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8 UNITED STATES DISTRICT COURT FOR THE
 EASTERN DISTRICT OF WASHINGTON
 9

10 RANCHERS-CATTLEMEN ACTION
 LEGAL FUND, UNITED
 11 STOCKGROWERS OF AMERICA and
 CATTLE PRODUCERS OF
 12 WASHINGTON,

13 Plaintiffs,

14 v.

15 UNITED STATES DEPARTMENT OF
 AGRICULTURE and SONNY
 16 PERDUE, in his official capacity as
 Secretary of Agriculture,

17 Defendants.

NO.

**COMPLAINT FOR A
 DECLARATORY JUDGMENT,
 VACATUR, AND INJUNCTIVE
 RELIEF CONCERNING THE
 LAWFULNESS OF UNITED
 STATES MEAT LABELING
 REGULATIONS**

18
 19 1. Domestic ranchers and farmers like Jeff Schmidt, David Niemi, and
 20 Lorene Bonds produce premium beef and pork, for which many consumers will

1 pay a premium price. Many Americans will pay more to feed themselves and their
2 families meat that comes from livestock born, raised, and slaughtered in the United
3 States. But current regulations permit meat from cattle and hogs born, raised, and
4 slaughtered in other countries to be passed off as domestic products, harming
5 United States ranchers, farmers, and consumers.

6 2. This is a challenge to the United States Department of Agriculture's
7 ("USDA's") March 2016 decision to revoke regulations requiring that beef and
8 pork products be labeled with their country of origin. USDA's decision reinstated
9 regulations that reclassify imported beef and pork as domestic goods, enabling that
10 meat to be passed off as a United States product. *See* 9 C.F.R. § 327.18(a).

11 3. From 2009 into 2016, USDA required that beef and pork be labeled so
12 that consumers buying those goods at retail could determine the meat's country of
13 origin. Those regulations not only provided purchasers desirable information and
14 enabled an open, competitive market among producers, but also corrected—what
15 USDA acknowledged was—a decades-long conflict between the Meat Inspection
16 Act's statutory text (which mandates such labels in certain circumstances) and the
17 agency's Meat Inspection Act regulations (which had not required such labeling).
18 *See* 21 U.S.C. § 601 *et seq.*

1 4. However, in 2016, acting on a bill that removed *other* country-of-
2 origin labeling requirements, USDA removed the regulations that had brought its
3 application of the Meat Inspection Act into compliance with the statutory text.

4 5. The agency reinstated its prior rules, allowing beef and pork from
5 animals slaughtered abroad to be reclassified as domestic goods, despite the fact
6 that the agency had previously recognized those rules conflicted with the Meat
7 Inspection Act's text.

8 6. Thus, USDA's current regulations regarding the country-of-origin
9 labeling for imported beef and pork are unlawful. *See, e.g., N.L.R.B. v. Brown*, 380
10 U.S. 278, 291-92 (1965) ("Reviewing courts are not obliged to stand aside and
11 rubberstamp their affirmance of administrative decisions that they deem
12 inconsistent with a statutory mandate or that frustrate the congressional policy
13 underlying a statute. Such review is always properly within the judicial province,
14 and courts would abdicate their responsibility if they did not fully review such
15 administrative decisions."); *Resident Councils of Wash. v. Leavitt*, 500 F.3d 1025,
16 1030 (9th Cir. 2007) ("When reviewing an agency's construction of a statute it is
17 charged with administering, we first look to the statutory text to see whether
18 Congress has spoken directly to the question at hand. If the intent of Congress is
19 clear, that is the end of the matter; for the court, as well as the agency, must give
20 effect to the unambiguously expressed intent of Congress." (quoting *Contract*

1 *Mgmt., Inc. v. Rumsfeld*, 434 F.3d 1145, 1146-47 (9th Cir. 2006), in turn quoting
2 *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984)
3 (quotation marks omitted)); 5 U.S.C. § 706(2)(A) (“The reviewing court shall ...
4 hold unlawful and set aside agency action, findings, and conclusions found to be
5 ... not in accordance with law[.]”).

6 7. The regulations should be declared unlawful, vacated, and enjoined.

7 I. SUMMARY

8 8. The Meat Inspection Act requires that imported meat from animals
9 slaughtered abroad (as opposed to livestock), including beef and pork, that is
10 “capable of use as human food ... be marked and labeled as required by such
11 regulations for imported articles.” 21 U.S.C. § 620(a).

12 9. The Tariff Act of 1930 requires imported beef and pork to be marked
13 or labeled with its country of origin all the way to “an ultimate purchaser in the
14 United States.” 19 U.S.C. § 1304(a).

15 10. Based on the Meat Inspection Act’s plain text, Congress’ unequivocal
16 direction is that USDA should enforce the Tariff Act’s country-of-origin labeling
17 requirements for imported beef and pork.

18 11. Yet, instead, USDA’s Meat Inspection Act regulations *reclassify*
19 imported meat as a domestic good, so it does *not* need to bear any marks or labels
20 identifying its country of origin. 9 C.F.R. § 327.18(a).

1 12. In fact, USDA allows such products to be labeled as “Product[s] of
2 [the] U.S.A.” even though the animals were born, raised, slaughtered, and
3 butchered elsewhere.¹

4 13. USDA promulgated rules under the Meat Inspection Act that
5 accomplish the exact opposite of what the authorizing statute requires.

6 14. For a brief period, USDA acknowledged and corrected its unlawful
7 regulations.

