

Creekstone Farms Premium Beef v. USDA
Civ. Action No. 06-544 (JR)
Plaintiff's Summary Judgment Reply and Opposition

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CREEKSTONE FARMS PREMIUM BEEF, LLC,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF AGRICULTURE,
and MIKE JOHANNNS, IN HIS CAPACITY AS THE
SECRETARY OF AGRICULTURE,

Defendants.

Case No. 1:06CV00544JR

SUPPLEMENTAL DECLARATION OF JOHN D. STEWART

John D. Stewart, certifies and states as follows:

1. I am the former Chief Executive Officer of Creekstone Farms Premium Beef, LLC ("Creekstone"), and am now a consultant for Creekstone. Creekstone is both a cattle producer and processor. Creekstone distributes its products through traditional retail channels and in many fine-dining restaurants across the country. Creekstone also has supplied export markets in Japan, Mexico, Korea, China, Taiwan, Hong Kong and other countries. Because of a prior discovery of bovine spongiform encephalopathy ("BSE") infection in a Canadian-raised cow in Washington State on December 23, 2003, the Korean and Japanese markets were closed to U.S. beef exporters until very recently.

2. Although these two markets have very recently re-opened to U.S. beef, this has not eliminated Creekstone's need and desire to voluntarily test for BSE. In Korea, for example, the country's bone fragment limitation, which prevents any beef with even a tiny fragment of

bone to be imported into the country, is having the practical effect of preventing virtually all U.S. beef exports to that country. Moreover, Creekstone's Korean customers have advised me that they would purchase more beef, and would be willing to pay a higher price, for beef from BSE-tested cattle.

3. In Japan, where all Japanese-raised cattle slaughtered for human consumption are tested for BSE, consumer and customer skepticism about the safety of U.S. beef remains high, thereby retarding our sales to that country. My conversations with Creekstone's Japanese customers, and with other Japanese beef consumers, have indicated that Japanese consumers would also buy more Creekstone beef at higher prices if Creekstone could assure them it came from BSE-tested cattle. From these conversations, I have also learned that Japanese consumers remain very skeptical about the safety of U.S. beef because it is not tested for BSE. Numerous articles and surveys confirm this understanding. *See* Attachments A - G. For example, on August 21, 2006 the Associated Press ran an article titled "Beef Imported from U.S. Scarce in Japan," by Yuri Kageyama (Attachment A), which described lack of confidence in U.S. beef among Japanese consumers, interviewing a number of individual consumers and officials from grocery chains in Japan. This information confirms Creekstone's own information indicating that BSE fears are suppressing demand in Japan for beef from Creekstone and other U.S. exporters. (See also the declaration filed in this case by one of Creekstone's primary brokers for the Japanese market, Parker International..)

4. In contrast to USDA's speculations in this lawsuit that the effect of BSE concerns on Japanese demand for U.S. beef have been eliminated, the fact is that Japanese consumption of U.S. beef is now only a tiny fraction of what it was before the discovery of BSE in the United States. Creekstone regularly reviews information on beef sales to Japan collected by the U.S.

Meat Export Federation and USDA's Agricultural Marketing Service. Based on that information, Japan only imported about 500 tons of U.S. beef in September of this year, compared to almost 17,000 tons per month in 2003 (before U.S. beef imports were banned due to BSE concerns in late 2003). While it has been posited that some of the reason for this very low level of sales to Japan may be limited availability of cattle on the U.S. market meeting the restrictive conditions Japan has imposed on imports from the U.S., there is no reason to believe that Japanese demand for U.S. beef is anywhere near historical levels. Creekstone itself so far has only sold 285 tons of beef to Japanese customers in the two months since the ban was lifted this summer, where we were averaging 3447 tons per month, or over 20 times as much, in 2003. This information leads Creekstone to remain very concerned that Creekstone will be unable to attain its previous levels of exports to Japan without some means to assure Japanese customers in response to their concerns about BSE and U.S. beef. It is Creekstone's judgment that the best, if not the only feasible, way to do this continues to be to provide Japanese consumers with beef from cattle that have been tested for BSE, just like all Japanese-origin beef.

