every location where livestock was raised for each animal marketed. IBP, inc. [sic] will require you, as our suppliers, to provide us evidence of your recordkeeping program for gathering and maintaining this information.” Neither the COOL Act nor the Voluntary Guidelines give IBP any authority to demand that producers provide IBP with evidence of a producer’s recordkeeping program. The COOL Act authorizes only the Secretary of Agriculture to establish a verifiable recordkeeping audit trail “that will permit the Secretary to verify compliance with this subtitle (including the regulations promulgated under section 284(b))”⁴ Thus, IBP has no current authority to demand that producers disclose personal business records and neither the COOL Act nor the Voluntary Guidelines grant them such authority.

IBP is Unfairly Misleading and Threatening U.S. Producers by Deceptively Demanding that Producers Pay for Services IBP is Not Authorized to Assess and Which Services USDA Does Not Require.

IBP informs U.S. producers that, “The documentation costs – as well as the independent, third-party verification costs – will also be your responsibility.” The COOL Act authorizes only the Secretary of Agriculture to establish a verifiable recordkeeping audit trail “that will permit the Secretary to verify compliance with this subtitle (including the regulations promulgated

² Subtitle D-Country of Origin Labeling, Sec. 282 (a) (1) , see also Federal Register, Vol.67, No. 198, October 11, 2002.

³ *Id.*

⁴ Subtitle D-Country of Origin Labeling, Sec.282 (d).

under section 284(b)).”⁵ IBP has no current authority and is not granted any authority by either the COOL Act or the Voluntary Guidelines to demand that producers pay for services such as independent, third-party verification services that are not required by the Secretary.⁶

IBP is Unfairly, Deceptively, and Unjustly Discriminating Against U.S. Producers By Demanding that U.S. Producers Meet a Series of Costly Conditions Not Imposed On Foreign Producers and Not Required by the COOL Act.

IBP is requiring U.S. producers to meet the following conditions as a prerequisite to marketing cattle to IBP:

1. Provide third-party verified documentation of where the livestock we purchased from you were born and raised.
2. Provide a signed legal affidavit with each load of livestock we purchase from you stating that there is a third-party verified audit trail in place that identifies where the livestock in each load were born and raised.
3. Provide IBP, inc. [sic] access to your records so that we can perform random producer audits as necessary to satisfy our customers, verifying that an accurate audit trail is in place and that it is being verified by an acceptable third-party.
4. Indemnify us for liability we incur that is a result of producer noncompliance.

IBP is not authorized under the COOL Act or the Voluntary Guidelines to impose any of the aforementioned conditions on U.S. producers. Moreover, the Secretary of Agriculture had not asserted such authority for itself in its Voluntary Guidelines. Therefore, the aforementioned conditions are arbitrary and capricious and constitute unauthorized demands upon U.S. producers.

Neither the COOL Act nor the Voluntary Guidelines authorize either the USDA or IBP to impose the aforementioned conditions upon U.S. producers. To the extent that IBP has only imposed the aforementioned, unauthorized conditions upon U.S. producers, and not upon producers of live cattle in Canada, Mexico, or any of the other 15 nations from which IBP may procure beef derived from live cattle, these demands constitute unjust discrimination towards U.S. producers.

U.S. Feeder Cattle Prices Are Responding Negatively to IBP’s Instant Letter, IBP’s January Flyer, and the Other Packer Letters Circulated Within the Marketplace.

U.S. feeder cattle prices, both cash and futures prices, have taken a significant downturn since the aforementioned packers began distributing their letters into the marketplace. As revealed by the attached charts developed by the Livestock Marketing Information Center, U.S.

⁵ Subtitle D-Country of Origin Labeling, Sec.282 (d).

⁶ Neither the COOL Act nor the Voluntary Guidelines require any form of third-party verification

feeder cattle prices have fallen significantly since the beginning of this year while both fed cattle prices and boxed beef prices have otherwise responded more favorably to current supply/demand market signals. Chart 1 shows medium frame No. 1 feeder steer prices falling from the mid \$80's to the high \$70's. Chart 2 shows choice slaughter steer prices rising from about \$75 to \$77 during the same period. Chart 3 shows boxed beef cutout values rising from the low \$120's to the high \$120's during the same period. A competitive market free of anti-competitive forces would not produce these results.