8 15. The 2002 Farm Bill directed USDA to ensure consumers be provided
9 “additional information on which to base their purchasing decisions,” particularly
10 information regarding a good’s country of origin. Mandatory Country of Origin
11 Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural
12 Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts, 73 Fed. Reg.
13 45106, 45109, 45140 (Aug. 1, 2008).

14 16. For beef and pork products, the 2002 Farm Bill had the primary effect
15 of requiring country-of-origin labeling on goods derived from imported livestock
16 (as opposed to imported beef and pork). *See* Joel L. Greene, Cong. Research Serv.,

17
18 ¹ USDA, *Food Standards and Labeling Policy Book* 155-56(Aug. 2005),
19 https://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf
20 [f.](#)

1 *Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat*
2 *Labeling*, 30-31 (Mar. 8, 2016) (Exhibit A).

3 17. However, USDA took this as an opportunity to bring its labeling
4 requirements for imported beef and pork into line with the Meat Inspection Act.
5 Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable
6 Agricultural Commodities, and Peanuts, 68 Fed. Reg. 61944, 61948-49 (Oct. 30,
7 2003).

8 18. In 2009, USDA promulgated final rules that required beef, pork, and
9 other commodities “slaughtered in another country [to] retain their origin, as
10 declared to U.S. Customs and Border Protection [(“U.S. Customs”)] at the time the
11 product entered the United States, through retail sale.” 7 C.F.R. § 65.300(f)(2)
12 (2009); *see also* 7 C.F.R. § 65.135(a) (2009).

13 19. In other words, the regulations issued following the 2002 Farm Bill
14 overrode the Meat Inspection Act’s rules and created a new, superseding
15 requirement: Country-of-origin labels had to remain on imported beef and pork
16 through the goods’ sale to consumers. This resolved the conflict between the Meat
17 Inspection Act’s regulations and the statute’s text.

18 20. However, the World Trade Organization (“WTO”) subsequently
19 authorized Canada and Mexico to impose sanctions against the United States
20 because the WTO concluded the labeling requirements related to goods derived

1 from imported *livestock* improperly disadvantaged the sale of imported *live* cattle
2 and hogs. Greene, *supra*, at i-ii.

3 21. The WTO did not call into question the marks or labels required by
4 the Tariff Act for imported beef and pork. *Id.* at 42-45.

5 22. In response, Congress removed cattle, hogs, beef, and pork from the
6 list of items that required country-of-origin labels under the 2002 Farm Bill.
7 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 759, 129 Stat.
8 2242, 2284-85 (2016).

9 23. Congress made no alterations to the requirements of the Meat
10 Inspection Act or the Tariff Act. *See id.*

11 24. Yet, USDA declared that *all* beef and pork products would no longer
12 be covered by its regulations issued following the 2002 Farm Bill. Removal of
13 Mandatory Country of Origin Labeling Requirements for Beef and Pork Muscle
14 Cuts, Ground Beef, and Ground Pork, 81 Fed. Reg. 10755 (Mar. 2, 2016).

15 25. Rather than act with precision and respond to the WTO's and
16 Congress' concerns in a way that also complied with preexisting laws, USDA used
17 a broad brush and deleted beef and pork from its labeling requirements, despite
18 USDA's prior acknowledgement that country-of-origin labeling was required not
19 only by the 2002 Farm Bill, but also by the Meat Inspection Act.

1 26. Through final agency action terminating the regulations covering
2 imported beef and pork that it had issued following the 2002 Farm Bill, USDA
3 reinstated its prior scheme for imported beef and pork. As of 2016, USDA is again
4 permitting the sale of beef and pork from animals slaughtered in other countries
5 with the same labels as domestic meat (imported beef and pork can even be labeled
6 a “Product of U.S.A.”), duping consumers. Thus, USDA’s regulations once again
7 conflict with the Meat Inspection Act’s text.

8 27. USDA’s action harms domestic consumers and producers.

9 28. A 2016 Consumer Reports survey found that 60% of consumers want
10 food labels to tell them if their meat is from livestock born *or* raised outside the
11 United States.

12 29. In 2015, Consumer Reports stated that its “surveys have consistently
13 shown that more than 90 percent of consumers would prefer to have a country-of-
14 origin label on the meat they buy.” Consumer Reports, *Don’t repeal country-of-
15 origin labeling on food* (June 12, 2015),

16 [http://www.consumerreports.org/cro/news/2015/06/dont-repeal-country-of-origin-
17 labeling-on-food/index.htm](http://www.consumerreports.org/cro/news/2015/06/dont-repeal-country-of-origin-labeling-on-food/index.htm).

18 30. A 2013 study conducted by the Consumer Federation of America
19 similarly found that 90% of consumers want country-of-origin labeling on “fresh
20 meat” sold by “food sellers.” Consumer Federation of America, *Large Majority of*

1 *Americas Strongly Support Requiring More Information on Origin of Food Meat*
2 (May 15, 2013), [http://consumerfed.org/press_release/new-poll-shows-strong-](http://consumerfed.org/press_release/new-poll-shows-strong-support-for-usdas-approach-to-resolving-country-of-origin-labeling-dispute/)
3 [support-for-usdas-approach-to-resolving-country-of-origin-labeling-dispute/](http://consumerfed.org/press_release/new-poll-shows-strong-support-for-usdas-approach-to-resolving-country-of-origin-labeling-dispute/).

