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

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The Honorable Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, DC 20208

The Honorable Tom Vilsack
United States Secretary of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Dear Ambassador Kirk and Secretary Vilsack:

R-CALF USA appreciated the opportunity to participate in the August 10, 2012 stakeholders' conference-call regarding the status of country-of-origin labeling (COOL) sponsored by the Office of the U.S. Trade Representative (USTR) and attended by officials from the U.S. Department of Agriculture (USDA).

As a follow-up to that call, R-CALF USA would like to offer its suggestions regarding how it believes USTR and USDA should proceed to ensure that U.S. cattle producers and U.S. consumers receive the maximum benefits from COOL in the wake of the adverse World Trade Organization (WTO) panel determination that found U.S. COOL to be inconsistent with the WTO's national treatment standard.

Based on our understanding of the information provided by USTR during the August 10 conference call, the principal objection raised by the WTO against U.S. COOL is that COOL does not make a legitimate regulatory distinction. According to the WTO, the methodology employed under COOL to verify the origins of cattle creates a disproportionate record-keeping burden on upstream cattle suppliers, in particular suppliers of Canadian and Mexican cattle, when compared to the relatively limited origin-information actually communicated to beef purchasers via the various COOL labels.

The following suggestions are intended to both reduce the record keeping requirements on all live cattle, including those imported from Canada and Mexico, and to make the origin information communicated to retail beef purchasers more accurate:

1. **USDA Should Initiate a Rulemaking to Verify Origin Information for Live Cattle Using a Presumption of Domestic Origin Methodology**

   a. **Labeling beef from cattle originating in the U.S., Canada and Mexico.**

As a condition of entry into the United States, cattle from Canada and Mexico that are not imported for immediate slaughter are currently required to be permanently identified with an official foreign marking that denotes their respective, foreign country of origin.[1] There is no comparable requirement on domestic cattle. Therefore, cattle entering the United States from

[1] *See* 9 C.F.R. § 93.427(c), § 93.436(b)(2).

either Canada or Mexico are readily distinguishable as to their country of origin when they reach the slaughterhouse where their permanent, foreign markings can be visually inspected. Consequently, all cattle arriving at the slaughterhouse that do not bear a permanent, foreign marking can be nothing other than cattle exclusively born and raised in the United States. Thus, no record keeping is needed from any upstream supplier to distinguish domestic cattle from imported cattle, other than from the meatpacker that would remove foreign markings from the carcass after the live cattle are visually inspected and slaughtered.

Presuming all cattle presented for slaughter that are void of official foreign markings to be exclusively born and raised in the United States is an accurate means of verifying that the beef derived from those cattle is eligible for the USA label without the need for any accompanying documentation or recordkeeping. Similarly, relying on the mandatory foreign markings affixed to imported cattle from Canada and Mexico is an accurate and recordkeeping-free means to verify the origins of cattle from which the beef would be eligible for a label that contains the particular foreign country and the United States, *i.e*., a mixed-origin label.

The origins of cattle imported for immediate slaughter are known by the packer by virtue of the official seal accompanying the transit vehicle.[2] Therefore, the beef from such cattle would be eligible for the appropriate mixed-country label, also without any additional record-keeping burden.

b. Labeling beef from cattle originating in countries other than the U.S., Canada and Mexico, along with hogs from any country

The presumption of domestic origin methodology discussed above, along with reliance on foreign markings to determine a live animal's eligibility for a particular COOL label after it is slaughtered, without any additional documentation or recordkeeping, can be readily employed for imported cattle from countries other than Canada and Mexico, as well as for imported hogs from any country that is not already subject to a mandatory marking requirement. The means to accomplish this could be achieved by simply removing livestock from the U.S. Department of Treasury's list of products that are currently exempt from the general U.S. requirement that all imported products bear origin markings as a pre-condition to entry into the United States.[3]

Upon removal of livestock from the list of the relatively few products that are currently exempt from the general U.S. requirement that all imported products be marked with a mark of origin, all imported livestock would bear a permanent foreign marking upon entry into the United States, just as imported cattle from Canada and Mexico are so marked. Therefore, the origins of all livestock, including hogs, presented for slaughter could be visually verified at the

[2] *See* 9 C.F.R. §§ 93.420, 93.429, and 93.436(a).

