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May 31, 2007

The Honorable Rosa DeLauro  
U.S. House of Representatives  
2262 Rayburn House Office Building  
Washington, DC 20515

The Honorable Herb Kohl  
U.S. Senate  
330 Hart Senate Office Building  
Washington, DC 20510

Re: Country of Origin Labeling

Dear Representative DeLauro and Senator Kohl:

The May 24, 2007 letter sent to you by the American Meat Institute (AMI) in rebuttal to the May 21, 2007 letter sent to you by R-CALF USA and other supporters of mandatory country-of-origin labeling (COOL) provides you with a unique opportunity to bare the bones of the COOL issue.

In respect for your busy schedules, I will point out only four of the most decisively false claims made by the AMI in its letter to you and other members of Congress.

First, the AMI claims that “[t]o assert that any country-of-origin labeling regime would have an impact on food safety or the integrity of a food product is absurd.” This claim is decisively false as proven by the current United States food safety standard that requires all beef imported from Uruguay to be certified as originating from cattle that were born, raised, and slaughtered in Uruguay – the very same standard adopted by the COOL law for food products eligible to bear the USA label. The United States Code of Federal Regulations at 9 CFR state:

**§ 94.22 Restrictions on importation of beef from Uruguay.**

Notwithstanding any other provisions of this part, fresh (chilled or frozen) beef from Uruguay may be exported to the United States under the following conditions:

- (a) The meat is beef from bovines that have been born, raised, and slaughtered in Uruguay . . .
- (j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

Thus, the transmittal of origin information, as required by the COOL law, is a practiced and proven means of ensuring food safety and food product integrity. Only with origin information can verification be made that the final food product underwent the food production practices of a

particular country's food production regime. Such verification simply cannot be made through mere inspection of the final food product, either by official inspectors or by consumers.

Closer to home, country-of-origin labeling could have benefited both food safety and the integrity of U.S.-produced beef when the Canadian-origin cow slaughtered in Mabton, Washington, in 2003 was diagnosed with bovine spongiform encephalopathy (BSE). Because the beef from that cow entered the human food chain before the disease was detected, a COOL label would have allowed consumers to avoid Canadian-labeled beef, rather than to avoid all beef, while the Food Safety Inspection Service was conducting its recall of the 10,410 pounds of raw, undifferentiated beef thought to include meat derived from the infected cow.<sup>1</sup>

The recent melamine contamination problem further demonstrates that food production practices within a particular country impact food safety and food product integrity. Only by transmitting information as to origin can consumers distinguish food products based on the particular production regime to which the food product was subjected.

Second, the AMI claims that, "[c]urrently, there are 34 countries eligible to ship meat products to the United States and each of those countries food safety inspection systems must be certified by USDA to be equivalent to the federal food safety inspection system in the U.S. Plants shipping product to the U.S. from those countries' must meet the same food safety requirements as are met in domestic federally inspected plants." While this claim is accurate in terms of what the current law requires, it was proven decisively false in practice. A report issued by the Office of Inspector General (OIG) in December 2005 revealed that Canadian plants were allowed to circumvent U.S. equivalency requirements for nearly two years:

In July 2003, FSIS found that Canadian inspection officials were not enforcing pathogen reduction and HACCP system regulations. These same types of concerns were identified again in June 2005, almost 2 years later. However, as of September 2005, FSIS has not made a determination whether the identified concerns are serious enough to limit the import of Canadian products. As a result, FSIS has allowed the importation of almost 700 million pounds of meat and poultry from plants that did not receive daily inspection, a requirement for all U.S. meat and poultry plants. Additionally, FSIS allowed the import of over 261 million pounds of ready-to-eat meat and poultry that had not been subjected to finished product testing for *Listeria monocytogenes*, as is required of U.S. plants.<sup>2</sup>

Thus, there is a disparity between what the food safety inspection system is supposed to require of foreign plants that ship products to the U.S. and what is actually practiced. The result,

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<sup>1</sup> See Transcript of Tele-News Conference Briefing Updating Presumptive Positive BSE Case, Washington, D.C., December 24, 2003, available at [http://www.usda.gov/wps/portal/!ut/p/\\_s.7\\_0\\_A/7\\_0\\_10B/.cmd/ad/.ar/sa.retrievecontent/.c/6\\_2\\_1UH/.ce/7\\_2\\_5JM/.p/5\\_2\\_4TQ/.d/3/\\_th/J\\_2\\_9D/\\_s.7\\_0\\_A/7\\_0\\_10B?PC\\_7\\_2\\_5JM\\_contentid=2003%2F12%2F0435.html&PC\\_7\\_2\\_5JM\\_parentnav=TRANSCRIPTS\\_SPEECHES&PC\\_7\\_2\\_5JM\\_navid=TRANSCRIPT#7\\_2\\_5JM](http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_10B/.cmd/ad/.ar/sa.retrievecontent/.c/6_2_1UH/.ce/7_2_5JM/.p/5_2_4TQ/.d/3/_th/J_2_9D/_s.7_0_A/7_0_10B?PC_7_2_5JM_contentid=2003%2F12%2F0435.html&PC_7_2_5JM_parentnav=TRANSCRIPTS_SPEECHES&PC_7_2_5JM_navid=TRANSCRIPT#7_2_5JM)

<sup>2</sup> Audit Report Food Safety and Inspection Service Assessment of the Equivalence of the Canadian Inspection System, U.S. Department of Agriculture, Office of Inspector General, Northeast Region, Report No. 24601-05-Hy, December 2005, at 4, hereafter referred to as "OIG Audit Report."

according to the OIG report, is that “FSIS did not institute compensating controls to ensure that public health was not compromised while deficiencies were present.”<sup>3</sup> Clearly, a country-of-origin label would afford consumers with the ability to achieve an additional level of protection against breaches in food safety inspection systems that operate in plants in foreign countries.