4 31. Nonetheless, in 2016, USDA's unlawful regulations provided for
5 around 887,000,000 pounds of imported fresh beef to be passed off to consumers
6 as homegrown products. This figure does not include the massive amounts of
7 imported, fresh pork, and imported, processed beef and pork, which USDA's rules
8 also allow to be treated as domestic products, despite the fact that our trade laws
9 (*e.g.*, the Tariff Act) require that such goods bear country-of-origin labels through
10 their retail sale.

11 32. As a result, United States cattle and hog producers received less
12 income because the domestic market was flooded with foreign goods that could be
13 passed off as having been produced in the United States, decreasing the demand
14 for true, domestically produced goods.

15 33. For these reasons this Court should:

16 a. Declare USDA's current marking or labeling requirements for
17 imported beef and pork unlawful because they fail to require that the meat "be
18 marked or labeled as required by such regulations for imported articles," 21 U.S.C.
19 § 620(a);

1 b. Vacate USDA's current marking or labeling requirements for
2 imported beef and pork because they fail to require that the meat "be marked and
3 labeled as required by such regulations for imported articles," 21 U.S.C. § 620(a);
4 and

5 c. Issue an injunction prohibiting USDA from authorizing marks
6 or labels on imported beef and pork that are inconsistent with the Tariff Act. *See* 5
7 U.S.C. § 703.

8 **II. JURISDICTION AND VENUE**

9 34. This complaint concerns the 2016 final USDA action that terminated
10 that agency's regulations requiring country-of-origin labeling for beef and pork.
11 Those regulations had corrected the conflict between the text of the Meat
12 Inspection Act and the USDA regulations implementing that Act. The 2016 final
13 agency action reinstated that conflict between the statute and regulations. Removal
14 of Mandatory Country of Origin Labeling Requirements for Beef and Pork Muscle
15 Cuts, Ground Beef, and Ground Pork, 81 Fed. Reg. 10755 (Mar. 2, 2016).
16 Therefore, this suit is timely under 28 U.S.C. § 2401(a).

17 35. This complaint concerns an unlawful, final federal agency action for
18 which there is no other adequate remedy. It thus arises under the laws of the
19 United States and this Court has jurisdiction under 5 U.S.C. § 704 and 28 U.S.C.
20 § 1331.

1 36. There is no requirement that this complaint first be brought before the
2 agency.

3 37. USDA declared that “[t]here are no administrative procedures that
4 must be exhausted prior to any judicial challenge to the provisions of” its decision
5 to reinstate the unlawful Meat Inspection Act regulations. Removal of Mandatory
6 Country of Origin Labeling Requirements for Beef and Pork Muscle Cuts, Ground
7 Beef, and Ground Pork, 81 Fed. Reg. at 10760. In fact, USDA did not even
8 provide the public an opportunity to comment before or after its 2016 final agency
9 action. *Id.*

10 38. Further, this suit falls within an exception to the exhaustion
11 requirement because it alleges the regulations are facially inconsistent with the
12 authorizing statute, a charge that does not require and would not benefit from the
13 agency’s expertise.

14 39. This Court has the authority to grant the relief requested pursuant to
15 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil
16 Procedure, as well as the Court’s inherent equitable powers.

17 40. Venue is proper in the United States District Court for the Eastern
18 District of Washington pursuant to 28 U.S.C. § 1391(e)(1). *See also* 5 U.S.C.
19 § 703.

III. PARTIES

A. Plaintiff the Ranchers-Cattlemen Action Legal Fund.

41. Plaintiff the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (“R-CALF”) is a nonprofit, membership-based organization. It is the largest trade organization in the United States whose voting members are exclusively composed of independent cattle producers. Its voting members are located in 43 states and include 62 cattle producers in Washington State. All of its voting members pay dues and have equal voting rights in electing R-CALF’s directors and setting R-CALF’s policies.

42. R-CALF’s mission focuses on ensuring the continued profitability and viability of independent cattle producers. This primarily involves advocating for independent, United States cattle producers in trade and marketing policies.

Among the trade and marketing issues that most threaten R-CALF’s members are policies that treat all beef as equal or that fail to distinguish between where and how beef is produced. These policies undermine domestic producers’ ability to demand a premium price for their premium products.

43. R-CALF has engaged in extensive federal advocacy regarding USDA’s country-of-origin labeling requirements (or lack thereof). It submitted comments to both Congress and USDA regarding the 2002 Farm Bill and its implementing regulations. It also submitted comments to USDA and the Office of

1 the United States Trade Representative in defense of the rules the agency
2 promulgated and in support of the United States challenging the WTO's
3 determination that the country-of-origin labeling regulations related to livestock
4 were overly burdensome. R-CALF even joined suits seeking to defend country-of-
5 origin labeling and challenging WTO's authority to issue its ruling.

6 44. In its comments, R-CALF explained that the Meat Inspection Act,
7 which requires enforcement of the Tariff Act, independently requires country-of-
8 origin labeling and that USDA must effectuate that requirement regardless of the
9 2002 Farm Bill and the WTO's decision. R-CALF's regulatory comments and
10 other submissions also noted the clash between the marks or labels required by the
11 Meat Inspection Act and its implementing regulations that allowed imported beef
12 to be treated as a domestic good.

13 45. R-CALF has expended a substantial amount of its limited resources to
14 promote country-of-origin labeling for beef. In addition to drafting the comments
15 and engaging in litigation, it has educated politicians about the need for country-of-
16 origin labeling and has publicized its views, including through presentations, social
17 media posts, and traditional press contacts.