[3] Unlike beef and most other imported products, cattle imported into the United States are exempt from the country-of-origin marking requirements of U.S. law due to cattle's inclusion on the so-called "J-List." The J-List was established in 1938 as an amendment to the Tariff Act of 1930. (*See* 19 U.S.C. §1304(a)(3)(J)). The U.S. Treasury Department designated items for inclusion on the J-List in 1938 and 1939, and cattle, along with all other livestock and unprocessed agricultural commodities, have been included in the J-List since its creation. (The current list of items included in the J-List is at 19 C.F.R. § 134.33).

slaughterhouse without the need for any additional documentation or recordkeeping. And, all livestock presented for slaughter that are void of any foreign markings would remain eligible for the USA label as they could be nothing other than born and raised in the United States.

2. **USDA Should Initiate a Rulemaking to Disallow a Mixed-Origin Label on Meat that Is Derived from Animals Exclusively Born, Raised, and Slaughtered in the United States.**

The 2008 Farm Bill clearly states that mixed-origin labels apply to products that are not exclusively born, raised, and slaughtered in the United States. The final COOL rule, however, undermines Congress' intent by including a loophole that allows packers to label muscle cuts of meat derived from animals that are exclusively born, raised, and slaughtered in the U.S. as a product of mixed origin if it is processed by a packer on the same day as foreign products. Not only does this loophole undermine Congress' intent, but also, it deceives consumers by misinforming them as to the true origins of their meat purchases. It also directly harms producers who market cattle that are born, raised, and slaughtered in the United States. This is because consumers are unable to accurately distinguish exclusively U.S. beef from beef of mixed origin, thus depriving domestic producers the opportunity to have their resulting beef products selected by consumers who may prefer an exclusively domestic beef product.

3. **USDA Should Initiate a Rulemaking to Disallow Countries to be Listed on a Ground Meat Label if Meat from Such Countries Is not Included in the Ground Beef Product.**

The final COOL rule allows packers and processors of ground beef to include the United States on a ground beef label provided at least some United States meat was used by the packer or processor within the previous 60 days. This provision allows packers and processors to misuse the good reputation of U.S. cattle producers to market exclusively foreign beef during 59 of each 60-day period. This provision facilitates the conveyance of fraudulent information to U.S. consumers. It also harms domestic cattle producers by misleading consumers that may choose products that contain at least some U.S. meat for the purpose of maintaining demand for U.S. livestock marketed by U.S. farmers and ranchers. The United States should not be listed on any product label if that product does not include meat from the United States.

4. **USDA Should Initiate a Rulemaking to Include Products that Undergo Minor Processing as Covered COOL Commodities.**

The final COOL rule improperly reduced the benefits of COOL for both consumers and producers by excluding otherwise covered commodities from COOL labeling requirements if those commodities underwent such minor processing as cooking, smoking, curing, breading or adding tomato sauce. The effect of this provision is to deprive consumers of the benefits of COOL on a wide range of food products that Congress certainly did not intend to be excluded from COOL requirements.

Conclusion

R-CALF USA firmly believes its first suggestion discussed above will eliminate the WTO's concern that COOL imposes a disproportionate burden on upstream suppliers when compared to the limited information actually conveyed to consumers. R-CALF USA further believes its remaining three suggestions will greatly increase the accuracy of information communicated to U.S. consumers via country-of-origin labels, thus maximizing the benefits of COOL for U.S. consumers and U.S. producers.

R-CALF USA would be pleased to discuss and/or further explain its suggestions to you. Please contact me at 406-670-8157 if such an opportunity would be helpful.

Sincerely,

Bill Bullard, CEO