5. Creekstone's desire to test the cattle it processes for BSE was not intended solely as a means to convince governmental authorities in Asian countries to allow Creekstone to resume shipments of beef to those countries. As recent developments have confirmed, Creekstone anticipated that, even after import restrictions in those countries were lifted, those countries would still impose restrictive conditions on imports from the U.S. and wholesale and retail customers in those countries would remain hesitant to buy U.S.-origin beef. The Japanese government has already (a) limited imports to only beef from cattle less than 21 months of age, forcing Creekstone to compete in the market for limited numbers of younger cattle; (b) authorized renewed exports at the end of 2005, only to ban imports again a month later after

finding prohibited material in one shipment from the United States; and (c) suspended or banned imports from certain U.S. plants because of what I consider to be very minor discrepancies in their compliance with the conditions Japan has imposed on renewed imports of U.S. beef. The South Korean government has imposed a ban on bone fragments in beef shipments from the United States, because of South Korean authorities' concerns that bone fragments could mean inadequate segregation of boneless muscle cuts from the higher-BSE-risk tissues, that is so restrictive that the major U.S. meatpackers have said they believe that it makes it impracticable to export to South Korea. Creekstone's first shipment of nine tons of beef arrived in South Korea on October 30, 2006, but before it can be distributed it will be quarantined and inspected by South Korean authorities, who have stated that they will turn back or destroy any shipment with any detectable bone fragments or even "silver skin," a tissue that separates some meat from bone. Creekstone's shipment is reported to be the first one from U.S. suppliers to South Korea in almost three years. And because of current South Korean requirements for U.S. beef imports, Creekstone could be prevented from selling an individual shipment, or all of its products, in South Korea at any time.

6. If Creekstone were able to demonstrate that its shipments of beef came only from cattle tested for BSE, Creekstone believes, based on several years of conversations with Japanese government authorities and others in Japan and elsewhere in Asia, that it could avoid some of the uncertainties and restrictive conditions that currently exist for Creekstone's shipments to Asia, by differentiating Creekstone's shipments from those of other U.S. suppliers. Creekstone wants to offer to the South Korean government that Creekstone would ship to South Korea only beef from cattle that have been tested for BSE, as an answer to the highly restrictive limit on bone fragments currently imposed on all U.S. beef exporters.

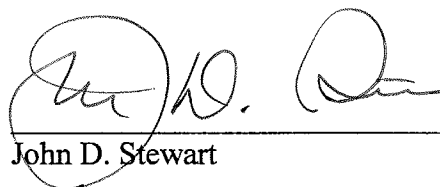
7. I have also learned from Creekstone's American customers that they too would buy more beef at higher prices if it were tested for BSE. Creekstone has been contacted by several large grocery stores and retail food service establishments expressing support for Creekstone's efforts to be able to test its cattle for BSE. Creekstone's reliance on this information from individual customers or potential customers is reinforced by news reports and polls, as referenced in my first declaration, that U.S. consumers are concerned about BSE and may consume less beef than they would but for those concerns.

8. Apart from expanding Creekstone's overseas markets, Creekstone also wants to test voluntarily for BSE as part of its business plan. As explained in my first Declaration in support of Creekstone's Motion for Summary Judgment, from its founding, Creekstone's business objective has been to build upon our own unique high-quality Black Angus genetics program to become the world's premier producer and marketer of Black Angus beef. Creekstone's program is unique in the beef industry because it combines superior Black Angus genetics, healthy and humane cattle management, a high quality feeding program, and state-of-the-art processing of Black Angus cattle exclusively. Testing for BSE would further Creekstone's business objective of providing U.S. and overseas consumers with the finest and safest Black Angus beef produced anywhere in the world. Voluntarily testing for BSE would further Creekstone's ability to differentiate its beef products in the marketplace and offer consumers a choice that is currently unavailable. In doing so, Creekstone would advance its reputation in the marketplace. While I cannot place a precise dollar value on that enhanced reputation, there is no question that it would increase Creekstone's revenues in the future. Obviously, Creekstone believes that value is substantial, as Creekstone has prepared a laboratory

for, and stand ready to commence on short notice, BSE testing that would cost Creekstone on the order of \$6 million dollars per year.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 31, 2006.



John D. Stewart

Exh. 1 – Attachment A

Aug. 21, 2006, 12:58PM

Beef Imported From U.S. Scarce in Japan

By YURI KAGEYAMA AP Business Writer

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TOKYO — It's been weeks since Japan ditched its import ban on U.S. beef and the first shipment went on sale, but American beef is nowhere to be seen at supermarkets here _ except this nation's five Costco stores.

Many Japanese are worried about the safety of U.S. beef. Retailers here say they aren't about to waste their time carrying an unpopular product. Instead, meat-section shelves are filled with beef from Australia and Japan.

