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May 23, 2003

The Honorable Tom Ridge
Secretary
United States Department of Homeland Security
3801 Nebraska Ave., NW
Washington, DC 20393

The Honorable John W. Snow
Secretary
United States Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable Tommy G. Thompson
Secretary
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

The Honorable Ann Veneman
Secretary
United States Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Sent Via Facsimile and e-mail

Re: Request for Removal of Livestock from J-List

Dear Secretary Ridge, Secretary Snow, Secretary Thompson, and Secretary Veneman:

The United States PL 107-9 Federal Inter-agency Working Group (Working Group) completed its Final Report on Bovine Spongiform Encephalopathy (BSE) and Foot

and Mouth Disease (FMD) assessment, prevention and control in January 2003.¹ This report relied heavily upon the comprehensive BSE risk assessment completed in November 2001 by the Harvard University Center for Risk Analysis.² The Harvard risk analysis presumed that imports of live cattle from Canada and Mexico are “extremely unlikely to pose a risk of introducing BSE to the U.S.”³

The May 20, 2003, confirmation of a BSE case in a native Canadian cow nullifies the reliability of the Harvard study’s risk presumption entirely. The Canadian cattle herd now poses a direct risk of introducing BSE to the U.S. However, the Working Group’s previous reliance upon the Harvard presumption raises the new concern that insufficient attention has been paid to safeguarding the United States from the cattle herds of Canada, Mexico, and elsewhere.

The closure of the United State’s border from imports of ruminants and ruminant products from Canada is a measured response to today’s known risk. It is “measured” because of the tremendous economic impact a single case of BSE may have on the U.S. cattle industry. The Working Group stated:

Further, the Harvard Center for Risk Analysis concluded that BSE in the United States is extremely unlikely either to occur or to follow the extensive pattern of spread experienced in the United Kingdom. Nevertheless, the economic consequences from even one confirmed case of BSE in the United States could easily exceed the costs incurred, thus far, in the United Kingdom because the U.S. population is five times the U.K. population, the U.S. beef sector is ten times the size of the U.K. beef sector, and U.S. beef exports are much greater than pre-BSE beef exports from the United Kingdom.⁴ (Emphasis in the original.)

The estimated cost of the U.K. BSE outbreak was over \$700 million.⁵ However, the U.K. had a concurrent outbreak of FMD with an estimated economic impact of \$3.6 to \$11.6 billion, and the Working Group found the specific costs associated with the two diseases difficult to separate.⁶

Although the Working Group focused on three primary goals, each of which are directly impacted by the degree to which a known risk is present,⁷ it did not recommend a strategy with

¹ Animal Disease Risk Assessment, Prevention, and Control Act of 2001 (PL 107-9), Final Report, Federal Inter-agency working group, January 2003, available at http://www.aphis.usda.gov/lpa/pubs/pubs/PL107-9_1-03.pdf.

² Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States, Harvard Center for Risk Analysis, November 26, 2001, available at <http://www.aphis.usda.gov/lpa/issues/bse/bse-riskassmt.html>.

³ Id. at 22.

⁴ Animal Disease Risk Assessment, Prevention, and Control Act of 2001 (PL 107-9), Final Report, Federal Inter-agency working group, January 2003, at Appendix 6, 6.1, available at http://www.aphis.usda.gov/lpa/pubs/pubs/PL107-9_1-03.pdf.

⁵ Id. at Appendix 6, 6-35.

⁶ Id. at Appendix 6, 6-4.

⁷ Id. at iii. The Working Group’s three primary goals were 1) Prevent the agent of BSE from entering the United States and infecting U.S. cattle; 2) Prevent the amplification of the agent of BSE throughout the U.S. cattle herd, were it to penetrate the primary firewall at the borders and infect U.S. cattle; and 3) Prevent the exposure of Americans to the agent of BSE via food and other products that are fully or partially of bovine derivation.

which to effectively address today's known risk, presumably because it was influenced by Harvard's presumption that the risk we now face was unlikely to materialize. Specifically, the Working Group did not include any recommendations for tracking, tracing, labeling or otherwise identifying imported livestock following their entry into the United States food chain and subsequent distribution to U.S. consumers.⁸ We believe this omission represents a major deficiency in the United State's overall strategy to protect United States consumers and the United States cattle industry from BSE.