R-CALF USA believes the packers' threats complained of herein and in R-CALF USA's March 5, 2003, complaint, wherein the packers threaten that future livestock values will be heavily discounted or unmarketable if producers do not comply with their arbitrary conditions, are causing significant downward pressure on the feeder cattle market. We, therefore, believe that U.S. producers are being financially injured as a direct result of these threatening packer letters.

Additional Information

As the world's largest beef processor, IBP is taking full advantage of its dominant economic position to coerce U.S. producers into supporting its stated political goal to ". . . either repeal mandatory country of origin labeling for meat altogether or to convert it to a permanent, voluntary program," and it is using unfair, unjustly discriminatory, and deceptive practices to accomplish its political goal, all of which are actionable under the P&S Act.

R-CALF USA's Request

Please understand, Madam Administrator, that R-CALF USA's position supports, defends and promotes the law. Remarkably, a year ago, the United States Congress spoke about an issue of national importance to a segment of the American economy responsible for producing the Nation's meat supply. Now a small concentrated segment of the economy, which processes beef but does not produce it, protests that consumers should not know whether the food they place in their bodies was "made in the USA," while the shirt with its tag at the back of the same person's neck must bear such a label. No act of Congress should be treated so superficially.

America's textile workers take the label "made in the USA" seriously. So do America's cattle producers. Your agency is charged with use of its important oversight and enforcement authority to protect individual U.S. cattle producers from the unfair, unjustly discriminatory, and deceptive practices of the large and powerful packers.

American cattle producers need your agency's protection as they are being deceived, threatened and coerced by IBP and the various packers complained of in R-CALF USA's March 5, 2003, Request for Investigation. These packers are working to undermine the COOL Act passed by Congress and they are unfairly and unjustly coercing American cattle producers to assist them in this deceitful endeavor.

R-CALF USA urges the Packers and Stockyards Administration to initiate an immediate investigation to determine whether the aforementioned packer letters have had the effect of either causing cash and futures prices for U.S. feeder cattle to fall, or if the letters have put downward pressure on the U.S. feeder cattle market.

R-CALF USA urges the Packers and Stockyards Administration to immediately and publicly issue a Cease and Desist Order against the aforementioned packers. In addition, every cattle producer who received one the aforementioned packer letters should receive a letter from you, Madam Administrator, explaining that you have intervened on their behalf to ensure that their interests are protected as required by the P&S Act. Please inform me as soon as possible regarding the specific actions the Packers and Stockyards Administration will undertake pursuant to this request.

Sincerely,



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: IBP Letter
Charts – 3



March 2003

Dear Producer:

As you know, federal law requires that country of origin labeling appear on all retail meats sold in the U.S. by September 30, 2004. The labels must state where the livestock was born, raised and slaughtered. USDA has stated self-certification will not be allowed, nor will the government step in to certify where livestock were born or raised. Retailers have also stated they will require verifiable records, and they do not plan to accept self-certification. Thus the responsibility for accurate documentation of these required facts rests exclusively on the livestock, meat and retail industries.

IBP, inc.'s (part of the Tyson Food family) major retail customers are already notifying us that we -- and our suppliers -- must have the recordkeeping systems in place this year to be able to comply with next year's mandate. Here is what our retail customers want us to do:

1. Sticker all covered commodities with country of origin information that complies with the law and USDA regulations. Provide enough signage to ensure one sign for each retail display in every shipment of product that cannot bear a label.
2. Contract to maintain records and a verifiable audit trail to establish the accuracy of the country of origin information that retailers receive from packers for covered commodities.
3. Indemnify retailers for any fines or other costs they incur as a result of the country of origin information that packers provide or fail to provide.
4. Segregate all covered commodities by country of origin throughout the production chain until they are delivered to the retailer, and maintain documentation verifying the efficacy of the packer's segregation plan.
5. Audits. Provide retailers with the results of an audit conducted by USDA or another certified independent third party to establish that packers have the systems in place to ensure the accuracy of the country of origin information that they provide retailers.

