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Re: R-CALF USA's Comments in Docket No. FSIS-2021-0018: NCBA Product of USA Petition – Final.

Dear Sir or Madam:

The Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) appreciates this opportunity to comment on Docket No. FSIS-2021-0018: NCBA Product of USA Petition – Final, (hereafter "NCBA petition") posted by the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) on June 16, 2021.

R-CALF USA is the largest trade association that exclusively represents United States cattle farmers and ranchers within the multi-segmented beef supply chain. Its thousands of members reside in 45 states and include cow-calf operators, cattle backgrounders and stockers, and feedlot owners, as well as sheep producers.

The NCBA petition requests that FSIS initiate a rulemaking process to amend 9 CFR § 317.8(b) to make a "Processed in the USA" label on meat products eligible for generic approval. Though not expressly stated, the NCBA petition implies that meat from all live animals slaughtered in the United States, regardless of whether those animals are of foreign or domestic origin, would be eligible for the "Processed in the USA" label. The NCBA suggests this would permit consumers to distinguish "genuine American product."[1]

The NCBA has long held that once foreign cattle are imported into the United States, they should be deemed American cattle.[2] Indeed, the NCBA has further held that all beef is simply beef (*i.e.*, all beef is equal) regardless of its origin as evidenced by its statement: "In short, beef is beef, whether the cattle were born in Montana, Manitoba, or Mazatlán."[3] The irony here is that this is precisely the position the FSIS held for decades related to foreign beef – deeming foreign beef a domestic product

[1] NCBA petition, at 5.
[2] *See*, e.g., NCBA pre-hearing statement before the U.S. International Trade Commission in investigation No. TPA-105-003, Oct. 29, 2018 (stating, "Historically, this small number of imported cattle from Mexico and Canada supplemented shortages in our herd and helped our feed yards and packing facilities run at optimal levels. U.S. producers imported these cattle, invested American resources in these cattle, and they were slaughtered as American cattle, returning value to the U.S. producers who invested in them.").
[3] First Amended Complaint, ¶ 34, *Am. Meat Inst., National Cattlemen's Beef Assoc. et al., v. U.S. Dep't of Ag.*, No. 13-1033, 2013 WL 4786371 (D.D.C. July 23, 2013); *see also* The Fallacy of COOL, Scott George, NCBA President, May 30, 2013, available at https://www.ncba.org/ourviews2.aspx?NewsID=2942 (NCBA arguing that consumers should not regard "feeder cattle from Canada or Mexico . . . any different than we do a steer born, raised and slaughtered right here at home.").

once it enters U.S. commerce.[4] The FSIS made clear that "[o]nce product offered for entry has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been 'entered' into the United States, and therefore, is the regulatory equivalent of domestic product."[5] But now the FSIS acknowledges the application of this inappropriate standard of comingling imported and domestic product "may be misleading to consumers."[6] Even the NCBA acknowledges it is at least "unintentionally misleading."[7]

But the NCBA petition attempts to preserve the ability of importers to commingle foreign-origin beef with domestic-origin beef simply by substituting the FSIS' established practice with a standard that would achieve the same result: the beef from all cattle, whatever the origin, and regardless of the length of time they were raised in the U.S., could be commingled with domestic-origin beef under the "Processed in the USA" label provided they were ultimately slaughtered in the United States.

R-CALF USA strongly opposes the NCBA petition that merely substitutes one inappropriate standard for another, and yet accomplishes the same inappropriate objective of allowing beef derived from foreign cattle to bear what is essentially the U.S. cattle producer's exclusive trademark – "United States of America" or "USA".

The term, "United States of America" or "USA" (hereafter "USA") when affixed to beef products, regardless of any accompanying language, is essentially a trademark name or geographical indication (GI) for United States cattle producers and the beef produced from their cattle. The "USA" name itself on a beef product corresponds to the United States of America as the product's specific origin; it is an indication that the product was produced under the safest, most stringent production practices in the world; and it is associated with the good names and reputations of United States cattle producers, their exceptional animal husbandry practices, their cattle, and their resultant beef. It is widely known that beef labeled as "USA" beef is coveted the world over.

Indeed, as the NCBA petition itself acknowledges, the use of "USA" and accompanying flag symbol on a beef product "encourage[s] a "Buy-America" sentiment, *even on a beef product labeled as a product of a foreign country*.[8] This is a powerful indication that the "USA" name affixed to a beef products supersedes any ancillary markings and denotes the source of the product, the geographic location of the cattle producers whose cattle produced the beef product, and it conjures indications of superior quality characteristics and an unparalleled reputation.

The NCBA petition attempts to capitalize on the fact that using "USA" in conjunction with any ancillary language – in this case "Processed in the" – on any beef product will accord that product an advantage in the domestic market. But this invites an obviously false interpretation by those many consumers looking to buy USA born, raised and harvested/processed beef.

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[4] 9 C.F.R. § 327.18(a) (stating, "All [meat] products, after entry into the United States, shall be deemed and treated as domestic products. . ."); *see also*, Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling, Joel L. Greene, Congressional Research Service, Mar. 8, 2016, at 31 (stating, However, once these non-retail items have entered the country, the federal meat inspection law has deemed them to be domestic products.").
[5] 54 Fed. Reg., at 41,045, (October 5, 1989).
[6] Letter from Rachel A. Edelstein, Acting Assistant Administrator, Office of Policy & Program Development, Food Safety & Inspection Service, USDA, to Elizabeth Drake, Schagrin Assocs. (Mar. 26, 2020).
[7] NCBA Petition, at 5.
[8] *See ibid*; *see also id*., at NCBA Addendum 2 (revealing the beef product is labeled "Product of Uruguay.").

Allowing the "USA" name or symbol – which in and of itself corresponds to origin, quality, and reputation – on any beef product produced from animals merely slaughtered in the United States would create the false impression that where the animal was processed corresponds to the resultant products' origin, quality and reputation, even though those particular attributes were developed over about a 15-month, 2-year, or even longer period while the animal was born and raised in its respective country.

As a result, the NCBA petition undermines the interests of U.S. cattle farmers and ranchers who want to retain and capitalize on their hard-earned good reputations in the marketplace, as well as consumers who deserve to know which country the beef product's origin, quality and reputation is attributed to. And that certainly is not the country where the animal was merely slaughtered.

For the foregoing reasons, R-CALF USA urges the FSIS to deny the NCBA's Product of USA Petition.

Sincerely,

Bill Bullard, CEO