April 9, 2003

Country-of-Origin Labeling Program
Agricultural Marketing Service
USDA
Stop 0249
Room 2092-S
1400 Independence Ave., SW
Washington, DC 20250-0249

Re: Docket No. LS-02-13. Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946

Dear Sir or Madam:

This letter responds to the Agricultural Marketing Service's (AMS or the agency) October 11, 2002, request for public comment included in the agency's notice pertaining to the establishment of voluntary guidelines (the guidelines) for country-of-origin labeling. The American Meat Institute (AMI) is the nation's oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products. Our member companies account for more than 90 percent of U.S. output of these products.

AMI strongly opposed mandatory country-of-origin labeling, favoring instead a voluntary approach. However, the law now contemplates mandatory country-of-origin labeling and many AMI members will be subject to the regulatory scrutiny imposed by the labeling requirements. In that regard, everyone will benefit by working cooperatively to make this cumbersome program as practical and feasible as possible. It is in that spirit that AMI submits the following comments concerning the voluntary guidelines to help AMS consider the best course of action in developing a proposed rule.

The Guidelines' Provisions regarding "Processed Food Item" is too Limiting.

The statute exempts from country-of-origin labeling a "covered commodity" if that commodity is an ingredient in a "processed food item." Specifically, section 281(2)(B) provides, in pertinent part, the following:

> EXCLUSIONS--The term "covered commodity" does not include an item described in subparagraph (A) if the item is an ingredient in a processed food item.

The scope of this exclusion from labeling is one of the singularly most important considerations facing AMS as it contemplates development of a regulatory proposal.

AMI appreciates the challenge this issue presents to the agency, given the absence of statutory guidance regarding what constitutes a processed food item. However the concepts articulated in the guidelines do nothing to alleviate the uncertainty, and the problems such uncertainty creates, that meat companies and their customers will face as they attempt to determine whether a product must bear country-of-origin labeling. To eliminate those problems and to simplify an already complex labeling system, AMI submits the following for the agency's consideration.

The simplest, fairest, and most logical approach is to define processed food item more broadly than was done in the guidelines. In that regard, a covered commodity should not have to bear country-of-origin labeling if the product in which the covered commodity is included bears an ingredient statement. Establishing a bright line through this "ingredient declaration" approach will benefit all interested parties in the distribution chain, consumers, as well as government regulators, and is not inconsistent with the principles underlying country-of-origin labeling.

More specifically, this "ingredient declaration" system would eliminate the substantial uncertainty that will exist as companies throughout the distribution chain struggle to determine whether the products they produce, receive, or offer for sale have a "different identify" or are "materially changed" from that of a covered commodity. The guidelines' dual standards create opportunity for uncertainty for packers and processors, as well as their

customers, as the food production system continues to develop new products demanded by consumers. That uncertainty, in turn, presents risk to packers and retailers given the considerable penalties attendant to not providing country-of-origin labeling.

Absent a bright line standard, such as the presence of an ingredient declaration, AMS will struggle to determine whether certain products must bear country-of-origin labeling and that struggle will be ongoing as the meat production system strives to meet changing consumer demand. The subjectivity involved in determining whether a product is materially changed or has a different identity is particularly problematic in an enforcement context. In that regard, AMS will find itself in the business of making determinations as to whether a particular product has been materially changed or has a sufficiently different identity such that it need not bear country-of-origin labeling and thereafter articulating that determination to compliance officials within AMS, FSIS, as well as the state enforcement entities. Without clearer direction from AMS, the agency is at risk of creating opportunities for enforcement officials to make conflicting determinations about whether products must bear country-of-origin labeling. Indeed, an attempt by AMS to pursue penalties in such circumstances could be challenged on the grounds that the regulations are void for vagueness. For the above-stated reasons, AMS should adopt the "bright line" rule that a product bearing an ingredient declaration need not bear country-of-origin labeling.

AMS Must Recognize and Accommodate the "Pipeline" Problem.

In contemplating a proposed rule AMS, should carefully consider how to address in an equitable manner the "pipeline" problem, *i.e.* requiring documentation as to the country-of-origin of livestock born before the 2002 Farm Bill became law. Because meat is a product of biological processes and the duration of those processes varies from species to species and from class to class within species, many animals were alive well before enactment of last year's Farm Bill, and the owners of those livestock may not have adequate documentation to demonstrate their country-of-origin.

