

September 9, 2024

The Honorable Katherine Tai  
U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20508

TRANSMITTED ELECTRONICALLY

**Re: Seeking your help with the WTO Appellate Body's 2015 anti-consumer, anti-rancher, anti-beef, anti-domestic supply chain decision.**

Dear Ambassador Tai:

We, the undersigned organizations, were heartened to read your May 28, 2024 article in the Financial Times.<sup>1</sup> You wrote that your office was committed to “breaking out of the technocrats’ bubble to meet working people where they are, redesigning the incentive structure so that communities are not pitted against each other” and that your office would draw “on people’s real experiences to best formulate trade rules that support such collective resilience, including on supply chains.”

This is precisely the help that ranchers and consumers need and consistent with your comments, we respectfully request that you issue a statement to lawmakers regarding your office’s position as to whether the United States has the authority to reinstate mandatory country of origin labeling for beef in the face of the substantive trade reforms you are seeking, including at the World Trade Organization.

The U.S. cattle industry is the single largest segment of American agriculture generating approximately \$77.5 billion annually in cash receipts that are vital to the wellbeing of rural American communities.<sup>2</sup> However, the U.S. cattle industry is shrinking and shrinking fast, in terms of its number of participants, number of cattle, and number of marketing outlets (e.g., feedlots and packing plants). During the past four decades, approximately 665,000 beef cattle operations have exited the industry, with the latest 2022 census showing that nearly 107,000 have exited during just the previous five years. The inventory of cattle and calves in the U.S. has fallen to the lowest level in over seven decades,<sup>3</sup> and over 75% of our nations smaller, environment-friendly feedlot operations have disappeared.

Congress’ effort to impart supply chain transparency for cattle producers and consumers, which helps facilitate the resiliency you seek, was thwarted in 2015 when the WTO Appellate Body issued an adverse decision regarding the labeling of beef per Section 281 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1638).<sup>4</sup>

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<sup>1</sup> Amb. Katherine Tai, “Trade must transform its role in the social contract”, Financial Times, May 28, 2024, available at <https://www.ft.com/content/91f22f38-6595-4b08-bebe-948c628fa736>

<sup>2</sup> See Cash Receipts by Commodity, U.S. Dept. of Agriculture, Economic Research Service (ERS), (based on past 5-year average cash receipts (2019-2023F) for cattle and calves), available at <https://data.ers.usda.gov/reports.aspx?ID=17845>.

<sup>3</sup> See Daily Livestock Report, CME Group, Vol. 22, No. 22, February 1, 2024 (explaining that cattle and calves inventory is lowest level since 1951), available at [newsletter@dailylivestockreport.com](mailto:newsletter@dailylivestockreport.com).

<sup>4</sup> United States - Certain Country of Origin Labelling (COOL) Requirements Recourse to Article 21.5 of the DSU by Canada and Mexico (WT/DS384, WT/DS386)

Data from the U.S. Department of Agriculture reveal that beef and cattle imports have been penetrating the U.S. market at a generally increased rate since 2011; and by 2023, the volume of those imports reached a historical high. The USDA estimated that roughly 18% of U.S. beef supplies were derived from imported beef and beef produced from foreign cattle from 2000-2010.<sup>5</sup> While the USDA has not updated its estimate, the average annual volume of imported beef and cattle penetrating the U.S. market has increased substantially since 2010. And while beef and cattle imports reached record volumes in 2023, Already in 2024, beef/veal imports and live cattle imports from January – July are over 20% and 22%, respectively, above the same period in record-setting 2023.<sup>6</sup>

Presently, neither U.S. consumers nor U.S. cattle producers have any control or influence over the volume of foreign beef or beef from foreign cattle entering their domestic market. This is because foreign beef and beef from foreign cattle remain indistinguishable from domestic beef sold in America’s retail grocery store meat cases. The result is that global beef packers have exclusive discretion regarding from which country(s) they will source their cattle and beef to satisfy America’s generic demand for beef.

