Confederación Nacional de Organizaciones Ganaderas

CONSTITUIDA CONFORME A LA LEY DE ASOCIACIONES GANADERAS

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Department of Agriculture
Food Safety and Inspection Service Office

RE: Food Safety and Inspection Service Office: Voluntary Labeling of FSIS-Regulated Products with U.S.-Origin Claims
Docket Number: FSIS– 2022–0015

COMMENTS ON PROPOSED RULE ON VOLUNTARY LABELING OF FSIS-REGULATED PRODUCTS WITH U.S. – ORIGIN CLAIMS

This document is submitted on behalf and in representation of the Confederación Nacional de Organizaciones Ganaderas (CNOG), to thank the Food Safety and Inspection Service of the Department of Agriculture (FSIS) for the opportunity to provide comments on the proposed new regulatory requirements regarding the alleged voluntary *"Product of USA"* or *"Made in the USA"* label claim for meat, poultry and egg products, published in the Federal Register on March 13, 2023.

The CNOG is Mexico's largest organization of livestock producers. It was established in 1936 and is currently made up of 2,036 local livestock associations, 46 regional livestock unions, 47 registered livestock associations and 6 regional livestock unions of pork producers. In total, more than 800,000 farmers from all over Mexico are represented by the CNOG.

The CNOG is a central actor in the definition of the strategy for the development of the livestock sector in Mexico. We represent the entire sector before various governmental and private entities, in addition to providing technical, legal, and administrative advice in support to all subsidiary livestock organizations in the country.

The CNOG's main objective is to promote the improvement the well-being and working conditions of Mexican ranchers, by organizing them, increasing the value of livestock activity nationally and internationally, being a trustworthy source of information on the advances of the livestock industry, ensuring that the supply is always guaranteed, and that the livestock sector continues to be a factor in contributing to the economic growth of the country.

(…2)

Mexico is currently the seventh largest producer of bovine meat, producing 2.2 million tons per year. In 2023, our cattle exports were close to 1 million heads per year, representing more than 800 million USD. The Mexican and American meat sectors have traditionally enjoyed a sound integration. The United States is Mexico's main partner for meat cattle, to the benefit of the American consumer.

As will be later explained, the proposed rule contains several problematic features, which, if implemented, will affect Mexican cattle exporters, as well as U.S. producers and consumers, while resulting in no tangible benefit but to a limited number of U.S. producers that will be able to afford the restrictive labeling requirements and to some supermarket chains that will be able to charge exorbitant prices for the meat that bears those labels.

Our comments are divided in three main parts:

- Firstly, we show that the proposed regulation mistakenly assumes that there is consumer confusion, and the *"product of the USA"* privileges the origin of the raw materials over the value added provided by U.S. ranchers and farmers in providing meat products to the U.S. consumer;
- Furthermore, we will show that the proposed regulation is problematic because it creates a series of economic inefficiencies in the production of meat products (mainly in the supply chain through cattle imports);
- Lastly, we discuss that this proposed regulation is in violation of several provisions of USMCA, the WTO General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (TBT Agreement) and the Codex Alimentarius.

We will turn to each of these points:

(…3)

a) Consumer confusion

Pursuant to the proposed regulations, meat products will be able to use the *"Product of USA"* or *"Made in the USA"* labels only when they are derived from animals born, raised, slaughtered and processed in the United States. The stated objective of the regulation is *"to resolve consumer confusion surrounding current voluntary label claims related to the origin of FSIS-regulated products in the U.S. marketplace"*. In its Background section, it states that FSIS-regulated products that are derived from animals that may have been born, raised and slaughtered in another country but are minimally processed in the United States may currently be labelled as *"Product of the USA"*, which leads to consumer confusion. On the basis of a consumer survey it carried out, the FSIS identified that 47 percent of the participants believe that only meat from animals born, raised, slaughtered and then processed constitute *"Products of USA"*.