Third, the AMI claims that “[t]hese groups [R-CALF USA and other COOL supporters] have, for too long, been mischaracterizing the mandatory labeling requirements that currently exist in this country. . . FSIS has had, for many years, mandatory country-of-origin labeling requirements for red meat that enters the U.S.” While this claim is also accurate in terms of what the law requires, it too was proven decisively false in practice. A report issued by the General Accountability Office in August 2003 revealed that country-of-origin information was not being maintained on imported meat as required by the Tariff Act of 1930. The GAO found:

In our January 2000 report on the potential implications of country-of-origin labeling for muscle cuts of beef and lamb, we found that meat packers and processors did not routinely maintain country-of-origin information on imported meat as required under the Tariff Act. We found that this was due in part to the fact that the Bureau of Customs and Border Protection does not generally enforce the act’s labeling requirement for meat after inspection at the border. We also said it might be due to the fact that USDA has given meat packers and processors different guidance on the need to maintain country-of-origin information. More specifically, USDA, which administers the Federal Meat Inspection Act, requires that the country of origin appear in English on all carcasses or containers of meat entering the United States. However, unlike Tariff Act rules, which require an imported product to maintain its import identity through to the ultimate purchaser, USDA considers imported meat to be part of the domestic meat supply once it passes a USDA safety inspection. Any subsequent cutting, blending, or grinding may be done without maintaining country-of-origin identity. Thus, grocery stores may not know whether the meat they sell is domestic or imported, let alone the country of origin of a particular package of meat. In fact, a package of fresh ground beef that carries a USDA inspection sticker may contain meat from domestic or imported cattle, or both.<sup>4</sup>

Thus, again, there is a disparity between what current laws require and what is actually being practiced. The key here is that the 2002 COOL law remedies the problem discussed above whereby country-of-origin labels are not being properly passed on to consumers by meat packers, processors, and retailers. The 2002 COOL law expressly requires that “a retailer of a covered commodity shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country of origin of the covered commodity.”<sup>5</sup>

Fourth, the AMI claims that the 2002 COOL law is “WTO and NAFTA non-compliant.” This claim is decisively false. In fact, the AMI, itself, discredits this claim by stating that that the

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<sup>3</sup> OIG Audit Report at 4.

<sup>4</sup> Country-of-Origin Labeling, Opportunities for USDA and Industry to Implement Challenging Aspects of the New Law, United States General Accounting Office, GAO-03-780, August 2003, at 10.

<sup>5</sup> 7 U.S.C. § 1638a(1).

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“FSIS has had, for many years, mandatory country-of-origin labeling requirements for red meat that enters the U.S.” As stated above, the 2002 COOL law merely preserves this label for the benefit of consumers after imported product enters the U.S., and it requires that domestic products be similarly labeled.

Moreover, under Article IX of the GATT 1994, countries are allowed to require marks of origin on goods imported from any other WTO Member. The WTO Agreement on Rules of Origin even prescribe how the origin for the mark of origin of an imported product is to be determined: the origin is either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out. (Agreement on Rules of Origin, Article 3(b).) And, the rules of origin that a Member applies to imports and exports should not be more stringent than the rules of origin they apply to determine whether or not a good is domestic. (Agreement on Rules of Origin, Article 3(c).) The 2002 COOL law comports to these requirements. The AMI provides no support for its claim that the COOL law is WTO and NAFTA non-compliant because its claim is baseless.

In closing, I would like to answer the question posed by the AMI: “If mandatory county-of-origin labeling were truly a food safety issue, should not all food products be covered throughout commerce?” The answer is yes, but for more than just food safety reasons. COOL provides consumers with basic information about where their food is produced, and consumers deserve this information to use as they see fit.

After the current 2002 COOL law is implemented, R-CALF USA would support new legislation to capture the food products not already covered in this initial law. Based on the level of opposition from the packers, processors, and retailers against the current law, however, we would expect it to take a long time to include any additional products under the requirement of country-of-origin labeling.

I hope you find the foregoing information useful and I urge you to take steps to implement the 2002 COOL law as quickly as possible. Please contact R-CALF USA at 406-252-2516 if you would like any additional information.

Sincerely,

A handwritten signature in cursive script that reads "R. M. Thornsberry" followed by a stylized flourish.

R. M. Thornsberry, D.V.M.

President, R-CALF USA Board of Directors

Cc: House Committee on Agriculture  
House Committee on Appropriations  
Senate Committee on Agriculture, Nutrition, and Forestry  
Senate Committee on Appropriations