It is not surprising that while the complainant countries petitioning the WTO were Canada and Mexico, the actors driving that WTO action were the four concentrated, global meatpacking firms that monopolize the entire North American beef market: Tyson Foods, JBS S.A. (JBS), Cargill and National Beef, “owning 85 per cent of the Canadian market and 80 percent of the American market.”<sup>7</sup>

Much like with the USMCA automobile parts panel decision, Canada and Mexico were driven to litigate not in the interests of their countries’ supply chains, workers, or consumers, but by a few deep-pocketed global enterprises seeking to minimize their input costs at the expense of a North American supply chain and consumers globally.

Despite some misleading rhetoric from the global packers, there are two separate and distinct industries that comprise the beef supply chain: (1) the cattle industry, the supplier of live cattle; and (2) the packers, the buyer of live cattle and manufacturer and seller of beef.

The WTO litigation was driven by global packers. By avoiding disclosure of beef’s origins thanks to the WTO ruling, global packers can source from anywhere and comingle cattle as they see fit. While this may provide them with some small margin improvement, it comes at a tremendous cost to responsible ranchers, who are further thrown into direct competition with the lowest labor and environmental standards globally. And consumers are now left with undifferentiated beef.

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<sup>5</sup> U.S. red meat production from foreign-born animals, USDA ERS, Michael J. McConnell et al., (“Over the last decade, imports of meat into the United States and meat produced in the United States from foreign livestock have accounted for roughly 18 percent (beef) and 10 percent (pork) of US beef and pork supplies.”), available at [\(PDF\) U.S. red meat production from foreign-born animals \(researchgate.net\)](#).

<sup>6</sup> [USDA ERS - Livestock and Meat International Trade Data](#)

<sup>7</sup> Clarrie Feinstein, “Lawsuit alleges Canada’s four largest meat packers colluded to raise beef prices for years”, THE TORONTO STAR, March 29, 2022, available at [https://www.thestar.com/business/lawsuit-alleges-canada-s-four-largest-meat-packers-colluded-to-raise-beef-prices-for-years/article\\_bf6b46d1-fc05-56f4-b7f3-c4ddf9e22e7d.html](https://www.thestar.com/business/lawsuit-alleges-canada-s-four-largest-meat-packers-colluded-to-raise-beef-prices-for-years/article_bf6b46d1-fc05-56f4-b7f3-c4ddf9e22e7d.html). See also Phil Milford and Jen Skerritt, “Meat Producers Sue Over Country-of-Origin Labeling Rules”, BLOOMBERG, July 9, 2013, available at <https://www.bloomberg.com/news/articles/2013-07-09/meat-industry-groups-sue-u-s-over-country-of-origin-labeling>

Just last year, U.S. Senator Ron Wyden held a damning hearing on cattle supply chains and Amazon deforestation. In his opening statement, speaking of JBS, Senator Wyden wrote that JBS was “a multinational meat producer turning a blind eye as parts of its supply chain burn down the Amazon, push the world toward climate catastrophe, and undercut American ranchers who play by the rules on international trade.”<sup>8</sup> Perversely, the North American Meat Institute (NAMI) had just bestowed environmental awards upon JBS.<sup>9</sup>

Ironically, by litigating at the WTO against country of origin labeling for beef, Canada and Mexico facilitated the displacement of their own ranchers with beef originating from freshly-razed Amazon rainforest.

There is no doubt that the global packers drove Canada and Mexico to litigate. The year before the WTO Appellate Body decision, the packers’ trade association, the American Meat Institute (now NAMI, the North American Meat Institute), had challenged the same USDA country of origin labeling laws in federal court at the same time, losing in 2014.<sup>10</sup> A co-plaintiff in that failed case, the National Cattlemen’s Beef Association (NCBA), is aligned with the global beef packers pursuant to the 1996 merger between the National Cattlemen’s Association and the Beef Industry Council, resulting in today’s National Cattlemen’s Beef Association. Although JBS left the NCBA in 2021,<sup>11</sup> the other three global packers remain members of the NCBA’s Product Council.<sup>12</sup>

### **Positive Steps from the Biden Administration**

Beyond its helpful antitrust efforts, the Biden Administration recently undertook a positive step on beef labeling. On March 11, 2024, the Department of Agriculture (USDA) issued a final rule on voluntary labeling of meat with “Product of USA” and “Made in the USA” labels. The final rule, titled “Voluntary Labeling of FSIS-Regulated Products with U.S.-Origin Claims”<sup>13</sup>, states that only meat from animals born, raised, slaughtered, and processed in the United States is eligible for such domestic origin labels.

