June 5, 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

Dear Representative DeLauro and Senator Kohl:

Although a highly usual event, a statement included in the first paragraph of a May 31, 2007, letter you recently received from Dr. R. M. Thornsberry, R-CALF President, has a ring of truth to it – *i.e.*, that the recent set of correspondence you have received regarding mandatory country-of-origin labeling (COOL) provides a "unique opportunity to bare the bones of the COOL issue." Unfortunately, thereafter, Dr. Thornsberry's letter parts ways with the facts.

R-CALF Letter Improperly Cites Animal Disease Regulation to Make Disingenuous Food Safety Arguments

Dr. Thornsberry cites a federal regulation, 9 CFR 94.22, for the proposition that mandatory COOL is necessary for food safety reasons. What Dr. Thornsberry fails to recognize, either intentionally or through negligence, is that the regulation cited is not promulgated by the Food Safety and Inspection Service (FSIS), the federal food safety agency charged with administering the Federal Meat Inspection Act (FMIA), which is the federal

statute that establishes the food safety parameters for meat, be they domestic or foreign in origin. Rather, the regulation at issue was promulgated by the Animal and Plant Health Inspection Service and an accurate and fair reading of the entire regulation, as well as the underlying statute authorizing that regulation, shows that it addresses not food safety but **issues of animal disease**, specifically foot and mouth disease in Uruguay. The **complete** citation of the referenced regulation is attached. (Attachment A)

Dr. Thornsberry's letter also cites the recent issues involving melamine in animal and pet food as added proof that mandatory COOL is needed. But his letter ignores the obvious. Following Dr. Thornsberry's argument to its illogical conclusion, livestock producers will be forced to account for and certify the sources of what they feed to their animals, as well as the sources of the components of that feed. As the facts of the melamine incident demonstrate, the livestock and feed production sectors are complex, and one cannot assume that because an animal was born, raised, and slaughtered in the U.S. that all or some of the components of what they were fed also were solely from the United States. Indeed, unclear from Dr. Thornsberry's letter is whether he is also calling for producers to certify the origin of the feed, and its various components, they provide to their livestock as a food safety measure and whether that information also should carry forward to the ultimate consumer.

The R-CALF Letter Acknowledges that the FMIA has Required Country-of-Origin Labeling of Imported Products for Many Years

Significantly, the second and third points of Dr. Thornsberry's letter concede, as AMI asserted, that the United States has had for many years mandatory country-of-labeling requirements. Ironically, in paragraph two on the first page of his letter Dr. Thornsberry asserts that there are "decisively false claims" made by AMI in our May 24 letter to you. However, page two of Dr. Thornsberry's letter acknowledges, with respect to the underlined quote from AMI, that "…this claim is accurate in terms of what the current law requires, …" Similarly, on page three Dr. Thornsberry again acknowledges that the AMI claim as to the existence of mandatory COOL requirements already in place "is also accurate in terms of what the law requires, …" In short, R-CALF in its opening salvo accuses AMI of making false statements; however, when R-CALF engages in the substance of the discussion, it is

forced to acknowledge the truthfulness of AMI assertions that the U.S. has had for years country-of-origin labeling requirements.

R-CALF also makes much in its letter about FMIA's requirements for foreign systems and plants and the GAO findings about what USDA has done regarding those entities. The solution to the issues cited by GAO, however, is not mandatory COOL, but insistence that USDA administer the FMIA the way Congress intended when it enacted that law. In short, it does not follow that the ills identified by GAO in its criticisms of FSIS will be cured by the implementation of the mandatory COOL provisions included in the 2002 Farm Bill, because the new country-of-origin labeling provisions are unrelated to the FMIA and they will be administered by a completely different government agency -- the Agricultural Marketing Service.

The third point made by Dr. Thornsberry cites the Tariff Act, but fails to recognize, either intentionally or through negligence, key language in the FMIA that is consistent with how FSIS has administered that statute for many years. Specifically, the FMIA provides that

> All such imported articles shall, upon entry into the United States, be deemed and treated as domestic articles subject to the other provisions of this chapter and the Federal Food, Drug, and Cosmetic Act: *Provided*, That they shall be marked and labeled as required by such regulations for imported articles: … 21 U.S.C. 620(a).