USDA stated in November 2001 that it would announce a risk assessment replete with "what if" scenarios for BSE.⁹ Two obvious "what if" questions arising from the specific May 20, 2003, BSE case is whether any of the cow's progeny had entered the United States and whether any cattle from the infected herd had likewise entered the United States prior to the BSE confirmation. Under both of these "what if" scenarios, there would be an obvious need to have a mechanism in place to identify, segregate or even recall live cattle originating from Canada.

Under 19 U.S.C. § 1304(a) the United States generally requires the marking of all products that enter its borders to be marked as to country of origin. Thereafter the statute sets down a number of exceptions to this general requirement and states that the Sec. of Treasury has the power to exclude marking requirements for certain classes of merchandise.¹⁰ Pursuant to regulation the Treasury Secretary has excluded all livestock from this general country of origin

⁸ Id. at iii-iv. The Working Group recommended six improvements, none of which pertain to the traceability of products once they have entered the United States.

⁹ BSE Risk Assessment, USDA, November 2001.

¹⁰ 19 U.S.C. 1304(a):

Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury **may** by regulations—

...

(3) Authorize the exception of any article from the requirements of marking if—

...

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: Provided, That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of sections 1351, 1352, 1353, 1354 of this title, as extended;

marking requirement. 19 C.F.R. § 134.33 (this is called the “J-list”). Removing livestock from the J-list would cause livestock imports to be marked.¹¹

We understand that livestock imported for immediate slaughter need not be marked under the existing statutory permissive exceptions even if not on the J-List. For example, another exception to the United States’ general marking requirement provides that if the ultimate purchaser knows the country of origin of the imported article then the article need not be marked. *See* 19 U.S.C. § 1304(a)(3)(H).

Trade data from the USDA’s Foreign Agriculture Service (FAS) website shows the following.¹² A total of 2.5 million live cattle were imported into the United States in 2002, overwhelmingly from Canada and Mexico (four head were imported from Australia). Of those cattle, 1.02 million were imported from Canada and 407 were imported from Mexico for direct slaughter by packers who knew the origins of the cattle under existing law as stated above. Thus in 2002, there were approximately 1.48 million head of live cattle imports that would be subject to country of origin markings if livestock were removed from the J-list.

The Country of Origin Labeling (COOL) provisions in the 2002 Farm Bill (hereinafter “Labeling Legislation”) requires retail sellers of beef, pork, and lamb, along with several other food commodities, to inform consumers of the country of origin of certain commodities.¹³ The Labeling Legislation is to be effective on September 30, 2004.¹⁴ The USDA is currently challenged to establish a means of identifying the origins of animals at the point of United States slaughter to facilitate the labeling of the resulting meat products for retail sale. Removing livestock from the J-List and, consequently, requiring marks of origin on all imported animals would effectively solve USDA’s current challenge in implementing the Labeling Legislation.

Requiring all imported livestock to be marked with their country of origin would also assist in achieving the objectives of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Such markings would enable the FDA and other agencies to track imported livestock from specific countries beyond the first purchaser or importer should such livestock be implicated in future emergencies. This tracking ability would be accomplished without imposing an economic burden on those who handle imported livestock prior to slaughter.

Requiring all imported livestock to be marked with their country of origin would strengthen the United States’ ability to both safeguard the food supply and maintain consumer confidence in the United States food system. It will also strengthen the United States ability to

¹¹ As a note, under the Homeland Security Act although the Customs Service transferred into the Department of Homeland Security from the Treasury Department, the Secretary of Treasury continues to retain authority over all “customs revenue functions.” Sec.412(a) of the Homeland Security Act of 2002. Included as a “revenue function” are all functions performed by personnel who make country of origin determinations. *Id.* at Sec. 415. Hence it appears that the Secretary of the Treasury still has control over regulations relating to marking.

¹² See, search engine at USDA-FAS website, <http://www.fas.usda.gov/ustrade/USTImHS10.asp?QI=>

¹³ Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 282(a)(1).

¹⁴ *Id.* at § 285.

safeguard the United States cattle herd. In addition, it would facilitate the implementation of the Labeling Legislation designed to afford consumers with information as to where the food they purchase originates.

For the reasons stated above, we strongly encourage you to consider removing all livestock (animals intended for human consumption) from the J-List as soon as possible. We look forward to learning how we may help your respective Agencies accomplish this important task.

Sincerely,

A handwritten signature in blue ink that reads "Leo R. McDonald, Jr." The signature is written in a cursive style with a large initial 'L' and 'M'.

Leo R. McDonald, Jr.
President

Cc: Members of Congress