For example, most market hogs are five to six months of age when they reach optimum slaughter weight for conversion into pork. Steers and heifers, the source of a substantial percentage of beef muscle cuts, reach market weights and are generally slaughtered from 18 to 24 months of age. Cows culled from dairy and beef herds, a source of much of the ground beef produced in the U.S., often are marketed at five to eight years of age, with some even older. Animals that existed before country-of-origin labeling became law will be subject to the labeling program, either voluntary or mandatory, and there is little assurance that the necessary documentation has been kept through the production system to meet the law's requirements.

Products derived from such livestock should be subject to a grandfather clause exempting them from country-of-origin labeling because of the relevant time frames at issue. In that regard, AMS should incorporate such a provision to address circumstances, such as those presented by dairy cows, that have been and are today part of a milking herd but three years from now, when culled from that herd, may or may not have adequate records attendant to those animals to ensure accurate information is provided to the packer and ultimately the retailer. Not to address this issue by some type of exemption unfairly penalizes livestock producers who own those animals.

Country-of-origin Labeling will be a Costly Process and AMS must develop a Proposed Rule that Minimizes those Costs.

As AMI demonstrated in earlier comments, implementing and administering a country-of-origin labeling scheme for meat products will be very costly, from both capital expenditure and ongoing operational perspectives. Given the *de minimis* benefits attendant to this labeling program, AMS must consider carefully how to craft a proposed rule that minimizes costs throughout the production and distribution system.

The law requires plants to employ product segregation systems so that the meat derived from an "all American" animal, *i.e.* born, raised, and processed in the U.S., is not mixed with meat requiring labeling declaring the product to be, for example, beef derived from an animal "born in the United States, raised in Canada and slaughtered in the United States," and similarly separate from an animal "born in Canada, raised and slaughtered in the United States." The meat from these various "types" of animals must be kept separate as the carcasses proceed down the line, enter the coolers, as the

meat proceeds through the fabrication process, as the trimmings are sent to the grinding operation, and ultimately as the meat, in this case beef, is stored for distribution.

Another capital expenditure will be developing new production and label configurations to accommodate the various labeling permutations that will arise. There are a number of realistic labeling permutations derived from the economic circumstances that drive where cattle and hogs are born, raised, and slaughtered. Those circumstances, which have evolved to enhance economic efficiencies, will (1) require cattle and hog slaughter and processing plants to establish systems that separate the animals and the meat derived from those animals at the plant, (2) force plants to kill animals with different affiliations on specific shifts or specific days, which still requires segregation, or (3) force plants to kill only one "type" of animal to avoid certain segregation and labeling issues.

Accommodating the notable differences in how livestock are raised and processed in the United States and in North America will require significant capital expenditures by many plants. In that regard, capital expenditures are estimated to be as high as $50 million to reconfigure a large cattle slaughter and beef processing plant to accommodate the issues identified above. For other, smaller cattle slaughter and processing facilities, cost estimates run from approximately $20 million to $30 million per plant. As AMI submitted in earlier comments, it could cost the largest cattle slaughter facilities as much as $1.32 billion to reconfigure those plants to address country-of-origin labeling requirements. That figure does not include the vast majority of the more than 800 plants that slaughter cattle in the United States.

Similarly, estimates of capital costs for hog slaughter and processing operations range from $12 million to $25 million. As AMI's previously submitted comments demonstrated, the pork industry could incur costs of approximately $1.1 billion to accommodate country-of-origin labeling. Thus, capital expenditures to enable compliance at the larger cattle and hog slaughter and processing plants could reach $2.4 billion or more. Indeed, even if half the plants identified elect to buy only animals that may be characterized as "All American," costs could still exceed $1 billion.[1]

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[1] These figures do not include costs that likely would be incurred at some lamb slaughter operations.

