R-CALF USA
Fighting for the U.S. Cattle Producer

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June 18, 2007

Mr. J. Patrick Boyle
President and CEO
American Meat Institute

Dear Mr. Boyle:

Your rationalization, as proffered in your June 15, 2007 letter to me, for your action of recommending that your meatpacker members "demand" that U.S. farmers and ranchers provide affidavits, access to records, third-party verifications, and indemnification of packer liability, for the express purpose of complying with the requirements of the 2002 country-of-origin labeling (COOL) law, does not overcome Congress' exclusive delegation of authority to the Secretary of Agriculture (Secretary) to promulgate regulations to implement the COOL law.

If Congress intended for either the American Meat Institute (AMI) or the Food Marketing Institute (FMI) to second-guess or otherwise preempt the lawful establishment of requirements to be imposed on all market participants in order to properly implement the COOL law, it would have stated so – but it did not. Instead, Congress expressly directed, and exclusively authorized, only the Secretary to "promulgate such regulations as are necessary to implement" COOL.

If AMI professes to know what requirements the Secretary intends to impose on industry participants to implement the COOL law, then AMI must have been involved in unlawful, *ex parte* communications with the Secretary in order to obtain such knowledge. If this is the case, then the Secretary's action of June 15, 2007, to reopen the public comment period for 60 days for the proposed rule for COOL for beef, lamb, pork, and other commodities is a shell game, inasmuch as the outcome of the rulemaking process is already known by AMI before the agency even considers public comments.

You may be aware that the federal Idaho District Court very recently invalidated proposed Bureau of Land Management (BLM) grazing regulations on the basis that the court believed the National Cattlemen's Beef Association (NCBA) wrote the rules instead of the BLM. If AMI, which at this point professes to already know the requirements of the yet unpublished final COOL rules, likewise has written the regulations to implement COOL, our two organizations, along with the Secretary, may be involved in a protracted dispute. Please advise me if AMI already knows the requirements that the Secretary will impose on industry participants upon the conclusion of the agency's rulemaking process for COOL.

If AMI does not know the requirements the Secretary will impose on industry participants to implement the COOL law following the conclusion of the rulemaking process,

then AMI has no legal or economic justification for its action of recommending that its meatpacker members demand that U.S. farmers and ranchers begin relinquishing their rights, incurring additional production costs, and otherwise begin comporting to meatpacker demands made under the false pretense that such demands are necessary to comply with the 2002 COOL law.

Inasmuch as your recommendations to all your meatpacker members constitutes an effort to preemptively influence market rules, without any legal or economic justification, your action further raises the question of explicit collusion, wherein packers would be colluding to fix the rules of the market for the purpose of seeking an unfair advantage over independent cattle producers.

If AMI is sincere regarding its obligations to its meatpacker members, then it would rescind its June 13, 2007, recommendations to its members or, at the very least, put its membership on notice that R-CALF USA will file a complaint with the Grain Inspection Packers and Stockyards Administration (GIPSA) against any meatpacker that follows your June 13, 2007, recommendations. R-CALF USA views your recommendations to be a direct violation of the Packers and Stockyards Act, which prohibits meatpackers from engaging in unfair, unjustly discriminatory, and deceptive practices.

Mr. Boyle, if AMI genuinely desires to assist its meatpacker members in seeking an effective, efficient, and accurate means of verifying the country-of-origin of live cattle, without the burden of additional paperwork and with the benefit of minimizing errors, then R-CALF USA would like to meet with you. The U.S. beef industry would best be served if the cattle and beef segments were to agree on a simplified approach to COOL implementation. If this were possible, then we could further discuss the possibility of making a joint submission to the U.S. Department of Agriculture during ongoing COOL rulemaking process regarding how the origins of covered commodities should be verified. Such an effort would be far more productive than pursuing the present course that will most certainly lead our respective industry segments into a protracted dispute.

Sincerely,

Bill Bullard
CEO
R-CALF USA