In order to meet these customer requirements, it will necessary for you to provide IBP with verifiable information on the place of birth and every location where livestock was raised for each animal marketed. IBP, inc. will require you, as our suppliers, to provide us evidence of your recordkeeping program for gathering and maintaining this information. Only you can document and verify the born-in, raised-in components of the law. The documentation costs -- as well as the independent, third-party, verification costs -- will also be your responsibility. Specifically, we will require you to:

1. Provide third-party verified documentation of where the livestock we purchase from you were born and raised.
2. Provide a signed legal affidavit with each load of livestock we purchase from you stating that there is a third-party verified audit trail in place that identifies where the livestock in each load were born and raised.
3. Provide IBP, inc. access to your records so that we can perform random producer audits as necessary to satisfy our customers, verifying that an accurate audit trail is in place and that it is being verified by an acceptable third-party.
4. Indemnify us for liability we incur that is a result of producer noncompliance.

For those of you raising market cattle or hogs you intend to sell to a packer after September 30, 2004, you should begin your documentation on all calves immediately and on all hogs no later than November 2003.

Many in the retail, meat and producer communities are concerned about the costs, benefits, legal and logistical challenges posed by this new law. As a result, there is a united industry effort to either repeal mandatory country of origin labeling for meat altogether or to convert it to a permanent, voluntary program. Either way, we need the producer community's help. If you share these concerns, we urge you to contact your Senators or member of Congress, as well as your trade associations, and express your opinion.

Furthermore, we urge to you share your thoughts with your fellow producers and USDA by attending one of the USDA "listening sessions" on this issue, expected to occur this coming spring. USDA is charged with writing the regulations for the final, mandatory country of origin labeling law, and they need to hear from all affected parties. If you share our concerns, we hope you will attend any meeting in your area and speak out.

We will attempt to contact you within the next few months to learn about your proposed recordkeeping plans. In the meantime, if you have questions, please feel free to contact one of ~~at 1-800-416-2272 and we will try to help you. If we are not available, you may ask for Bob~~ Hansen in Hog Procurement, John Gerber in Cattle Procurement or John DeWitt in Cattle Procurement.

Sincerely,



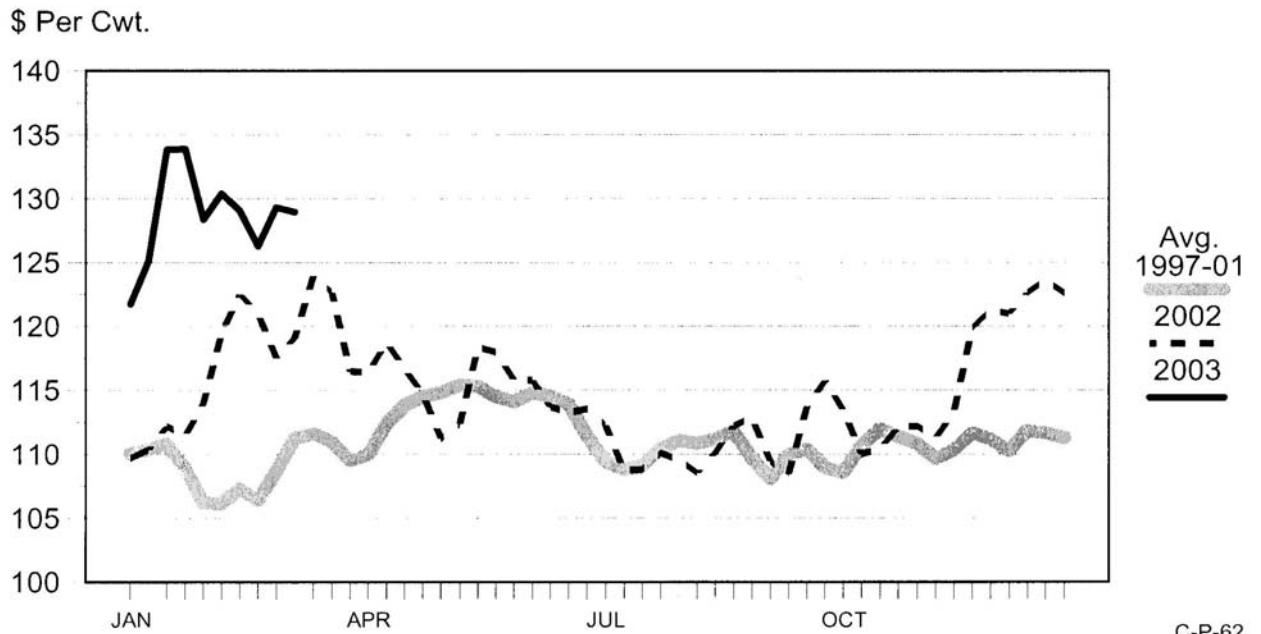
Bruce Bass
Vice President
Cattle Procurement