In order to bring this discussion into perspective, let us remember that the regulation applies to *"meat, poultry, and egg products, as well as voluntarily-inspected products"*. To be clear: the regulation does not apply to live animals. The proposed regulation suggests superficially that meat products currently bearing the *"Product of USA"* label are products of Mexico (or elsewhere) that undergo minor changes in the United States. That is simply not the case.

Current FSIS Regulations on country-of-origin labeling only apply to imported -not domestic- products, and mandatory COOL does not apply to meat products. Therefore, to state that consumers are confused because they believe that a certain requirement exists cannot be attributed to the current labeling practices, but rather to a lack of information on the part of USDA. Currently, there is no requirement that meat products be made of animals that were born, raised and slaughtered in the U.S. in order to be considered a *"Product of the U.S.A."* Therefore, the alleged confusion is due to the incorrect belief that such a requirement exists.

(…4)

More specifically, the current FSIS Regulations on country-of-origin labeling[1] require that the immediate container of imported meat, poultry and eggs bears a country-of-origin label to establish the country/countries where the products been produced. However, once these goods are repackaged or are otherwise reprocessed in a federally inspected facility, they are treated and deemed as domestic products for labeling purposes (i.e., they become a *"product of USA"*). By establishing a requirement that only a subset of these domestic products (i.e., those that were produced from U.S.-born and raised animals) can be considered as a *"Product of USA"* and that the other subset of such domestic products (i.e. those produced from imported animals, but further processed in the U.S.) cannot enjoy bearing that label, negatively and immediately affects the latter's' competitive position.

Furthermore, the proposed rule negates the fact that a high degree of integration exists between Mexico and the Southern States of the United States. Currently, ranchers and farmers in the southern United States find high quality cattle from Mexico at a very affordable price to breed them in the United States. By that same token Mexican cattle farmers take advantage of the vocation of their ranches to produce calves that are kept in pastures until they are exported. Likewise, beef imports from Mexico and Canada are complementary to the U.S. supply, as the U.S. beef supply is supplemented depending on the cattle production cycle.

Most of the beef are used to processed beef products in the face of reduced availability in the domestic market, allowing processors to access quality meat at competitive prices. As Meat Institute President and CEO Julie Anna Potts stated, *"Our members make considerable investments to produce beef, pork, lamb, veal and poultry products in American facilities, employing hundreds of thousands of workers in the U.S. and with processes overseen by USDA inspectors. This food should be allowed to be labeled a 'Product of the USA.'"*[2] Currently, 30% of the cattle head imported from Mexico crosses the border when the animals weigh between 300 and 400 lbs, and another 68% between 500 lbs and 600 lbs, and in turn are bred in the United States until they reach 1,200 lbs[3]. This cannot, by any means, be considered a minor change.

(…5)

[1] 9 C.F.R. § 327.14-.15

[2] https://www.drovers.com/news/industry/nami-fsis-new-label-proposal-meat-poultry-will-raise-prices-consumers

[3] FAS/USDA and https://www.gob.mx/agricultura%7Cquintanaroo/articulos/defiende-sagarpa-derecho-de-ganaderos-mexicanos-en-controversia-con-usa-por-sistema-de-etiquetado-cool

To bring more context, the proposed rule ignores the United States' own interpretation of the term *"originating product"* contained in Chapter 4 of USMCA. Under that Chapter, products can become originating if they are either processed in the United States from originating or non-originating materials, if they undergo a tariff shift or if they comply with a specific regional value content.[4] Specifically, meat and edible meat offal (Chapter 2 of the HS) become originating when they undergo a substantial transformation from, e.g. imported live animals.[5] In other words, contrary to the proposed regulation, the U.S. government understands that slaughtering live animals in U.S. territory is enough to render them *"products of the U.S.A."*

Additional official sources from the U.S. Government confirm this interpretation. For example, the CBP webpage on marking of country of origin on U.S. imports states the following:

"The country of origin of an article may be changed in a secondary country if one of the following occurs:

1. *If the further work or material added to an article in the second country constitutes a substantial transformation. A substantial transformation occurs if a new article with a different name, character, and use is created.*
2. *For a good from a NAFTA country: if under the NAFTA Marking Rules (19 CFR Part 102) the second country is determined to be the country of origin of the good; or*
3. *For an article considered to be a textile or apparel product (regardless of whether it is a good from a NAFTA country): if the country of origin is determined by the general rules set forth in 19 CFR Part 102.21 to be the second country. For purposes of determining whether a textile or apparel product is from Israel, the general rules in 19 CFR 12.130 apply."* [Emphasis added][6]

[4] In the same vein, Article 9(b) of the WTO Agreement on Rules of Origin provides that *"rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out."* [Emphasis added]

[5] See USMCA, Chapter 4, Section B: Product Specific Rules of Origin: *"Chapter 2 Meat and Edible Meat Offal - 02.01-02.10 A change to heading 02.01 through 02.10 from any other chapter."*

[6] https://www.cbp.gov/trade/rulings/informed-compliance-publications/marking-country-origin-us-imports

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In the same vein, Statute 4.5.2 of the Codex Alimentarius states *"When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling."* The proposed regulation is in frontal inconsistency with this international standard and therefore, in violation of this international treaty. If some consumers believe that only meat from animals born, raised, slaughtered and then processed constitute *"Products of USA"* such belief cannot serve as a justification to contradict the international standard.

As has been demonstrated, by requiring a *"purity"* test, i.e., that the animal from which the meat comes from has to be born in the United States, the proposed regulation will not improve consumer information, but will rather instead create the false impression that the origin of the raw material of their food products is far more important than the hard work of U.S. farmers and ranchers in the production of meat products. It is the proposed rule, not the current status, that would lead to consumer confusion.

b) Economic inefficiencies

As stated above, the North American meat industry is integrated between the three countries. Meat imports from Mexico and Canada are complementary to the U.S. beef supply by genetics and animal health.

According to the FSIS, the proposed rule will have one-time relabeling cost for industry, annual recordkeeping costs, and one-time market testing cost, with an estimated total cost of $3 million, annualized at a 7 percent discount rate over 10 years.

However, the implementation cost analysis performed by FSIS is biased and incomplete, as it only considers a portion of the direct costs associated with retail-level labeling and recordkeeping. The analysis presented does not consider indirect and hidden costs, such as the ones incurred for segregation of animals destined for slaughter along the entire value chain - feedlots, slaughterhouses, meat processors and wholesalers- or the potential impact on prices for consumers.

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The proposed regulation, if enacted, will harm ranchers and farmers in Mexico and the United States with no tangible benefits—but rather considerable harm—for the U.S. consumer, because it would introduce new requirements and costs that would negatively affect the cost-structure of meat producers and distort the pricing structure at the retail level.

Under the previous COOL provisions, Mexican cattle were processed only in certain processing plants, on a specific day of the week and at least 14 days in advance and there was a significant impact on Cattle Price Relationship.

The new proposed rule contains all the elements to presume that these commercial practices will be repeated and will add to the already cumbersome requirements that Mexican producers undergo in order to sell their products in the United States.

It is expected that this new rule, if applied, will generate several billion dollars in losses, as its ultimate effects will be similar to those of mandatory COOL. If we consider that export cattle from Mexico and Canada are slaughtered at around 1,200 pounds, the loss to U.S. slaughterers in the first year could reach an estimated $195 million dollars. This is without considering the costs associated with registration and maintenance, as well as possible losses due to the cancellation of agreements with processors.

In addition, this regulation would distort the supply chain, since producers in the southern United States which are currently supplied by Mexico, would have to decide whether to incur additional costs of bringing cattle from elsewhere in the U.S. or to simply forego the possibility of labeling their meat products as *"Product of the U.S.A."* Consider, for example, a consumer in Arizona deciding between purchasing beef raised in Sonora -deeply integrated in the US supply chain- and beef raised in North Dakota, given the increased transportation costs, not to mention the carbon footprint incurred.

Under the proposed rules, if breeders decide to continue importing cattle from Mexico, they could reach an estimated $195 million USD in lost revenue in the first year only, without considering the costs associated with registration and maintenance, as well as possible losses due to the cancellation of agreements with processors.

