Table of Contents

I. Introduction

Food Safety and Inspection Services' (FSIS) Standards and Labeling Policy Book (FSIS Policy Book)[1] allows for deceptive and misleading labeling of foreign imported meat and meat products. As outlined in the FSIS Policy Book, meat products may be labeled "Product of U.S.A" if "the product is processed in the U.S. (i.e., is of domestic origin)." With a lack of clarity in the definition of "processing," the current policy allows foreign meat to be imported into the United States and bear the label "Product of U.S.A." if it passes through a United States Department of Agriculture (USDA) inspected plant. The current language must be clarified.

Today, more and more consumers want to know where their food comes from and consumers place a higher financial value on food that is local, regional and from the United States. For U.S. consumers, the current labeling practice can lead to the disguising of the true origin of the meat and meat products and allows foreign interests and multi-national corporations to take advantage of increased U.S. market opportunities. This can allow for an unfair market advantage for foreign meat and meat products that not only deceives the consumer, but it financially harms U.S. family farmers and independent ranchers.

The lack of clarity in this policy leads to violations of FSIS's own policies and regulations that clearly mandate truthfulness in labeling by prohibiting false or misleading labeling and

[1] "Standards and Labeling Policy Book." *U.S. Department of Agriculture Food Safety and Inspection Service*. Office Policy, Program and Employee Development. Aug. 2005. https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES. Accessed 7 June 2018.

practices. The policy of prohibiting false or misleading labeling and practices is supported by three additional federal statutory provisions. This policy is not consistent with the Federal Meat Inspection Act (FMIA) nor with other federal legislative acts. Further, in adopting the FMIA, Congress specifically intended to avoid these harmful outcomes.[2]

II. Interest of Petitioners

A. Organization for Competitive Markets

Organization for Competitive Markets (OCM) is a national organization working on behalf of America's farmers and consumers to ensure agricultural markets are fair and transparent. OCM is a public policy research and advocacy organization headquartered in Lincoln, Nebraska.

OCM has been a leader in efforts to ensure consumers have the information they need to know the origin of their meat and meat products. OCM played a key role in the passage of mandatory Country of Origin Labeling in 2002. Through its state initiative campaign, OCM continues to advocate for mandatory Country of Origin Labeling of beef and pork.

In its recent briefing papers, OCM has called for policy changes at both the federal and state level to ensure fair labeling, advancing an agenda that would provide consumers with the transparency they are demanding and provide American family farmers with the value-added market opportunity that truth in labeling provides.

Because of the labeling policy contained in the FSIS Policy Book, OCM knows that products labeled as "Product of U.S.A." are not necessarily of domestic origin. This policy hinders OCM in its effort to assist U.S. family farmers in connecting with U.S. consumers who demonstrate a preference for U.S. domestic meat and meat products.

The ability of consumers to identify U.S. beef and pork products has been greatly hampered by the repeal of the retail mandatory Country of Origin Labeling for those products. Therefore, OCM understands it is imperative when a manufacturer chooses to label its meat products as "Product of U.S.A.," it should have the right to do so but only if the meat ingredients of the product are of domestic origin.

B. American Grassfed Association

The American Grassfed Association (AGA) is the nation's leading organization in the development of grassfed meat production and market development for producers of grassfed meat, dairy and pastured pork.

---

[2] 21 U.S.C § 602.

In the past, AGA's top priority was working with the USDA to establish a legal definition for grassfed and to implement a labeling program to help producers receive a premium for products meeting the definition, while providing a service to consumers wishing to buy grassfed products. The USDA introduced its definition in 2006, and AGA's producers and board decided to develop a more stringent standard. The AGA certification program and standards were introduced in 2009.

In addition to the certification program for grassfed ruminant producers, AGA communicates the value of grassfed products to consumers, chefs, and the media and serves as a resource for information on grassfed products and production. Through conferences, email and print publications, and other initiatives, AGA offers education to producers, chefs and restaurants, distributors, processors, healthcare professionals, members of the media, and consumers.

AGA is credited for providing expertise in the development of the research document, Back to Grass: The Market Potential for U.S. Grassfed Beef, published in April 2017 and referenced throughout this petition.