Japan was once the top destination for U.S. beef, importing \$1.4 billion worth a year. But that was before Tokyo's decision December 2003 to ban American beef imports after the first case of mad cow disease in the U.S.

The U.S. government repeatedly has said the beef is safe because of stringent checks. But such assurances have done little to allay the fears of Japanese about mad cow disease, or bovine spongiform encephalopathy, a degenerative nerve disease in cattle.

Eating contaminated meat products has been linked to the rare but fatal human variant Creutzfeldt-Jakob disease in more than 150 deaths. The outbreak, mostly in Britain, peaked in the 1990s.

"It's scary _ all this talk about mad cow disease," said housewife Kimie Suzuki, who eats mostly fish but sticks with Japanese beef when she eats meat. "I've had foreign beef before but it tastes different."

Fears of Japanese like Suzuki have grown, not diminished, in recent months.

The ban on American beef was eased in December 2005, but imposed again in January after prohibited spinal bones were found in a veal shipment _ an error by U.S. plant workers and a government inspector who didn't realize veal cuts with backbone eaten in the U.S. are considered at risk for mad cow disease in Japan.

That error was critical, making consumers even more suspicious about the safety of U.S. meat.

Kaori Watanabe, spokeswoman for Aeon Co., says the nation's top supermarket chain hasn't received a single call from customers asking for American beef. Aeon, which operates more than 300 food stores nationwide, is often deluged with requests for products, so that means there's no interest in American beef, she said.

"We decided against it until there's a situation in which customers can buy it without worrying about it," said Watanabe. Shoppers are more interested these days in organically grown vegetables, she added.

Ichiro Tanaka, spokesman for major supermarket chain Ito-Yokado Co., says he's happy selling Australian and Japanese beef since his stores, numbering some 180, stopped carrying American beef three years ago.

"American beef hasn't won the understanding of Japanese consumers," he said. "Consumers don't trust it."

Even Seiyu Ltd., the Japan unit of U.S. retail giant Wal-Mart Stores Inc., which runs more than 200 stores nationwide, isn't selling American beef.

A survey by Tokyo-based marketing researcher Intage earlier this month found that 54 percent of the respondents said they wouldn't buy American beef. A similar survey in December 2005 found 45.4 percent of respondents said they wouldn't buy U.S. beef.

Japanese tend to be suspicious about their own government, and some think the government caved into political pressures from Washington, Japan's No. 1 ally, to let in a possibly tainted product.

American beef at about \$11.70 a pound is a fraction of the cost of Japanese beef, which can cost 10 times that, because of higher labor costs in Japan and the economies of scale at American farms.

Australian beef competes well in pricing against American beef at about the same prices. The Australian cattle industry has jumped right into the opportunity presented by the stumbling of U.S. beef exporters.

The industry is aggressively promoting the safety of Australian beef, noting that Australia has never had a case of mad cow. Australian cattle ranches have switched to feeding cows grain, instead of grass, to appeal to the Japanese palate for fat-laced meat.

Costco Wholesale Japan Inc., a unit of U.S. warehouse retailer Costco Wholesale Corp., is one exception in pushing American beef.

But Costco appeals to the well-traveled Japanese who buy in bulk _ a minority for an island nation more accustomed to small homes and frequent shopping. Still, Costco's entire 5.1-ton first shipment of U.S. beef sold out within about 24 hours. Another batch went on sale a week later and is selling well, according to Costco.

"The response and demand for U.S. beef has been overwhelmingly strong," Costco Wholesale Vice President Mike Sinegal said.

The other high-profile enthusiast for U.S. beef is fast-food chain Yoshinoya D&C Co., which made its fortune on the beef bowl, a serving of hot rice topped with slices of American beef.

When the chain announced it would serve its final beef bowl in 2004 because of the import ban, crowds rushed to its outlets to devour American beef. But even Yoshinoya has not yet started selling beef bowls, promising the dish for sometime next month.

The Japanese government has generally taken a hands-off approach, although it has organized meetings to answer consumer questions about the scrapping of the ban.

"It's not our job to promote American beef," said Health Ministry official Koji Obayashi. "It's OK if no one buys U.S. beef."

Exh. 1 – Attachment B

August 15, 2006

Japan Allows Beef Imports From 35th US Facility

By REUTERS

Filed at 3:10 a.m. ET

TOKYO (Reuters) - Japan has decided to allow beef imports from a 35th authorised U.S. processing plant after the facility cleared checks by Japanese authorities, the farm and health ministries said on Tuesday.

