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

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July 22, 2009

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

Sent via facsimile and U.S. Mail: 202-720-6314

Re: Recently Disclosed Documents Show COOL Rule Was Compromised by Quid Pro Quo Exchange at WTO

Dear Secretary Vilsack:

R-CALF USA does not know whether you have been informed of how the final rule for mandatory country-of-origin labeling (COOL) came to contain provisions that effectively undermined the program's purpose and defied Congress' intent. We recently obtained copies of correspondence dated January 7, 2009 between Ambassador John Gero, Premanent Mission of Canada to the WTO, and Ambassador Peter Allgeier, Permanent Mission of the United States to the WTO, that sheds considerable light on this subject. Attached to this letter are the copies of the referenced correspondence.

These correspondences between U.S. and Canadian Ambassadors to the WTO indicate that the decision to retain and solidify in the U.S. Department of Agricultfinal COOL rule the most troublesome and misleading provisions of the U.S. Department of Agriculture's (USDA's) interim final COOL rule – the ability for packers and retailers to misinform consumers with multi-country labels instead of 'Product of USA' labels for those commodities produced exclusively in the United States - was made not to achieve the public interest, but rather, to avoid conflict with Canada.

These correspondences suggest that USDA's concessions were the result of a quid pro quo exchange whereby Canada's requests would be honored in return for Canada's promise not to pursue a WTO dispute for a period of eight months. Further, these correspondences indicate that USDA had granted *a foreign country* – Canada – the opportunity to dictate the final contents of the Final COOL Rule, while U.S. consumers and producers were afforded no such opportunity.

We do not know if this type of decision making was a common practice under the previous Administration. Nor do we know whether other rulemakings, such as those involving USDA's relaxation of safeguards against bovine spongiform encephalopathy (BSE), were likewise subjected to the granting of preferential treatment to foreign countries or other interests. However, we strongly believe that your Administration should review whether similar quid pro

quo arrangements controlled any other agency decisions, including rulemakings, and take decisive action to reverse any decisions that were so influenced.

Based on this available evidence that specifically relates to the final COOL rule, we urge you to immediately reverse the inappropriate concessions accorded to Canada during the previous Administration and to promulgate a new final COOL rule that conforms to Congress' clear intent to accurately inform consumers as to the origins of food covered under COOL.

Thank you for your consideration of this important matter and please let me know if we can provide any additional information.

Sincerely,

Bill Bullard
CEO, R-CALF USA

PERMANENT MISSION OF THE UNITED STATES TO THE WORLD TRADE ORGANIZATION
MISSION PERMANENTE DES ÉTATS-UNIS D'AMÉRIQUE
AUPRÈS DE L'ORGANISATION MONDIALE DU COMMERCE
11, ROUTE DE PRÉGNY
1292 CHAMBÉSY - GENEVA

January 7, 2009

H.E. Mr. John Gero
Ambassador
Permanent Mission of Canada to the WTO
Avenue de l'Ariana 5
1202 Geneva

Dear Mr. Ambassador,

I refer to Canada's request of December 1, 2008 for consultations with the United States of America ("United States") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994*, Article 14 of the *Agreement on Technical Barriers to Trade*, Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, and Article 7 of the *Agreement on Rules of Origin*, which was circulated in document WT/DS384/1.

Pursuant to this request, the United States and Canada held constructive consultations in Washington, D.C. on December 16, 2008. During these consultations, Canada described its concerns about certain mandatory country of origin labeling provisions of the United States under the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008*, and as implemented by the U.S. Department of Agriculture Interim Final Rule on *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* ("Interim Final Rule"), published on August 1, 2008 (73 Fed. Reg. 45106).

The United States has informed Canada that it intends to issue a Final Rule on *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* ("Final Rule") in the near future. Such a Final Rule will replace the Interim Final Rule, implementing the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*. Through the letter of December 1, 2008 from Canada's Minister of International Trade to the United States Trade Representative and the attachment to that letter, Canada informed the United States of its request to have the following elements[1] included in the Final Rule:

[1] These elements are explained more fully in the attachment to the December 1, 2008 letter from Canada's Minister of International Trade to the United States Trade Representative.

(a) maintaining the flexibility to use a Category B[2] label on covered commodities derived from Category A[3] animals when Category A animals and Category B animals are commingled during a single production day;

(b) expanding the flexibility to use a Category C[4] label on covered commodities derived from Category B animals, without any requirement that there must be commingling between B and C animals; and

(c) establishing the flexibility to use a Category B label on covered commodities derived from Category C animals when Category B animals and Category C animals are commingled during a single production day.

A copy of the attachment to the letter from Canada's Minister of International Trade to the United States Trade Representative is attached hereto.

The United States has carefully considered Canada's concerns and its request regarding the inclusion of the three elements in the Final Rule described above.

The United States requests Canada to confirm that if the three elements described above are included in the Final Rule, Canada will not request the establishment of a panel for a period of at least eight months from the date of publication of the Final Rule in the U.S. Federal Register in its dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, or initiate or pursue any other WTO dispute settlement proceedings regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule, during the eight month period from the date of publication of the Final Rule, provided that the Final Rule continues to contain the three elements described above during that period.[5]

The United States proposes that at the end of the eight month period from the date of publication of the Final Rule described above, the United States and Canada will consult regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

The United States proposes that in these consultations, which could include a continuation of the consultations held on December 16, 2008, the United States and Canada would explore the possibility of a mutually agreed solution regarding: 1) dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, and 2) the COOL provisions of the

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[2] Category B refers to § 282(2)(B) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

[3] Category A refers to § 282(2)(A) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

[4] Category C refers to § 282(2)(C) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

[5] This is without prejudice to the proceedings in WT/DS357, United States – Subsidies and Other Domestic Support For Corn and Other Agricultural Products.