III. Requested Action

Petitioner respectfully requests FSIS change paragraph 2 of its existing policy, "Product of USA," outlined in the FSIS Policy Book. The current policy states:

> **PRODUCT OF USA:**
> Labeling may bear the phrase "Product of U.S.A." under one of the following conditions:
> 1. If the country to which the product is exported requires this phrase, and the product is processed in the U.S., or
> 2. The product is processed in the U.S. (i.e., is of domestic origin).
> This entry cancels Policy Memo 080 dated April 16, 1985[3]

Petitioners request paragraph 2 of the above stated policy, "2. The product is processed in the U.S. (i.e., is of domestic origin). This entry cancels Policy Memo 080 dated April 16, 1985" be changed to read:

> "2. If it can be determined that significant ingredients having a bearing on consumer preference such as meat, vegetables, fruits, dairy products, etc., are of domestic origin (minor ingredients such as spices and flavorings are not included). In this case, the labels should be approved with the understanding that such ingredients are of domestic origin."

[3] "Standards and Labeling Policy Book." *U.S. Department of Agriculture Food Safety and Inspection Service*. Office Policy, Program and Employee Development. Aug 2005. https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES. Accessed 7 June 2018.

The above change to the FSIS Policy Book should be made to provide "guidance to help manufacturers and prepare product labels that are truthful and not misleading."[4]

The above requested language restores the Policy Memo 080 dated April 16, 1985 which was canceled by the existing FSIS Policy Book entry.

IV. Basis for Granting the Petition

A. FSIS Legal Basis for Adopting the Change

FSIS is the primary agency responsible for the policies and regulations governing the labeling of meat and meat products under the Federal Meat Inspection Act (FMIA) and has the authority to implement the above requested action.[5]

Both the FMIA and FSIS regulations clearly establish that meat and meat product labels must not mislead the consumer nor must they be false.

FMIA states that meat or meat food products shall be "misbranded" if its "labeling is false or misleading in any particular."[6]

FMIA further provides packaged meat and meat food products offered for sale must not have markings or labeling that is false or misleading.[7]

FSIS labeling regulations provides that no product shall be labeled that would give a false indication of origin.[8]

With the enactment of FMIA, the U.S. Congress provided a clear and concise basis for ensuring the accuracy of meat and meat food products labeling, Congress enacted the following statement:

> "Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated and properly labeled and packaged meat and meat food products and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers."[9]

---

[4] "Standards and Labeling Policy Book." *U.S. Department of Agriculture Food Safety and Inspection Service*. Office Policy, Program and Employee Development. Aug 2005. https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES. Accessed 7 June 2018.

[5] 9 CFR § 300.2(b)(1).

[6] 21 U.S.C. § 601(n)(1).

[7] 21 U.S.C. § 607(d).

[8] 9 CFR § 317.8(a).

[9] 21 U.S.C § 602.

B. Supporting Federal Statutory Provisions

Congress has consistently established that it is the policy of the U.S. to ensure food products not be misleading or false. As with the FMIA, Congress has given similar protection authority to the Federal Trade Commission (FTC), the U.S. Customs and Border Protection (CBP) and the Food and Drug Administration (FDA).

In regulating unfair and deceptive acts including false and misleading advertising of foods, drugs, devices, and cosmetics, the FTC was granted authority to prohibit advertisement for food products that are "misleading in a material respect."[10]

In there "Policy Statement on Deception," FTC clearly states, "The Commission will find an act or practice deceptive if there is a misrepresentation, omission or other practice, that misleads the consumer acting reasonably in the circumstances…"[11]

With the adoption of the Tariff Act of 1930, the Congress directed U.S. Customs and Border Protection to ensure transparency for the purchaser of an imported product the country of origin.[12]

In the definition of "Country of Origin," the Customs and Border Protection regulations clearly state that the product must bear the name of the country of origin where the product was manufactured, produced or grown unless there was "substantial transformation" of the product. "Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin."[13]

The Federal Drug, Food and Cosmetic Act (FDFCA) sets out the same public policy in regard to labeling. FDFCA establishes food is misbranded if "(a) False and misleading label if (1) its labeling is false or misleading in any particular."[14]

In furtherance of the FDFCA Congressional mandate, the FDA regulations set out that food is misbranded when representations in the labeling of food implies geographical origin of the food or any ingredient of the food that is not "A truthful representation of the geographical origin."[15]

---

[10] 15 U.S.C. § 55(a)(1) and § 52.

[11] "FTC Policy Statement on Deception." *Federal Trade Commission*. 14 Oct 1983. https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf. Accessed 7 June 2018.

[12] 19 U.S.C. § 1304(a).

[13] 19 CFR §134.1(b).

[14] 21 U.S.C. § 343(a)(1).

[15] 21 CFR §101.18(c)(1).

Through legislative action, Congress has consistently established the law on labeling. Labels must not be misleading, false or misbranded. Domestic origin is one of the attributes of the product that must be truthful. Congress has taken this position to protect manufacturers, consumers and producers.