Moreover, the proposed rule relies heavily on a survey that concludes that some consumers are willing to pay a large premium for meat that derives from animals that were born, raised, and slaughtered in the U.S. Assuming *arguendo* that this is the case, the proposed regulation will not benefit the American consumer, but it will create an artificial market where supermarkets will increase prices by approximately 32%-43% for meat products bearing the *"Product of USA"* or *"Made in the USA"* labels. Once this happens, it will significantly contribute to higher inflation that would harm U.S. consumers, which is precisely what the Biden-Harris administration has been trying to avoid.

Indeed, if implemented, the proposed rule would create a market distortion whereby supermarkets, aware of the figures resulting from the consumer survey carried out by FSIS, will require that products bear the *"Product of the USA"* or *"Made in the USA"* labels, expecting to increase the price of e.g., NY strip steak by $3.67 per lb. Under this scenario, products that do not bear the labels may start to be considered *"sub-prime"* (regardless of the actual quality of the product) or, at least, less commercially attractive, because of the sole effect of the distortion created by the label and will affect the competitiveness of U.S. processors and Mexican farmers. In the long run, the price difference will artificially increase by much more than $3.67 per lb of NY strip steak.[7] In fact, if we take the survey results as valid, the potential loss of consumer surplus could reach $20 billion USD for ground beef, and $20.7 billion USD for steaks.[8]

As noted by the Food Marketing Institute "*to be eligible to export to the U.S., a foreign country's inspection system has to be found by USDA to be equivalent to the U.S. system. In addition, meat plants in other countries that wish to export must document that they are following U.S. food safety standards or standards that are equivalent to U.S. standards. These plants must be certified by the USDA. When the meat products arrive at the U.S. border, they are subject to more safety inspections. Finally, if the imported meat is further processed in the U.S., it is subject again to the inspection requirements administered by USDA*".[9] Therefore, there are no objective grounds to assume differences in the quality of products born and raised in other countries.

[7] According to the Mexican Government, under the mandatory COOL, the price of Mexican-born cattle plummeted to as much as $95 USD per head less than their U.S.-born equivalent.

[8] Calculated by analyzing the difference between the consumer's willingness to pay established in the survey, the actual price they pay for that product, and consumption of steaks and ground beef.

[9] http://www.meatinstitute.org/sites/countryoforiginlabel.org/ht/d/sp/i/34493/pid/34493

Mexico has already experienced distortions on quality perceptions with the U.S voluntary *"Dolphin safe"* label. While we do not contend that the conditions in that case were the same, it shows the power of a single voluntary label to distort the market and create price bubbles to the detriment of consumers. It also shows that voluntary labels can create trade restrictions that violate international agreements (i.e. violations to the TBT Agreement).

Lastly, the proposed rule does not consider that a decrease in bovine cattle imports from Mexico will in turn affect other input suppliers such as U.S. yellow corn producers. Mexico imports more than 80% of its yellow corn from U.S., where 78% is consumed by the livestock sector. Decreased cattle exports will probably result in decreased production in Mexico, thereby affecting U.S. corn exporters, as they will face a shrinking Mexican market.

c) Violations of U.S. international commitments

The proposed regulation does not exist in isolation. It is the latest of many efforts by a handful of U.S. producers seeking to gain a competitive edge by creating a false impression that their products are superior to imported products, and by restricting competition from other Mexican and U.S. producers whom they perceive as a threat to their business. The introduction of controversial country-of-origin labeling rules dates, at least, to the 2008 amendments to the Farm Bill, where the original COOL was established. As we know, the World Trade Organization (WTO) declared it illegal, and both Mexico and Canada were authorized to retaliate against the United States.

We will discuss the potential violations of the proposed regulations in light not only of the WTO Agreements, but also in light of the newer set of obligations accepted by the United States through the USMCA and the Codex Alimentarius.