We welcomed this development,<sup>14</sup> but caution that due to the realities of market domination by global packers, it will have limited effect. For example, if you shop for ground beef at Trader Joe’s today, you will not see any indication of the beef’s country of origin, because there is no

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<sup>8</sup> U.S. Senator Ron Wyden, Hearing Statement on Cattle Supply Chains, Amazon Deforestation, June 22, 2023, available at <https://www.finance.senate.gov/chairmans-news/wyden-hearing-statement-on-cattle-supply-chains-amazon-deforestation>

<sup>9</sup> North American Meat Institute Recognizes Environmental Achievement Award Winners, <https://meatinstitute.org/press/north-american-meat-institute-recognizes-environmental-achievement-award-winners>

<sup>10</sup> *American Meat Institute v. USDA*, 760 F.3d 18 (D.C. Cir. 2014)

<sup>11</sup> Helena Bottemiller Evich, “Beef lobby rift: JBS leaves NCBA”, May 21, 2021, available at <https://www.politico.com/news/2021/05/21/beef-lobby-rift-jbs-leaves-ncba-490189>

<sup>12</sup> Affiliates and Industry Organizations, NCBA, available at [Affiliates & Industry Organizations \(ncba.org\)](https://www.ncba.org/affiliates-and-industry-organizations).

<sup>13</sup> USDA Food Safety and Inspection Service, “Voluntary Labeling of FSIS-Regulated Products with U.S.-Origin Claims”, March 11, 2024, available at <https://www.fsis.usda.gov/policy/federal-register-rulemaking/federal-register-rules/voluntary-labeling-fsis-regulated>

<sup>14</sup> R-CALF, “Ranch Group Welcomes End to Deceptive Origin Claims; Renews Call for MCOOL for Beef”, March 11, 2024, available at <https://www.r-calfusa.com/ranch-group-welcomes-end-to-deceptive-origin-claims-renews-call-for-mcool-for-beef/>

requirement to do so if the beef was packed in the United States. You have no way of knowing whether that beef is from cattle raised in the United States, North America, or somewhere else.

This is why we continue to advocate for a restoration of mandatory country of origin labeling.

### **Our Request For Your Help**

We and other groups have been advocating for the restoration of mandatory country of origin labeling for beef. The American Beef Labeling Act (S. 52), and the Country of Origin Labeling Enforcement Act (H.R. 5081), both require country of origin labels on beef sold in grocery stores. We believes this is the most important step Congress can take in the 2024 Farm Bill to stop the commoditization of beef, and the global race to the bottom in cattle and beef sourcing.

A September 2022 nationwide poll of 2,005 registered voters by Morning Consult found that 86% of voters supported the American Beef Labeling Act; 77% of voters believe it is important that the beef they purchase was born, raised, and harvested in the United States, and 45% of them said it was very important.<sup>15</sup> This poll reinforces the fact that consumers want to know the true origins of the actual beef products they purchase.

Unfortunately, the biggest impediment to this legislation moving forward is the “WTO illegal” talking point. As detailed below, this is especially unfortunate as the 2015 WTO Appellate Body decision was egregious not only in its effects, but even on WTO legal grounds.

Despite all of the developments above, and analysis detailed below, we continue to hear uncertainty and reluctance. But we believe that in this new trade paradigm that you have championed, and the fact that the U.S., Canada and Mexico share similar competition policy concerns via-a-vis the global packers, we expect that the chance of new trade litigation on this topic is non-existent.

For this reason, the undersigned organizations are requesting that your office issue a letter or public statement repudiating these WTO-legality concerns, and the tremendous public policy concerns that would follow from adherence to this egregious decision.