18 46. In 2017, R-CALF supported legislation in Colorado, Wyoming, and
19 South Dakota that would have required retailers to identify the country-of-origin of
20 beef sold in those states, in order to aid domestic cattle producers who face falling

1 prices. Those bills were defeated at the behest of multinational meat packing
2 companies that import beef to the United States and sell it to unsuspecting
3 consumers who are unable to differentiate between domestic and foreign goods.

4 47. Had USDA lawfully implemented the Meat Inspection Act's
5 requirements, R-CALF would have focused more of its efforts on addressing other
6 trade and policy issues that harm domestic producers—such as the federal Beef
7 Checkoff program.

8 48. Further still, R-CALF's members are injured by USDA's current
9 implementation of the Meat Inspection Act. R-CALF members—including, for
10 instance, David Niemi and Lorene Bonds—earn higher profits when they sell their
11 products directly to consumers rather than to meat packers, because they can
12 demand a higher price for goods they can promote as coming exclusively from
13 domestic producers and cattle. When the country-of-origin regulations were put in
14 place following the 2002 Farm Bill, however, those members and others received
15 increased payments from the meat packers, because the packers could no longer
16 pass off foreign meat as if it were a domestic good; thus there was increased
17 demand and the meat packers too had to pay a premium for R-CALF's members'
18 domestic goods.² With USDA no longer requiring country-of-origin marks or

19 ² See, e.g., Wendy J. Umberger, Dillon M. Feuz, Chris R. Calkins, & Bethany M.
20 Sitz, *Country of Origin Labeling of Beef Products: U.S. Consumers' Perceptions*,

1 labels on imported beef, R-CALF's members' payments from the packers have
2 fallen. Based on information they have been provided, R-CALF's members expect
3 those payments would increase again if the packers were required to label imported
4 beef products with their country of origin.

5 49. In sum, both R-CALF and its members are harmed by USDA's
6 unlawful implementation of the Meat Inspection Act.

7 **B. Plaintiff Cattle Producers of Washington.**

8 50. Plaintiff Cattle Producers of Washington ("CPoW") is a Washington
9 State nonprofit, membership organization dedicated to advancing the interests of
10 Washington State cattle producers. It has 35 dues-paying, voting Members in
11 Washington State, who determine the policies and directors of the organization.

12 51. CPoW also works closely with the Stevens and Spokane County
13 Cattleman's Associations to coordinate the organizations' efforts. The Stevens and
14 Spokane County Cattleman's Associations are Washington State organizations that
15 work with and build support for CPoW's state-wide, regional, and national efforts.

16
17 34 J. of Food Dist. Res. 103 (2003),

18 <http://ageconsearch.umn.edu/bitstream/27050/1/34030103.pdf>. (consumers "were
19 willing to pay an 11% to 24% premium for [country of origin labeling] of steak
20 and hamburger, respectively").

1 52. CPoW's goals include restoring the prosperity of rural Washington by
2 advancing the interests of domestic farmers, as opposed to multinational
3 corporations. CPoW and its members believe that cattle producers in Washington
4 raise the safest, most wholesome product under the strictest health standards in the
5 world. Accordingly, CPoW actively opposes trade policies that hinder Washington
6 cattle producers' ability to promote their product as uniquely desirable.

7 53. As a result, CPoW has consistently expended its limited resources to
8 promote country-of-origin labeling on beef products. Without country-of-origin
9 labeling, the major meat packers, who control nearly all of the domestic market for
10 beef, are able to label all of their products similarly and thus pass off foreign meat
11 as domestic.

12 54. This injures consumers and domestic producers, including CPoW's
13 members.

14 55. CPoW's members who sell their cattle to meat packers are unable to
15 secure a premium price for their premium product, but rather must accept a lower
16 price that reflects the fact that their products will be sold alongside (and as
17 indistinguishable from) cheaper, less desirable, foreign beef. The absence of
18 country-of-origin labeling decreases CPoW's members' income.

19 56. For instance, Jeff Schmidt sells beef to both consumers and meat
20 packers. When he sells meat directly to consumers and is able to promote it as

1 entirely domestically born, raised, and slaughtered he receives substantially more
2 profit than when he sells his cattle to meat packers who indiscriminately mix
3 foreign and domestic meat. When USDA required country-of-origin labeling, Jeff
4 Schmidt was able to secure a substantially higher price from meat packers because
5 the packers were required to inform consumers about the distinction in their
6 supplies, and thus there was an increased demand for domestic beef. Since USDA
7 revoked its country-of-origin labeling requirements, Jeff Schmidt has again received
8 lower returns and profits from selling cattle to multinational meat packers.

9 57. Recognizing the value of accurate country-of-origin labeling (for both
10 producers and consumers), CPoW and its members helped finance and build an
11 independent slaughterhouse in Washington State. This allows CPoW's members
12 to sell more meat directly to consumers. Therefore CPoW's members are not
13 entirely beholden to the meat packers who will only compensate domestic
14 producers for beef as if it is equivalent to the foreign products that the packers
15 promote as indistinguishable from domestic goods.

16 58. CPoW opposed USDA's decision to abandon its country-of-origin
17 labeling requirements. For instance, following the WTO decision, CPoW
18 organized an auction to help finance the drafting of regulatory comments calling
19 on USDA to maintain as much of its country-of-origin labeling requirements as
20 possible. CPoW has also spent its limited staff time developing and promoting

1 articles and social media posts to inform its members of developments in country-
2 of-origin labeling.