In addition to the capital costs that will be incurred at livestock slaughter and processing plants, many meat processing facilities do not slaughter cattle, but produce ground beef and other fresh whole muscle meat products, which could be subject to country-of-origin labeling. These facilities buy significant amounts of frozen imported beef and buy large amounts of beef trimmings from slaughter facilities, perhaps as many as 10 to 20 suppliers.[2] Estimates of developing a segregation system to accommodate the inputs with a vast array of labeling permutations, which is made more problematic by the requirement that for blended products the various inputs must be listed in order of predominance by weight, range from $1 to $3 million. Given the large number of federal and state inspected grinding operations that may be affected by the labeling requirements, many of them very small, it is virtually impossible at this time to provide an accurate estimate of the capital costs that might be incurred by this sector of the meat industry. What is patently obvious, however, is that the costs incurred will be substantial under the system envisioned by the voluntary guidelines.

Even after capital investments are made, meatpacking plants face the ongoing costs attendant to implementing the country-of-origin labeling provisions. The statute imposes on those who provide covered commodities to retailers an obligation to provide accurate information, regardless of whether the plant only buys "All American" or elects to buy livestock or meat with different country affiliations. In either circumstance, a recordkeeping system must be implemented and administered so that the purchaser of the covered commodity, as well as the government, can verify labeling accuracy. In that regard, all meat packers, of every size who sell <u>or want to sell</u> a covered commodity to retailers will have to administer a recordkeeping system for country-of-origin labeling.

Estimates are that, from an operational standpoint, for a cattle slaughterer and processor it will cost at least $5 per head and maybe as much as $10 per head to provide accurate country-of-origin labeling information. These values involve not only recordkeeping, but also other costs related to

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[2] Also significant is the fact that many slaughter plants buy trimmings from other slaughter plants in order to be able to meet customer demands. Thus, a "dedicated" slaughter plant would only be able to buy trimmings from other, similarly dedicated plants rather than having a wider array of plants from which to purchase inputs.

segregation, additional labeling, storage, and other factors.[3] For hogs, the cost estimate is between $1.25 and $2 per head. Using conservative estimates of per head costs AMI previously submitted comments suggesting that country-of-origin labeling will result in costs of $208.2 million for beef and $144.9 million for pork – a total of approximately $353 million annually.[4] These operational costs are likely to be incurred by virtually all slaughter operations because, although some meat produced at a slaughter plant is used in products that are not covered commodities, virtually all livestock slaughter operations either sell some products to retailers or would like to be able to sell to retailers. Because the obligation to provide accurate information as the product's country-of-origin exists regardless of the nature of the animal, *i.e.*, "All American" or other, virtually every slaughter plant will have to have a recordkeeping and audit system.

As with capital expenditures, slaughter operations are not the only meat processor that will incur operations costs. Beef grinding operations that are separate and apart from the slaughter facilities will also bear costs as they provide, for example, coarse ground beef or case ready ground beef to retailers or others in the meat distribution chain. In that regard, because the costs attendant to compliance will be unduly burdensome, AMS must reconsider the voluntary guidelines provision requiring blended products to declare the country-of-origin by order of predominance by weight. To impose such an additional and extensive labeling requirement will be prohibitively costly to many ground product producers, with little or no discernible benefit.

For example, a small ground beef producing establishment that procures inputs from five, 10, or even 20 different suppliers and produces several different products, *i.e.* ground beef with different lean percentages, 93, 85, 80, and 70 percent, will be forced to abandon the economic efficiencies inherent in least cost formulation or will be forced to carry an extensive labeling inventory, as well incurring the costs involved in shutting down operations while new labeling is rolled out for each different product.

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[3] The labeling problem is compounded when the product quality factor, *i.e.* the grading system, is added to the calculus.

[4] The $353 million does not include costs attendant to approximately 975,000 veal calves slaughtered at federal plants nor the almost 3.1 million lambs slaughtered under federal inspection. This value also does not include the costs that would be borne by state inspected facilities that sell a covered commodity. State inspected plants are not exempt from providing accurate information about the country-of-origin of such products.

In summary AMS must, as it develops a proposed rule for country-of-origin labeling, adjust its regulatory scheme regarding the scope of the definition of a processed food ingredient. The agency must also devise a means of not punishing those who own livestock that were born before the Farm Bill was enacted due to the absence of necessary records. Finally, to require blended products to declare country-of-origin by order of predominance by weight unnecessarily adds cost to an already cumbersome labeling system.

Sincerely,

Mark Dopp
Senior Vice President, Regulatory
Affairs and General Counsel

cc: Patrick Boyle
Mike Brown
Janet Riley