C. Consumer Preference for Origin Labeling

Research consistently demonstrates that consumers support knowing the origin of their food and it clearly indicates that U.S. farmers and ranchers can benefit from this consumer preference.

A 2010 Consumers Union poll confirmed that U.S. consumers want to know where their meat comes from. Their polling indicated that 93% of consumers want country of origin labeling on meat. In response to the question, "Suppose a cow is born and raised in Mexico, and then sent to the U.S. to be fattened for two months, slaughtered and sold. If you saw the meat from this animal in your supermarket, which of the following labels would you prefer to have?" 72% of the respondents answered that Mexico should be listed in some form on the label. 47% responded it should be labeled product of the U.S. and Mexico, and 25% responded it should be labeled Product of Mexico.[16]

Researchers at the University of Kentucky and the University of Alberta concluded that more than one-third of the U.S. consumers who responded to their 2011 survey indicated the origin of beef was a "deciding factor" when purchasing beef steaks.[17]

Additional research published in the Journal of Food Distribution Research in 2003 has demonstrated production location or source of origin is very or somewhat a positive beef attribute for consumer choice. 75% of those surveyed preferred to buy a country of origin product. Of those 75%, 21% stated they made their choice to help the U.S. producers. The research concluded on average consumers were willing to pay a 19% premium for the "U.S.A. Guaranteed" steak.[18]

D. Impact of Current Policy on U.S. Farmers and Ranchers

---

[16] "Poll finds 93% of consumers want labeling on meat." *Consumers Union The Advocacy Division of Consumers Report*. *Consumers Union*. https://consumersunion.org/news/poll-finds-93-of-consumers-want-labeling-on-meat/. Accessed 7 June 2018.

[17] Lim, Kar H.; Maynard, Leigh J.; Hu, Wuyang; Goddard, Ellen. 2011. "U.S. Consumers' Preference and Willingness to Pay for Country-of-Origin-Labeled Beef Steak and Food Safety Enhancements." *Selected Paper prepared for presentation at the Agricultural & Applied Economics Association's 2011 AAEA & NAREA Joint Annual Meeting, Pittsburgh, Pennsylvania, July 24-26, 2011.* https://ageconsearch.umn.edu/bitstream/103385/2/AAEA%20COOL%20MEL%20khlim.pdf. Accessed 7 June 2018.

[18] Umberger, Wendy J.; Feuz, Dillon M.; Calkins, Chris R.; Sitz, Bethany M., 2003. "Country-Of-Origin Labeling Of Beef Products: U.S. Consumers' Perceptions," *Journal of Food Distribution Research, Food Distribution Research Society, vol. 34(03),* November 2003.

In enacting FMIA, Congress fully recognized misbranding not only impacts the consumers and processors but can result "in sundry losses to livestock producers."[19]

One of the biggest threats to America's family farmers and independent ranchers is lax importation regulations. In the case at hand, allowing imported meat and meat products to be brought into the U.S., pass through a USDA inspected plant and come out on the other side of the plant bearing the brand "Product of U.S.A." is one of the most egregious examples of the lax importation laws. According to Dr. Allen Williams of Grass Fed Insights, LLC, all imported beef must pass through a USDA-inspected plant, and once it does, it can be labeled as a "Product of USA."[20] Allowing foreign meat and meat products to bear this label denies U.S. cattle producers of the market opportunity that research clearly demonstrates is available to them, and denies consumers the transparency they are entitled to under the law.

Today, U.S. cattle producers are under extreme market pressure. Four companies, Cargill, Tyson, JBS and National Beef, control over 80% of the cattle market.[21] JBS is a Brazilian company and if the recently announced acquisition of National Beef by Marfrig is permitted, the second largest beef producer in the world will also be Brazilian.[22] All four of these multi-national corporations depend on imported meat and meat products for their supply chain.[23]

While there are many factors impacting the price of meat and the beef market is extremely complex, a case can be made that foreign imports of beef impact the price U.S. producers are paid for their cattle. The power of imports' effect on the market can be illustrated based on the recent U.S. market price for cattle and beef. Recently, due to severe drought, U.S. cattle supplies fell to low numbers not seen since the early 1950s. Because of the short supply and a consistent demand, U.S. farmers and ranchers saw market price for their cattle rise from 2010 through 2015[24] but in 2015 the U.S. increased beef imports[25]and repealed mandatory Country of Origin Labeling for beef and pork, breaking the profit opportunity for U.S. cattle producers.