3 59. If USDA required more beef to be labeled with its country of origin,
4 CPoW would expend fewer resources on this issue and instead direct those
5 resources to other issues it believes promote its members' interests.

6 60. Further, the meat packers would not be able to flood the market with
7 the same volume of foreign product—as informed consumers would purchase
8 fewer foreign goods, favoring domestic meat—meaning CPoW's members would
9 be able to demand a higher price for their premium, domestic product.

10 61. Both CPoW and its members have been and are harmed by USDA's
11 failure to properly implement the Meat Inspection Act and require certain beef
12 products to be labeled with their country of origin.

13 **C. Defendants.**

14 62. Defendant USDA is the agency charged with administering and
15 issuing regulations related to the Meat Inspection Act, the 2002 Farm Bill, and
16 Congress' response to the WTO's rulings against the 2002 Farm Bill's country-of-
17 origin labeling requirements for imported cattle and hogs.

18 63. Defendant Secretary of Agriculture Sonny Perdue, sued in his official
19 capacity, is the federal official charged with overseeing USDA and all of its
20 agency actions.

IV. FACTS

1
2 **A. The Meat Inspection Act plainly mandates that imported meat comply**
3 **with the marks or labels required by United States trade laws, including**
4 **that imported meat be marked with its country of origin.**

5 (i) *Statutory text.*

6 64. The text of the Meat Inspection Act, 21 U.S.C. § 620(a), is clear. It
7 states in full: “No carcasses, parts of carcasses, meat or meat food products of
8 cattle, sheep, swine, goats, horses, mules, or other equines which are capable of use
9 as human food, shall be imported into the United States if such articles are
10 adulterated or misbranded and unless they comply with all the inspection, building,
11 construction standards, and all other provisions of this chapter and regulations
12 issued thereunder applicable to such articles in commerce within the United States.
13 No such carcasses, parts of carcasses, meat or meat food products shall be
14 imported into the United States unless the livestock from which they were
15 produced was slaughtered and handled in connection with slaughter in accordance
16 with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901-1906). All such
17 imported articles shall, upon entry into the United States, be deemed and treated as
18 domestic articles subject to the other provisions of this chapter and the Federal
19 Food, Drug, and Cosmetic Act [21 U.S.C.A. § 301 et seq.]: *Provided*, That they
20 shall be marked and labeled as required by such regulations for imported articles:

21 *Provided further*, That nothing in this section shall apply to any individual who
purchases meat or meat products outside the United States for his own

1 consumption except that the total amount of such meat or meat products shall not
2 exceed fifty pounds.” 21 U.S.C. § 620(a) (emphasis added) (brackets in original).

3 65. 21 U.S.C. § 620(a) provides that imported beef and pork can be sold
4 domestically *only if* the foreign products comply with the Tariff Act’s marking or
5 labeling requirements for imported goods.

6 66. The Tariff Act provides that “Except as hereinafter provided, every
7 article of foreign origin (or its container, as provided in subsection (b) hereof)
8 imported into the United States shall be marked in a conspicuous place as legibly,
9 indelibly, and permanently as the nature of the article (or container) will permit in
10 such manner as to indicate to an ultimate purchaser in the United States the English
11 name of the country of origin of the article.” 19 U.S.C. § 1304(a).

12 67. The “‘ultimate purchaser’ is generally the last person in the United
13 States who will receive the article in the form in which it was imported,” *i.e.*, the
14 consumer. 19 C.F.R. § 134.1(d).

15 68. The only circumstance in which a domestic reseller, rather than a
16 consumer, will be considered the “ultimate purchaser” is if the reseller subjects the
17 imported good to a “substantial transformation.” *Id.* A domestic reseller that
18 subjects an imported good to a “minor” manufacturing process where “the identity
19 of the imported article [remains] intact” must still ensure the marks or labels
20 required by the Tariff Act make their way to “the consumer who purchases the

1 article after processing,” as the consumer “will be regarded as the ‘ultimate
2 purchaser.’” *Id.*

3 69. The Meat Inspection Act requires that all covered meat products
4 comply with the “regulations for imported articles,” including the Tariff Act’s
5 mandate that imported beef and pork be labeled with their country of origin all the
6 way through sale to the consumer.

7 (ii) *Legislative history.*

8 70. The Wholesome Meat Act, Pub. L. No. 90-201, 81 Stat. 584, 589
9 (1967), rewrote several prior meat-related statutes to create the modern Meat
10 Inspection Act. The language in 21 U.S.C. § 620(a) was primarily enacted by § 10
11 of the Wholesome Meat Act.

12 71. The Wholesome Meat Act’s legislative history reinforces that the
13 Meat Inspection Act requires USDA to enforce all existing trade rules governing
14 the labeling of imported beef and pork, particularly those that provide for marks or
15 labels that enable United States consumers to differentiate between foreign and
16 domestic goods.

17 72. For instance, the House of Representatives Report on the bill explains
18 that the House defeated an amendment that would have “require[d] foreign meat
19 and meat food products to be honestly labeled as such so that American consumers

1 could know that their purchase was of foreign origin.” H.R. Rep. No. 90-653, at
2 69 (1967).

3 73. The Report explains the amendment was rejected, in part, because
4 “[t]he Tariff Act of 1930, as amended already provides for the labeling of imported
5 meats.” *Id.* at 70 (quotations marks omitted).