The Brawley Beef plant in California was the last of those authorised by the U.S. government as suppliers to Japan to receive Tokyo's approval following a ban over mad cow disease.

The plant was the only one of the 35 that could not immediately resume beef exports following Japan's decision in late July to lift the ban.

"The U.S. government has been informed of the decision," a Japanese Agriculture Ministry official said.

Inspectors decided the plant met Japan's safety requirements following extra inspections conducted from August 7-12.

At the time one other facility, the American Foods Group plant in Green Bay, Wisconsin, was allowed to begin supplying Japan on condition the U.S. government put the processor under close supervision.

Tuesday's statement said the Wisconsin plant also met Japanese requirements.

Japan first imposed a ban on imports of U.S. beef in December 2003 following the discovery of the first U.S. case of mad cow disease.

The second ban came on January 20, just a month after Japan had lifted the two-year-old ban after Japanese inspectors found forbidden material in a veal shipment from a New York company.

Last week U.S. beef returned to the Japanese market, with a U.S. firm selling the first shipment of U.S. meat amounting to about five tonnes.

Japan was once the top importer of U.S. beef, buying 240,000 tonnes valued at \$1.4 billion in 2003. The volume accounted for nearly 30 percent of total beef supplies in Japan.

Despite the resumption, Japanese consumers are still reluctant to eat American beef due to persistent fears that they might catch a human version of mad cow disease.

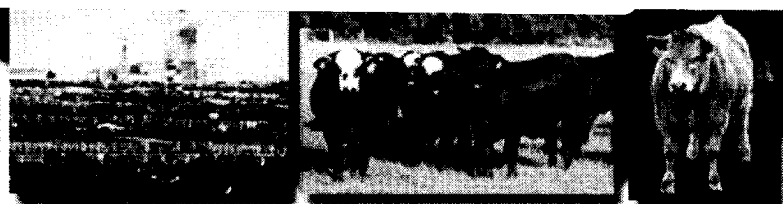
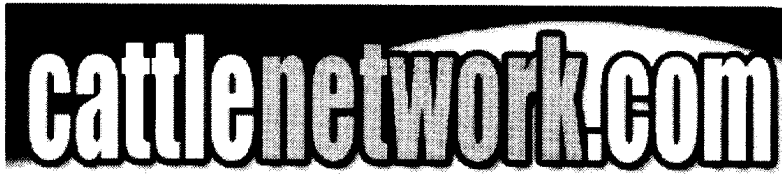
The Yomiuri Shimbun reported on Saturday that 80 percent of those surveyed by the newspaper said they were concerned about the safety of U.S. beef.

Of 1,741 people polled, 45 percent said they did not want to eat U.S. beef and 43 percent said they wanted to think about it before deciding. Only 10 percent said they wanted to eat it.

Separately, a consumer group survey on Friday found that only one Japanese food firm out of 21 planned to use American beef.

Yoshinoya D&C Co. Ltd, famous for its beef rice bowl menu, has decided to use U.S. beef, the Food Safety Citizen Watch said. Five other firms said they might use the beef.

News Source: http://www.nytimes.com/reuters/washington/politics-madcow-japan.html?_r=1&oref=slogin



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U.S. Beef In Short Supply In Japan Today 8/23/2006 7:04:00 AM

U.S. Beef In Short Supply In Japan

Ads by Goooooogle

Apart from shipments to Costco Wholesale Japan, U.S. beef is hard to find in Japanese restaurants and retail stores, according to Japanese press reports.

Restaurateurs interested in adding U.S. beef to their menus can't find adequate supplies, and retailers on the whole say their customers don't want the product. Only 17.6 tons of beef arrived by air in the first 10 days since Japan reopened its market, as U.S. producers scramble to find a source of beef from animals 20 months of age and younger, and Japanese wholesale customers nervously gauge consumer interest.