Agricultural Marketing Act of 1946, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

The proposals of the United States described in this letter are without prejudice to the rights and obligations of the United States and Canada under the *Marrakesh Agreement Establishing the World Trade Organization*.

Sincerely,

Peter F. Allgeier

Peter F. Allgeier
Ambassador

Permanent Mission of Canada
to the United Nations
and the World Trade Organization

Mission permanente du Canada
auprès des Nations Unies
et de l'Organisation mondiale du commerce

Avenue de l'Ariana
1202 Geneva, Switzerland
Tel: (41.22) 919-9214, Fax: 919-9254

January 7, 2009

H.E. Mr. Peter Allgeier
Ambassador
Permanent Mission of the United States
to the WTO
11, route de Pregny
1292 Genève

Dear Mr. Ambassador,

Thank you for your letter, dated January 7, 2009, which states as follows:

> "I refer to Canada's request of December 1, 2008 for consultations with the United States of America ("United States") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994*, Article 14 of the *Agreement on Technical Barriers to Trade*, Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, and Article 7 of the *Agreement on Rules of Origin*, which was circulated in document WT/DS384/1.
>
> Pursuant to this request, the United States and Canada held constructive consultations in Washington, D.C. on December 16, 2008. During these consultations, Canada described its concerns about certain mandatory country of origin labeling provisions of the United States under the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008*, and as implemented by the U.S. Department of Agriculture Interim Final Rule on *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* ("Interim Final Rule"), published on August 1, 2008 (73 Fed. Reg. 45106).
>
> The United States has informed Canada that it intends to issue a Final Rule on *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* ("Final Rule") in the near future. Such a Final Rule will replace the Interim Final Rule, implementing the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*. Through the letter of December 1, 2008 from Canada's Minister of International Trade to the United States Trade Representative and

the attachment to that letter, Canada informed the United States of its request to have the following elements[1] included in the Final Rule:

(a) maintaining the flexibility to use a Category B[2] label on covered commodities derived from Category A[3] animals when Category A animals and Category B animals are commingled during a single production day;

(b) expanding the flexibility to use a Category C[4] label on covered commodities derived from Category B animals, without any requirement that there must be commingling between B and C animals; and

(c) establishing the flexibility to use a Category B label on covered commodities derived from Category C animals when Category B animals and Category C animals are commingled during a single production day.

A copy of the attachment to the letter from Canada's Minister of International Trade to the United States Trade Representative is attached hereto.

The United States has carefully considered Canada's concerns and its request regarding the inclusion of the three elements in the Final Rule described above.

The United States requests Canada to confirm that if the three elements described above are included in the Final Rule, Canada will not request the establishment of a panel for a period of at least eight months from the date of publication of the Final Rule in the U.S. Federal Register in its dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, or initiate or pursue any other WTO dispute settlement proceedings regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule, during the eight month period from the date of publication of the Final Rule, provided that the Final Rule continues to contain the three elements described above during that period.[5]

The United States proposes that at the end of the eight month period from the date of publication of the Final Rule described above, the United States and Canada will consult

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[1] These elements are explained more fully in the attachment to the December 1, 2008 letter from Canada's Minister of International Trade to the United States Trade Representative.

[2] Category B refers to § 282(2)(B) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

[3] Category A refers to § 282(2)(A) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

[4] Category C refers to § 282(2)(C) of the *Agricultural Marketing Act of 1946*, as amended by the *Food, Conservation, and Energy Act, 2008* § 11002.

[5] This is without prejudice to the proceedings in WT/DS357, *United States – Subsidies and Other Domestic Support For Corn and Other Agricultural Products*.

regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

The United States proposes that in these consultations, which could include a continuation of the consultations held on December 16, 2008, the United States and Canada would explore the possibility of a mutually agreed solution regarding: 1) dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, and 2) the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

The proposals of the United States described in this letter are without prejudice to the rights and obligations of the United States and Canada under the *Marrakesh Agreement Establishing the World Trade Organization*."

I am pleased to confirm that if the three elements described in your letter are included in the Final Rule, Canada will not request the establishment of a panel for a period of at least eight months from the date of publication of the Final Rule in the U.S. Federal Register in its dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, or initiate or pursue any other WTO dispute settlement proceedings regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule, during the eight month period from the date of publication of the Final Rule, provided that the Final Rule continues to contain the three elements described in your letter during that period.*

I am also pleased to confirm Canada's acceptance of your proposal that at the end of the eight month period from the date of publication of the Final Rule described in your letter, the United States and Canada will consult regarding the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule. In these consultations, which could include a continuation of the consultations held on December 16, 2008, Canada and the United States would explore the possibility of a mutually agreed solution regarding: 1) dispute WT/DS384, *United States – Certain Country of Origin Labeling [COOL] Requirements*, and 2) the COOL provisions of the *Agricultural Marketing Act of 1946*, as amended by the *Farm, Security, and Rural Investment Act of 2002* and the *Food, Conservation, and Energy Act, 2008*, including as implemented by the Final Rule.

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* This is without prejudice to the proceedings in WT/DS357, *United States – Subsidies and Other Domestic Support For Corn and Other Agricultural Products*.

Canada's acceptance of your proposals is without prejudice to the rights and obligations of Canada and the United States under the *Marrakesh Agreement Establishing the World Trade Organization.*

Yours sincerely,

John Gero
Ambassador
Permanent Representative to the WTO