---

[19] 21 U.S.C § 602.

[20] Cheung, Renee; McMahon, Paul; Norell, Erik; Kissel, Rosalie; Benz, Donny. 2017. "Back to Grass: The Market Potential for U.S. Grassfed Beef." *Stone Barns Center*. April 2017. https://www.stonebarnscenter.org/wp-content/uploads/2017/10/Grassfed_Full_v2.pdf. Accessed 7 June 2018.

[21] Huffman, Angela; Maxwell, Joe; Salerno, Andres. 2017. "Consolidation, Globalization, and the American Family Farm." *Organization for Competitive Markets*. August 2017. https://competitivemarkets.com/wp-content/uploads/2017/08/Consolidation-Globalization-and-the-American-Family-Farm.pdf. Accessed 7 June 2018.

[22] "Marfrig Purchases National Beef Ownership Interest." *National Beef.* 9 April 2018. http://www.nationalbeef.com/About/News/Pages/Marfrig-Purchases-National-Beef-Ownership-Interest.aspx. Accessed 7 June 2018.

[23] Cheung, Renee; McMahon, Paul; Norell, Erik; Kissel, Rosalie; Benz, Donny. 2017. "Back to Grass: The Market Potential for U.S. Grassfed Beef." *Stone Barns Center*. April 2017. https://www.stonebarnscenter.org/wp-content/uploads/2017/10/Grassfed_Full_v2.pdf. Accessed 7 June 2018.

[24] "Cattle Prices By Year." *Beef2Live.* 28 May 2018. http://beef2live.com/story-cattle-prices-year-0-112587. Accessed 7 June 2018.

[25] "US Lifts Ban On Beef Imports From Argentina, Brazil." *Processing.* 6 July 2015. https://www.processingmagazine.com/us-lifts-ban-on-beef-imports-from-argentina-brazil/. Accessed 7 June 2018.

The result by the end of 2015 was U.S. imports of beef increased by 33%[26] and the U.S. cattle market price dropped by 30%.[27]

From June 15, 2015 to July 1, 2016, beef processors' profits rose $199 per head while U.S. feeder cattle producers saw a $533 per head decline.[28] As reported by the National Farmers Union, cattle producers saw their retail earnings decline from $0.44 on the dollar in 2014 to just $0.22 in 2018, a loss of 50% of retail value.[29]

Hit hardest by misbranding of U.S. meat products are those U.S. producers who have been transitioning their operations to grassfed beef. This market opportunity has been the one bright spot in U.S. cattle production with sales nearly doubling annually.[30] Sales of grassfed beef has grown from $17 million in 2012 to $272 million in 2016 with producers seeing as much as a 30% premium for their products.[31]

Grassfed U.S. cattle producers are the hardest hit from imports with 75-80% of the total U.S. grassfed beef market by value being from imports as compared with the total beef market where 9% of beef sales by volume is imports.[32]

Brazil, Argentina and Uruguay are the leading exporters of grassfed beef into the U.S. Australia leads beef exports into the U.S. overall with on average 31% of all beef imports to the U.S. from 2011 to 2015. However, it is important to note that 97% of Australia's imported beef to the U.S. is grassfed beef.[33]

---

[26] Cook, Rob. 2015. "U.S. beef imports up 33 percent in 2015." *Drovers*. 4 Sept 2015. https://www.drovers.com/article/us-beef-imports-33-percent-2015. Accessed 7 June 2017.

[27] Meyer, Vaughn. 2016. "Evaluating My Beef Checkoff Return on Investment." *Organization for Competitive Markets*. July 2016. https://competitivemarkets.com/evaluating-my-beef-checkoff-return-on-investment/. Accessed 7 June 2018.

[28] Meyer, Vaughn. 2016. "Evaluating My Beef Checkoff Return on Investment. *Organization for Competitive Markets*. 7 July 2016. https://competitivemarkets.com/evaluating-my-beef-checkoff-return-on-investment/. Accessed 7 June 2018.

[29] Jerome, Andrew. 2018. "Farmers Share of Retail Food Dollar Hits New Low." *National Farmers Union*. 4 May 2018. https://nfu.org/2018/05/04/farmers-share-of-retail-food-dollar-hits-new-low/. Accessed 7 June 2018.

[30] Cheung, Renee; McMahon, Paul; Norell, Erik; Kissel, Rosalie; Benz, Donny. 2017. "Back to Grass: The Market Potential for U.S. Grassfed Beef." *Stone Barns Center*. https://www.stonebarnscenter.org/wp-content/uploads/2017/10/Grassfed_Full_v2.pdf. Accessed 7 June 2018.