### **Background on the WTO Beef Country of Origin Labeling Decision**

As to the WTO decision, it was rejected by the Obama Administration’s Office of U.S. Trade Representative (USTR) as being based on “ cursory analysis”, and USTR cautioned that the holding was “clearly not a sustainable reading” of the General Agreement on Tariffs and Trade (GATT) nor the Technical Barriers to Trade agreements.<sup>16</sup>

Regrettably, the North American Meat Institute and the global beef packers’ aligned producer associations were able to use fears of the resulting WTO authorization to Canada for \$781

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<sup>15</sup> The full Morning Consult MCOOL poll is available at [Label Our Beef - R-CALF USA](#) under the heading, “New Poll.”

<sup>16</sup> Statements by the United States at the Meeting of the WTO Dispute Settlement Body, Geneva, May 29, 2015, available at [https://ustr.gov/sites/default/files/enforcement/DS/384.396.\(21.5\).May29.2015.DSB\\_.Stmt\\_.as-delivered.Public.pdf](https://ustr.gov/sites/default/files/enforcement/DS/384.396.(21.5).May29.2015.DSB_.Stmt_.as-delivered.Public.pdf)

million in retaliatory tariffs and \$228 million for Mexico in December, 2015 to repeal the labeling laws they did not want. A provision was inserted into the Consolidated Appropriations Act, 2016 that removed beef and pork from the list of covered commodities under the Agricultural Marketing Act. This foreclosed alternative settlement solutions available at the time, similar to what USTR had negotiated in 2014 with Brazil,<sup>17</sup> which would have preserved the integrity of U.S. consumer disclosure laws.

### **The WTO's decision on meat labeling was cited as one of three cases leading the United States to end the WTO Appellate Body**

As the Obama Administration USTR predicted, the Appellate Body's reasoning was so flawed that deference to the jurisprudence was untenable.

The following year, still under the Obama Administration, USTR for the first time blocked the reappointment of a non-U.S. judge to the WTO Appellate Body. USTR stated that the United States "has been troubled and raised systemic concerns about the disregard for the proper role of the Appellate Body and the WTO dispute settlement system".<sup>18</sup>

Under the Trump Administration, USTR continued to block all appointments as Appellate Body members' terms expired, and in 2019, the WTO's Appellate Body lost the necessary quorum. The Congressional Research Service summarizes what this meant for the WTO Dispute Settlement Body (DSB):

As a result, on December 11, 2019, the WTO's Appellate Body lost its quorum of three members necessary for the Body to decide appeals of WTO dispute settlement panel decisions and issue final reports. Thus, if a WTO member appeals a panel report, the DSB can no longer adopt such reports unless the disputing parties agree to consider the report as final. **The DSB also cannot oversee the losing member's implementation of a panel ruling or authorize the prevailing member to engage in trade retaliation if the losing member ignores the panel's recommendations.** (Emphasis added)

The Biden Administration has continued the prior two Administrations' policy of blocking appointments to the WTO Appellate Body. As Senator Grassley and colleagues wrote to you last year, "[t]his rare bipartisan agreement was the result of a clear and consistent pattern of the WTO intentionally undermining American sovereignty"<sup>19</sup>.

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<sup>17</sup> See generally, Gary Clyde Hufbauer, "A Good Deal Settles the Brazil Cotton Dispute", Oct. 2, 2014, PIIE, *available at* <https://www.piie.com/blogs/trade-and-investment-policy-watch/good-deal-settles-brazil-cotton-dispute>

<sup>18</sup> Statement by the United States at the Meeting of the WTO Dispute Settlement Body, Geneva, May 23, 2016, *available at* [https://www.wto.org/english/news\\_e/news16\\_e/us\\_statment\\_dsbmay16\\_e.pdf](https://www.wto.org/english/news_e/news16_e/us_statment_dsbmay16_e.pdf)

<sup>19</sup> Grassley, Cotton, Colleagues Urge Against Return To Biased WTO Dispute Settlement Body, August 30, 2022, *available at* <https://www.grassley.senate.gov/news/news-releases/grassley-cotton-colleagues-urge-against-return-to-biased-wto-dispute-settlement-body>

In February 2020, USTR published a detailed report on the United States' concerns with the WTO dispute settlement system, in particular with respect to the Appellate Body.<sup>20</sup> Section III of this report is titled "Appellate Body Errors in Interpreting WTO Agreements Raise Substantive Concerns and Undermine the WTO."