6 74. Put another way, central to the Wholesome Meat Act’s construction
7 and passage was Congress’ understanding that the Meat Inspection Act would
8 carry forward all existing marking or labeling requirements for imported meat,
9 particularly those in the Tariff Act that allow consumers to differentiate between
10 foreign and domestic goods.

11 **B. USDA’s Meat Inspection Act regulations fail to enforce the statute’s**
12 **requirement that imported products must comply with the marks or**
labels mandated by United States trade laws.

13 75. USDA’s Meat Inspection Act regulations fail to incorporate the Meat
14 Inspection Act’s requirement that covered meat must comply with all of the United
15 States’ marking or labeling laws for imported goods.

16 76. Instead, the USDA Meat Inspection Act regulations provide that once
17 imported, all foreign meat that otherwise complies with the Meat Inspection Act
18 and Federal, Food, Drug and Cosmetic Act is *exempted* from complying with
19 United States trade laws, even if those laws would have required that meat to
20 continue to be marked or labeled as an import.

1 77. Specifically, 9 C.F.R. § 327.18(a) provides in full: “All products,
2 after entry into the United States, shall be deemed and treated as domestic products
3 and shall be subject to the applicable provisions of the Act and the regulations in
4 this subchapter and the applicable requirements under the Federal Food, Drug and
5 Cosmetic Act, except that products imported under § 327.16 are required to
6 comply only with the requirements of that Act and § 327.16 of this subchapter.”
7 (emphasis added).

8 78. Section 327.18(a) affirmatively reclassifies imported meat, including
9 beef and pork, as a “domestic product,” regardless of whether the meat would have
10 been classified that way under United States trade laws. Although the plain text of
11 the Meat Inspection Act allows imported meat to be treated as a “domestic
12 product” only if it *also* continues to comply with the marking or labeling
13 requirements for imported goods, the regulations omit any requirement that
14 imported meat bear the marks or labels required for imported goods.
15 Section 327.18(a) unlawfully exempts imported meat from the Tariff Act’s
16 marking or labeling requirements.

17 79. Under § 327.18(a) imported meat does not need to bear country-of-
18 origin labels, allowing meat packers and other resellers to sell domestic and
19 imported meat side by side without providing consumers any way to differentiate
20 between the products. In fact, under § 327.18(a), once meat is imported, domestic

1 resellers can *remove* labels from meat that had been required by United States trade
2 laws. Section 327.18(a) destroys any assurances United States trade laws provided
3 that purchasers will be able to identify where, and thus how, the meat they
4 consume was produced.

5 80. Section 327.18(a)'s exception for meat falling under 9 C.F.R.
6 § 327.16 is inconsequential. Section 327.16 only concerns meat purchased "in a
7 quantity of 50 pounds or less" for the importer's "own consumption." It does not
8 concern any meat destined for the retail market.

9 81. Two other Meat Inspection Act regulations, 9 C.F.R. § 327.14 and 9
10 C.F.R. § 327.15, provide that foreign meat must comply with the marks or labels
11 required under United States trade laws when the meat is "offered for importation,"
12 *i.e.*, in order to cross the border. But, these provisions do not apply to foreign meat
13 after it is imported. *See* 9 C.F.R. § 327.1(a).

14 82. No other regulation implementing the Meat Inspection Act corrects
15 § 327.18(a)'s effect of undermining United States trade rules that require the
16 marking or labeling of imported goods.

17 83. No provision of the Food, Drug and Cosmetic Act corrects
18 § 327.18(a)'s effect of undermining United States trade rules that require the
19 marking or labeling of imported goods.

1 84. Section 327.18(a) facilitates exactly what the text and history of the
2 Meat Inspection Act establish Congress sought to avoid, allowing foreign meat,
3 including beef and pork, to enter the United States market and avoid the rules that
4 require foreign goods to be labeled with their country of origin. USDA has created
5 a system that undermines the law Congress enacted to defend United States
6 producers, consumers, and products.

7 **C. USDA had acknowledged and corrected the error in its Meat Inspection**
8 **Act regulations, but, through final agency action, it recently reinstated**
9 **the rules above, renewing the conflict between the Meat Inspection Act’s**
10 **regulations and the authorizing statute.**

11 85. The 2002 Farm Bill enacted a new law requiring that “a retailer of a
12 covered commodity inform consumers, at the final point of sale of the covered
13 commodity to consumers, of the country of origin of the covered commodity.”
14 Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 282, 116
15 Stat. 134, 534 (2002).

16 86. Beef and pork, which were “covered commodities” under the 2002
17 Farm Bill, could only be classified as domestic goods if they were “exclusively
18 from [] animal[s] that [were] exclusively born, raised, and slaughtered in the
19 United States.” *Id.* Put another way, the 2002 Farm Bill was meant to expand the
20 country-of-origin labels required by United States law, mandating that any meat
21 products that came from an animal that spent any portion of its lifecycle abroad—

1 regardless of where the animal was slaughtered or processed—needed to be
2 distinguished from true, domestically produced products.