[31] Cheung, Renee; McMahon, Paul; Norell, Erik; Kissel, Rosalie; Benz, Donny. 2017. "Back to Grass: The Market Potential for U.S. Grassfed Beef." *Stone Barns Center*. https://www.stonebarnscenter.org/wp-content/uploads/2017/10/Grassfed_Full_v2.pdf. Accessed 7 June 2018.

[32] Cheung, Renee; McMahon, Paul; Norell, Erik; Kissel, Rosalie; Benz, Donny. 2017. "Back to Grass: The Market Potential for U.S. Grassfed Beef." *Stone Barns Center*. https://www.stonebarnscenter.org/wp-content/uploads/2017/10/Grassfed_Full_v2.pdf. Accessed 7 June 2018.

[33] Cheung, Renee; McMahon, Paul; Norell, Erik; Kissel, Rosalie; Benz, Donny. 2017. "Back to Grass: The Market Potential for U.S. Grassfed Beef." *Stone Barns Center*. https://www.stonebarnscenter.org/wp-content/uploads/2017/10/Grassfed_Full_v2.pdf. Accessed 7 June 2018.

In a recent interview, Renee Cheung, founder of consultancy Bonterra Partners and co-author of "Back to Grass: The Market Potential for U.S. Grassfed Beef" expressed how the repeal of Country of Origin Labeling for beef and pork products has made the issue of allowing foreign imported meat products to be labeled as "Product of U.S.A" even more difficult for consumers to know they are eating American beef.[34]

The ability to re-brand foreign imported meat products as "Product of U.S.A." gives unfair advantage to the top four multi-national corporations which control 80% of the U.S. beef market and are the major producers in the world. In 2013, Cargill announced its deal with an Australian company to import into the U.S. both grassfed and grain fed Australian beef.[35]

In that the top four beef producers market globally and often own their own cattle or through contracts control cattle around the world, these corporations can simply import cheaper foreign beef, pass it through USDA-inspected plants or blend it with U.S. beef[36] and gain the increased market value that can be attributed to "Product of U.S.A." [37]

The trend of the major packers to attempt to fill the growing U.S. demand for grassfed beef with foreign beef has some in the U.S. meat business concerned. Ryan Fibiger, founder of Fleishers' Craft Butchery, states it most concisely, '"it is great consumers can now buy grassfed beef in Walmart," but if they buy a low quality imported grassfed steak, "they will never buy grassfed again."'[38]

V. Conclusion

The current FSIS policy which allows foreign imported meat and meat products to be brought into the U.S., processed through a USDA inspected plant and labeled "Product of U.S.A." is counter to the legal authority granted to FSIS in federal law and by its own regulations. The current policy is having the very adverse outcomes on farmers and consumers that Congress specifically stated were the outcomes it intended to prevent when enacting the FMIA. Based on the law and the evidence set out above, we respectfully request FSIS change its policy on

---

[34] Burwood-Taylor, Louisa. 2017. "Report: Grass-Fed Beef Market Doubling Every Year, But Scaling Challenges Remain." *Ag Funder News.* 8 May 2017. https://agfundernews.com/grass-fed-beef-survey-story.html. Accessed 7 June 2018.

[35] 'Cargill Food Distribution teams up with Trey Australia to provide Americans with quality beef from "Down Under".' *Cargill* 30 September 2013. https://www.cargill.com/news/releases/2013/NA3078157.jsp. Accessed 7 June 2018.

[36] OSU Cow-Calf Corner. 2010 "Why Does the US Both Import and Export Beef" *Beef Magazine*. 11 June 2010. http://www.beefmagazine.com/cowcalfweekly/0611-why-does-us-import-export-beef. Accessed 7 June 2018.

[37] Charles, Dan 2013. "Why Lots of Grass-Fed Sold in U.S. Comes From Down Under." *the salt.* 3 Oct. 2013. https://www.npr.org/sections/thesalt/2013/10/04/228659915/why-most-grass-fed-beef-sold-in-u-s-comes-from-down-under. Accessed 7 June 2018.

[38] Cheung, Renee; McMahon, Paul; Norell, Erik; Kissel, Rosalie; Benz, Donny. 2017. "Back to Grass: The Market Potential for U.S. Grassfed Beef." *Stone Barns Center*. https://www.stonebarnscenter.org/wp-content/uploads/2017/10/Grassfed_Full_v2.pdf. Accessed 7 June 2018.

labeling “Product of U.S.A.” as it is set out in the FSIS Policy Book to that recommended in this petition.