Gary Machan
Vice President
Hog Procurement

BOXED BEEF CUTOUT VALUE

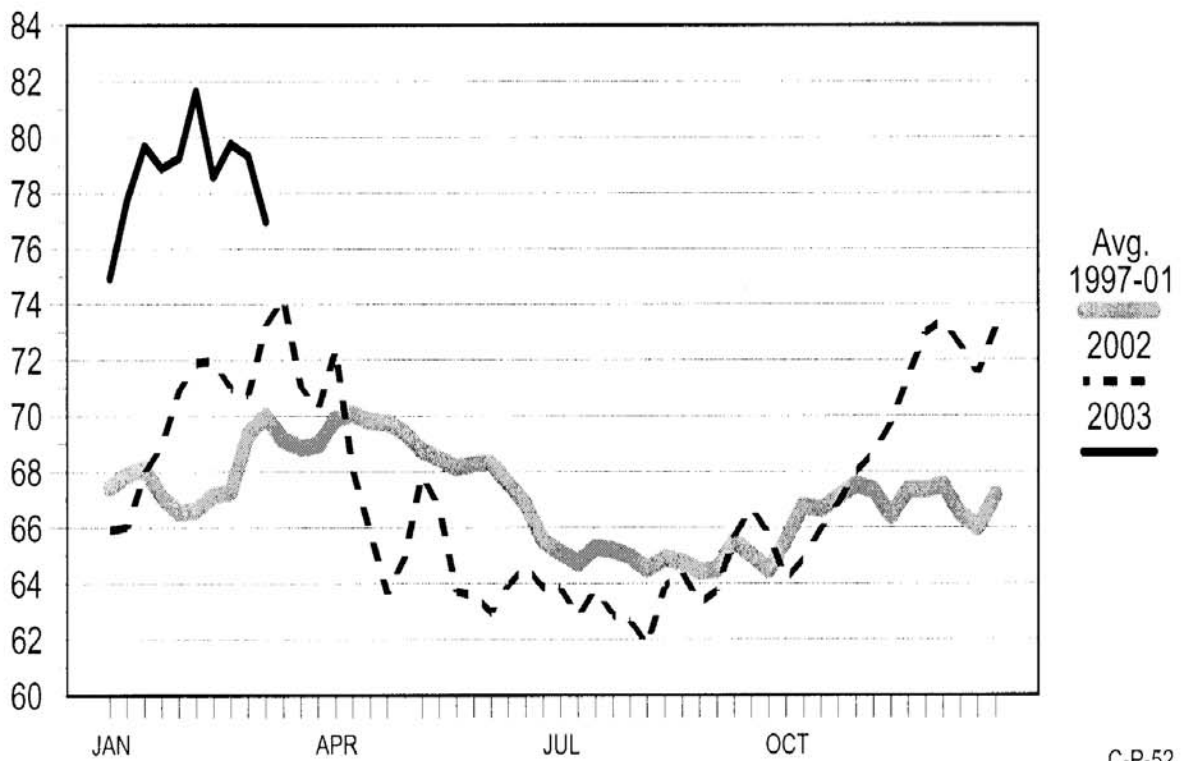
Choice 550-700 Lbs. Carcass, Weekly



CHOICE SLAUGHTER STEER PRICES

Southern Plains, Weekly

\$ Per Cwt.



MED. FRAME #1 FEEDER STEER PRICES 700-800 Lbs., Southern Plains, Weekly