3 87. In the process of implementing the 2002 Farm Bill’s directive, USDA
4 acknowledged it did not need to merely expand its labeling requirements, but it
5 also needed to reconcile the conflict between the Tariff Act and the agency’s
6 implementation of the Meat Inspection Act. USDA explained that, “Currently,
7 under the Tariff Act of 1930 ... most imported items, including food items, are
8 required to be marked to indicate the ‘country of origin’ to the ‘ultimate
9 purchaser.’ [U.S. Customs,] which administers the Tariff Act, generally defines
10 ‘ultimate purchaser’ as the last person in the United States who will receive the
11 article in the form in which it was imported[.]” Mandatory Country of Origin
12 Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and
13 Peanuts, 68 Fed Reg. at 61948. The Tariff Act provides that products produced
14 abroad can only be treated as domestic goods if they “undergo [a] ‘substantial
15 transformation’” in the United States. *Id.* However, the agency continued, USDA
16 had been applying the Meat Inspection Act so that imported meat from animals
17 slaughtered abroad *only* needed to be marked with its country of origin through
18 retail sale *if* it was “pre-packaged and labeled” at the time it was imported, so that
19 the meat was “sold to [the] grocer[.]” exactly “as [it was] packaged” when it
20 entered the country. *Id.* If the imported meat underwent *any* sort of “process[ing]

1 in the United States,” USDA’s “policies and directives” interpreting the Meat
2 Inspection Act allowed the reseller to remove the “country of origin declarations”
3 on the product. *Id.* at 61949. USDA admitted that its Meat Inspection Act
4 regulations allowed more imported meat to be classified as domestic goods than
5 was allowed under the Tariff Act (and, correspondingly, the Meat Inspection Act).

6 88. Rather than issue regulations pursuant to the 2002 Farm Bill and also
7 correct its prior Meat Inspection Act regulations that too narrowly implemented the
8 Meat Inspection Act, through final agency action in 2009, USDA issued a single
9 set of new, comprehensive regulations. Those regulations both carried out the
10 2002 Farm Bill and brought USDA’s treatment of imported meat into line with the
11 Meat Inspection Act and the Tariff Act. USDA provided that if U.S. Customs
12 determined an imported item—including beef and pork—needed to be marked
13 with its country of origin under the Tariff Act, USDA would require the item to
14 “retain th[at] origin as determined by [U.S. Customs] ... through retail sale.” *Id.* at
15 61949; *see also* 7 C.F.R. § 65.300(f)(2) (2009) (implementing the proposed rule).

16 89. In 2012, however, the WTO determined that USDA’s requirements
17 “reduce[d] the value” of imported *livestock*, discouraging United States meat
18 packers from purchasing *live* cattle and hogs from Mexican and Canadian
19 producers, in violation of United States trade agreements. Joel L. Greene, Cong.

1 Research Serv., *Country-of-Origin Labeling for Foods and the WTO Trade*
2 *Dispute on Meat Labeling*, at i (Mar. 8, 2016) (Exhibit A).

3 90. As a result, the WTO authorized monetary sanctions against the
4 United States. *Id.*

5 91. In response, Congress repealed the language in the 2002 Farm Bill.
6 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 759, 129 Stat.
7 2242, 2284-85 (2016).

8 92. The Consolidated Appropriations Act, however, made no changes to
9 the Tariff Act's or the Meat Inspection Act's labeling requirements for imported,
10 beef and pork from animals slaughtered abroad, nor did the WTO's decision
11 address those laws.

12 93. Yet, to implement the directive in the Consolidated Appropriations
13 Act, through final agency action, USDA removed "beef and pork muscle cuts and
14 ground beef and pork" from the list of products required to retain their country-of-
15 origin marks or labels through retail sale. Removal of Mandatory Country of
16 Origin Labeling Requirements for Beef and Pork Muscle Cuts, Ground Beef, and
17 Ground Pork, 81 Fed. Reg. at 10755.

18 94. And—despite USDA's earlier acknowledgement that, prior to
19 implementing the 2002 Farm Bill, the agency's Meat Inspection Act regulations
20 conflicted with the Meat Inspection Act's text—in terminating the country-of-

1 origin labeling regulations issued following the 2002 Farm Bill, USDA made no
2 effort to fix the conflict between the Meat Inspection Act's regulations and the
3 statute's requirements.

4 95. To the contrary, USDA implemented the Consolidated Appropriations
5 Act by reinstating the same regulations USDA had enforced before the 2002
6 Farm Bill, thus returning USDA to a state where its Meat Inspection Act
7 regulations conflict with the statute's plain text by failing to enforce the Tariff Act.
8 USDA was directed to undo the expanded labeling requirements that followed the
9 2002 Farm Bill, which reached imported livestock. Rather than narrowly carrying
10 out that directive, USDA both removed its labeling requirements for imported
11 livestock *and* abandoned its requirements for labeling imported beef and pork that
12 are independently mandated by the Meat Inspection Act.

13 96. Accordingly, the Congressional Research Service has noted the
14 renewed conflict between the Meat Inspection Act regulations and United States
15 trade laws, which the Meat Inspection Act's text requires USDA to enforce.

16 Greene, *supra*, 30-31.

17 97. As the Congressional Research Service explains, the purpose of the
18 2002 Farm Bill was to expand upon the country-of-origin labeling required by the
19 Tariff Act. *Id.* at 30. However, the 2002 Farm Bill did "not change the
20 requirements of the Tariff Act or the food safety inspection statutes." *Id.*

1 98. The Meat Inspection Act provides “[m]eat and poultry product
2 imports must comply not only with the meat and poultry inspection laws and rules
3 but also with Tariff Act labeling regulations.” *Id.* at 31. However, once
4 “[i]mported bulk products ... [have] entered the country,” according to USDA’s
5 Meat Inspection Act regulations, the imported products are deemed “to be
6 domestic products.” *Id.* This is the case even though, under the Tariff Act,
7 customs officers would not necessarily deem those products to be domestic
8 products. In other words, the USDA regulations that predated the 2002 Farm Bill
9 and which, through final agency action in 2016, USDA chose to reinstate for beef
10 and pork, allow importers to “avoid the need for labeling” that would be required
11 under United States trade laws. *Id.* Thus, according to the Congressional Research
12 Service, USDA’s revocation of the 2002 Farm Bill’s country-of-origin labeling
13 requirements for pork and beef once again created a “potential for conflict”
14 between United States trade laws and USDA’s policies. *Id.*

15 99. USDA’s current implementation of the Meat Inspection Act is
16 unlawful because it fails to implement that statute’s requirement that USDA
17 enforce United States trade laws’ marking or labeling requirements.