The regulations referenced in this section of the FMIA are those cited by AMI in its May 27 letter. Moreover, the longstanding policy of FSIS to treat as domestic product any meat product that issues from a federally inspected establishment is consistent with the above-quoted language in the FMIA and is logical. It flies in the face of common sense to conclude that meat products processed at an establishment in the U.S, inspected by USDA officials, that bear the U.S. mark of federal inspection; and that have been processed pursuant to a law enacted by the U.S. Congress are not of American origin.

R-CALF Misstates Important U.S. Obligations under NAFTA and WTO, While Acknowledging the very Provisions that make the 2002 Farm Bill Provisions Inconsistent with U.S. Trade Agreements

Astonishingly, Dr. Thornsberry's letter acknowledges and cites as authority provisions that support the conclusion that the 2002 Farm Bill provisions violate U.S. obligations under both the WTO and the NAFTA. R-CALF contends that the WTO Agreement on Rules of Origin permits the 2002 COOL law, but the law in fact violates the very provision of that agreement on which R-CALF relies. R-CALF's letter quotes Article 3(b) of the Agreement, which requires that country-of-origin be determined by "the country where the last substantial transformation has been carried out." But the 2002 Farm Bill *violates* the "substantial transformation" rule: it requires, for example, that a meat product sold at retail be marked to indicate separately the country in which the animal was born, the country in which the animal was raised, and the country in which the animal was slaughtered.

Requiring tracing of the place in which an animal was born and raised is a direct violation of the "substantial transformation" rule. The rule, which has been most thoroughly developed under the NAFTA by the establishment of tariff shift rules, as set out in the U.S. Code of Federal Regulations (the details of the WTO rules are still in negotiation), provides that slaughter transforms an animal into meat, and the country-of-origin of the meat is the country of slaughter. To comply with this rule, therefore, a marking requirement must permit such meat to be marked as U.S.-origin. But the 2002 Farm Bill does not permit this. On the contrary, it requires that a meat packer and retailer trace the places at which the animals were born and raised, as well as the place of slaughter, and mark the meat package with all of that information.

The substantial transformation issue is just one of many ways in which the 2002 COOL law violates U.S. obligations under the WTO and NAFTA. U.S. meat producers and ranchers alike rely heavily on tough enforcement of international trade rules to ensure access to foreign markets. U.S. credibility in enforcement will be seriously undercut if U.S. laws that violate those very same rules are permitted to go into effect.

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Dr. Thornsberry's letter is remarkable for its accusations of AMI "deceit," on the one hand, while on the other hand being forced in the very same letter to acknowledge the accuracy of AMI's statements about the status of the United States longstanding country-of- origin labeling requirements. Disturbingly, however, that the letter raises the specter of food safety and suggest such a serious issue can be addressed through labeling does a disservice to every sector of the meat industry.

AMI would be happy to meet with you or your staffs to discuss any aspect of this letter or any or the earlier correspondence. Such a meeting would give everyone a chance to see the 2002 Farm Bill's country-of-origin's provisions for what they really are -- a thinly disguised attempt to erect protectionist trade barriers.

Sincerely,

J. Patrick Boyle

Enclosure

ATTACHMENT A

CHAPTER I--ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF
AGRICULTURE

PART 94_RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC
NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE
SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS--Table of Contents

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.

(b) Foot-and-mouth disease has not been diagnosed in Uruguay within the previous 12 months.

(c) The beef came from bovines that originated from premises where foot-and-mouth disease has not been present during the lifetime of any bovines slaughtered for the export of beef to the United States.

(d) The beef came from bovines that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

(e) The beef came from bovines that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

(f) The beef consists only of bovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. Bovine parts that may not be imported include all parts of bovine heads, feet, hump, hooves, and internal organs.

(g) All bone and visually identifiable blood clots and lymphoid

tissue have been removed from the beef.

(h) The beef has not been in contact with meat from regions other than those listed in Sec. 94.1(a)(2).

(i) The beef came from bovine carcasses that were allowed to maturate at 40 to 50[deg] F (4 to 10[deg] C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Measurements for pH must be taken at the middle of both longissimus dorsi muscles. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

(j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

(k) The establishment in which the bovines are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.