The proposed regulation is a technical regulation: While varying in degree, the proposed regulation maintains some of the restrictive and discriminatory features that rendered the original mandatory COOL illegal. Notably, while this regulation is portrayed as *"voluntary"*, it establishes government-mandated *"labeling requirements"* as they apply to a product, process or production method, within the meaning of Annex 1 of the TBT Agreement and therefore constitute technical regulation.

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The proposed regulation is discriminatory: Article III:4 of the General Agreement on Tariffs and Trade (GATT) establishes the principle of national treatment, under which *"[t]he products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."* [Emphasis added]. By that same token, Article 2.1 of the TBT Agreement provides that *"Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country."*[10]

This principle, incorporated into the USMCA through Articles 2.3, 11.3 and 11.5, para 8, prohibits the U.S. from establishing and applying technical regulations -or standards- on Mexican meat in a manner which is less favourable than that accorded to like U.S. beef. To the extent that the labels aim at providing a commercial advantage given the consumers' willingness to pay, and to the extent that said advantage can only be provided to meat products from animals born, raised, and slaughtered in U.S. territory, it clearly discriminates against Mexican like products, starting with live cattle, and is therefore a direct violation of this principle. Furthermore, to the extent that the record-keeping requirements negatively affect Mexican exporters, the United States is also violating this principle.

Unnecessary obstacles to international trade: the TBT's Code of Good Conduct requires that standards are not applied with the effect of creating unnecessary obstacles to international trade. In this respect, by forcing U.S. meat producers to label their products as *"Product of the USA"* or *"Made in the USA"* only if they come from U.S.-born, and raised animals, the United States is creating a system whereby Mexican products cannot meet their standard, and therefore this creates an unnecessary obstacle to international trade.

[10] Assuming, arguendo, that they were not considered technical regulations, but standards, the Agreement on Technical Barriers to Trade, incorporates this principle by stating that: "*[i]In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favourable than that accorded to like products of national origin and to like products originating in any other country."*

Moreover, Article 2.2 of the TBT Agreement requires that *"Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create."* Likewise, Article 11.5, paragraphs 2(a)(ii) and 2(b)(ii) of the USMCA, requires the U.S. to consider approaches that are less trade restrictive.

Leaving aside the discussion of whether this regulation fulfills a legitimate objective -which it does not- the proposed regulation neglects to justify whether this is the least trade-restrictive approach, or to present an analysis of other alternatives that could meet that requirement. On the other hand, we note that many comments submitted during this process propose a plethora of measures that would be less trade-restrictive than the proposed measure. The CNOG stands ready to discuss alternatives with the FSIS that would be less restrictive.

d) Closing comments

By the time these comments were submitted, we have identified [close to 1,800] comments to the proposed regulation, the majority of which come from individual persons making general assertions in support of the proposed regulations, without any scientific, economic, or other evidence, and based primarily on misconceptions about imported meat. We trust that the FSIS will favor substance over quantity and will make a decision regarding this proposed regulation based on the reasoned arguments that have been submitted, rather than on the number of "me too" submissions.

The CNOG has provided sufficient arguments and information to demonstrate the risks posed by the proposed regulation, not only to Mexican cattle exporters, but also to American meat producers and consumers. We are confident that the FSIS will undertake a serious exercise before deciding on whether or not to implement the proposed ruling. Should the FSIS require to have a more detailed discussion on our arguments, we are ready to engage at your earliest convenience.

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The integration of the North American meat industry needs to operate seamlessly and without artificial restrictions. While Mexico would be entitled to respond with equivalent measures or otherwise retaliate for this illegal proposed measure, we trust that reason and the common interests of both countries will prevail.

Finally, the CNOG hopes that the proposed regulation will never be implemented in its current form and that, if FSIS continues to consider the need of having specific labeling rules for meat products, that other less restrictive alternatives are seriously considered.

Sincerely,

ING. HOMERO GARCÍA DE LA LLATA
PRESIDENT

Sr. JOSÉ ERNESTINO MAZARIEGOS ZENTENO
SECRETARY

ING. NOEL JAVIER RAMÍREZ MEJÍA
TEASURER