1 **D. USDA’s termination of the regulations that had brought USDA’s**
2 **marking or labeling requirements into compliance with the Meat**
3 **Inspection Act has significant consequences.**

4 100. USDA’s final agency action terminating regulations that brought its
5 marking or labeling requirements into compliance with Congress’ directives has
6 significant impacts on United States cattle and hog producers, as well as United
7 States consumers.

8 101. For instance, in 2016, USDA recorded that nearly 983,414 metric tons
9 of fresh beef from cattle slaughtered abroad was imported into the United States.

10 102. This includes 194,394 metric tons of fresh beef that came in as “cuts,”
11 and another 208,386 metric tons of fresh beef that was imported as “primals &
12 subprimals,” *i.e.*, was already broken down into the pieces in which beef is
13 typically sold such as loins or flanks.

14 103. Put another way, in 2016, more than 402,000 metric tons of fresh beef
15 was imported into the United States, which was, at most, sliced after it arrived.

16 104. Therefore, in 2016, there was more than 887 million pounds of fresh
17 beef imported into the United States that the Tariff Act would have required to be
18 labeled with its country of origin all the way to the consumer because the beef did
19 not undergo a substantial transformation once it was imported into the United
20 States. *See* 19 C.F.R. § 134.1(d).

1 105. Yet, under its current regulations, USDA allows domestic resellers of
2 that beef to strip the country-of-origin label off that meat and place the imported
3 beef alongside domestic products, with both sets of goods packaged and labeled so
4 as to appear indistinguishable. 9 C.F.R. § 327.18(a).

5 106. This places domestic producers at a competitive disadvantage. It
6 allows meat packers to flood the market with foreign beef that consumers cannot
7 distinguish from domestic beef. This harms domestic producers' bottom line.

8 107. USDA's rules likewise deny consumers information they desire
9 regarding their food.

10 **V. CAUSE OF ACTION**

11 108. Plaintiffs re-allege and incorporate by reference all of the allegations
12 set forth above.

13 109. The USDA regulations for the marking or labeling of imported beef
14 and pork are unlawful because they fail to implement the plain language and clear
15 intent of the authorizing statute, the Meat Inspection Act, which requires imported
16 beef and pork comply with the marking or labeling requirements for imported
17 goods established by United States trade laws. Instead, undermining the express
18 language of Meat Inspection Act, USDA's regulations declare that meat, once
19 imported, can be treated as a domestic good. Thereby, the regulations allow beef
20 and pork packers and other resellers to sell goods to United States consumers

1 without the labels that are required under United States trade laws. This
2 undermines consumers' ability to know the country of origin where their foreign
3 beef and pork was produced and harms domestic producers. Agencies are not
4 empowered to legislate and are certainly not empowered to contradict Congress.

5 110. Therefore, to the extent they fail to require that imported beef and
6 pork comply with the marks or labels required for such goods under United States
7 trade laws, as mandated by the Meat Inspection Act's plain text, 21 U.S.C.
8 § 620(a), the USDA regulations regarding the marking or labeling of imported beef
9 and pork should be declared unlawful, vacated, and enjoined, *see* 28 U.S.C.
10 §§ 2201-2202; Fed. R. Civ. P. 65.

11 VI. PRAYER FOR RELIEF

12 Plaintiff requests that the court enter a judgment:

13 A. Declaring USDA's regulations regarding the marking or labeling of
14 imported beef and pork unlawful to the extent they fail to require that imported
15 beef and pork comply with the Tariff Act's marking or labeling requirements, as
16 21 U.S.C. § 620(a) mandates;

17 B. Vacating USDA's regulations regarding the marking or labeling of
18 imported beef and pork that fail to require that imported beef and pork comply
19 with the Tariff Act's marking or labeling requirements, as 21 U.S.C. § 620(a)
20 mandates;

1 C. Enjoining the Secretary of Agriculture from continuing to implement
2 USDA regulations regarding the marking or labeling of imported beef and pork to
3 the extent those regulations fail to require that imported beef and pork comply with
4 the Tariff Act's marking or labeling requirements, as 21 U.S.C. § 620(a) mandates;

5 D. To ensure that the public has accurate notice of the requirements of
6 the law, requiring the government to provide public notice, including in the official
7 and online editions of the United States Code and the Code of Federal Regulations,
8 that the challenged aspects of USDA's regulations are unlawful and will not
9 remain in effect;

10 E. Awarding Plaintiff reasonable attorneys' fees and costs; and

11 F. Awarding such other relief as may be just and proper.

12 RESPECTFULLY SUBMITTED AND DATED this 19th day of June,
13 2017.

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21 COMPLAINT FOR A DECLARATORY JUDGMENT, VACATUR,
AND INJUNCTIVE RELIEF CONCERNING THE LAWFULNESS
OF UNITED STATES MEAT LABELING REGULATIONS - 34

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