This section of the report details the Appellate Body's untenable jurisprudence on the core WTO principle of National Treatment, codified in Article I and III of the GATT. USTR wrote:

- The Appellate Body, however, has found a measure to be discriminatory (and therefore not consistent with WTO rules) based solely on evidence that the measure may impact imports from one Member more than those of another, even though converting a nondiscrimination inquiry into a detrimental impact test renders almost any origin-neutral measure vulnerable to challenge in WTO dispute settlement.
- **It is much more difficult to pursue legitimate public policy measures under the legal standard the Appellate Body has invented than under the standards to which Members actually agreed. In addition, the Appellate Body's approach would have WTO adjudicators second-guess Members' legislatures and serve as the ultimate arbiters of a range of important legislative questions, which is not a role that WTO Members assigned to them under the WTO agreements.**<sup>21</sup> (Emphasis Added)

In elaborating on the above headline points, USTR wrote that "prior to 2012, the Appellate Body had never interpreted Article III to mean that any detrimental impact on like imports is per se sufficient to support a finding of inconsistency."<sup>22</sup> This text cites to footnote 219 of the report, which indicates that the adverse Appellate Body decision on MCOOL for beef was one of just three post-2012 decisions to receive this unjust, unreasonable, and untenable judgment.

### **U.S. consumers and cattle producers were the last victim before a new era cooperation, not litigation**

Simply put, American consumers and cattlemen were one of a few unlucky victims of a WTO Appellate Body that was so overzealous a decade ago that it led to three U.S. Presidents agreeing on the need to close their office entirely.

Since the shuttering of the Appellate Body, global trade relations have changed dramatically. Even where WTO rules are clearly, unquestionably violated, retaliatory tariffs are dismissed among allies.<sup>23</sup>

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<sup>20</sup> Lighthizer, R. E. (n.d.). (rep.). Report on the Appellate Body of the World Trade Organization. Office of the United States Trade Representative, *available at* [https://ustr.gov/sites/default/files/Report\\_on\\_the\\_Appellate\\_Body\\_of\\_the\\_World\\_Trade\\_Organization.pdf](https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf).

<sup>21</sup> *Id.* at 90.

<sup>22</sup> *Id.* at 92.

<sup>23</sup> See, e.g., the United States and India agreeing to mutually terminate litigation each country had brought against the other on solar technologies: USTR, "United States Announces Major Resolution on Key Trade Issues with India", June

Only your office conveys the authority necessary to reassure lawmakers on these points. For this reason, your help is desperately needed.

Sincerely,

Buckeye Quality Beef Association  
Campaign for Family Farms and the Environment  
Coalition for a Prosperous America  
Colorado Independent CattleGrowers Association  
Colorado Land, Water & Food Alliance  
Colorado Women Involved in Farm Economics  
Consumer Federation of America  
Dakota Rural Action  
Egypt Valley Wasteland Organization  
Farm Action Fund  
Farm and Ranch Freedom Alliance  
Food & Water Watch  
Independent Beef Association of North Dakota  
Independent Cattlemen of Missouri  
Independent Cattlemen of Wyoming  
International Texas Longhorn Association  
Iowa Citizens for Community Improvement  
Iowa Stock Growers Association  
Missouri Rural Crisis Center  
National Association of Farm Animal Welfare  
National Family Farm Coalition  
National Women Involved in Farm Economics  
Northern Plains Resource Council  
Northern Wisconsin Beef Producers  
Oklahoma Independent Stockgrowers Association  
Powder River Basin Resource Council  
R-CALF USA  
South Dakota Stockgrowers Association  
Southern Colorado Livestock Association  
Western Organization of Resource Councils (WORC)