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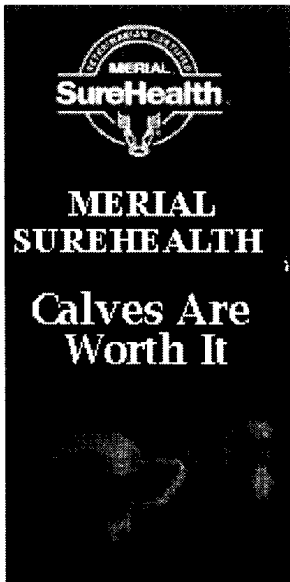
At about \$11.70 a pound on average, U.S. beef costs a fraction of Japanese-raised beef, which often retails for over \$50 a kilogram, but Australian beef is nearly matching the price and is shifting production from grass-fed to grain-finished to provide the fatter beef Japanese consumers prefer. Western Australia's largest packer, Harvey Beef, announced this week that it will shift its production to grain-fed beef to cut costs, increase sales and stimulate the production capacity of the nation's feedlots.

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Fast-food restaurant chains in Japan are eagerly awaiting the arrival of U.S. beef, but they need huge quantities and lower prices they can achieve once beef arrives chilled and frozen by sea. Yakiniku and Yoshinoya, two major chains, have announced they will reintroduce U.S. beef as soon as supplies increase.

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Retailers, however, are another matter. Even Wal-Mart's Seiyu stores have ignored U.S. beef to date, and other chains say there is absolutely no demand for the product. One chain, Aeon Stores, told the *Associated Press* that it has not received a single call asking for U.S. beef, adding that it is regularly overwhelmed by callers requesting various products the chain doesn't carry.



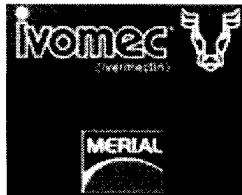
Various surveys conducted this summer in Japan found that between 54 percent and 90 percent of Japanese consumers said they would not buy U.S. beef, at least for now. Suspicion lingers that the Japanese government caved to pressure from the United States, reopening the market prematurely as a favor to Washington.

Beef Cattle
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by Pete Hisey on Wednesday, August 23, 2006

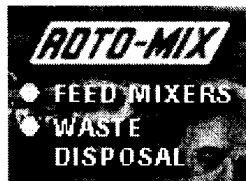
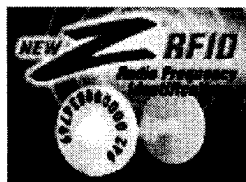
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CONSUMERS STILL SKEPTICAL

U.S. beef hard sell as concern lingers, Aussies fill void

By YUMI WIJERS-HASEGAWA

Staff writer

Michal Small has been waiting eagerly for the return of U.S. beef to Japan, but it seems the American will have to wait a while longer before the Roppongi Hills restaurants she frequents start serving the fare again.

"I think American beef is absolutely safe. And now is the best time to buy it because there's so much scrutiny," said Small, who lives in Tokyo's Minami-Azabu district and comes from a family in Oklahoma that raises cattle for consumption by them and their friends.

But while Small may be eager to bite into a thick U.S. steak, the Japanese public's mistrust stemming from the risk of mad cow disease doesn't appear to be waning.

The fact that there aren't enough cows meeting the current standard of import -- under 21 months old with at-risk parts removed -- leads to a limited supply and resultant higher prices, another reason for the slow return to Japan.

Businesses have other reasons as well. Australian beef now has a strong presence, having filled the vacuum left by the recently lifted ban on U.S. beef. Many restaurants have found ways to do without U.S. beef, and its return offers few incentives to go back.

According to trade statistics announced by the Finance Ministry, a mere 105 tons of U.S. beef was imported in August. Before the ban at the end of 2003, the monthly average was approximately 20,000 tons. The ban was instituted after the U.S. had its first case of mad cow disease that December. Japan to date has 29 confirmed cases.

Wholesale prices for chilled U.S. short plate, the part Yoshinoya D&C Co. uses for its "gyudon" beef-on-rice dishes, check in at about 950 yen to

1,050 yen per kg. The same part, but frozen, used to cost about 600 yen per kg before the ban, according to a major trader.

U.S. boneless short ribs, served as "kalbi" in Korean barbecue -- another Japanese favorite -- can cost as much as 3,200 yen per kg, close to 30 percent more than the 2,500 yen it went for before the ban, he said.

Under such circumstances, only a handful of restaurants and retailers are selling the meat two months since the first shipment arrived Aug. 7 after the ban was lifted.

Well-known are Costco Wholesale Japan Inc. and Yoshinoya, which held a one-day-only revival campaign of its signature beef bowl in February 2005 and again on Sept. 18. Since Sunday, it has been running the first of two sets of five-day campaigns. It is hoping for a full-fledged return in December.

The only retailers other than Costco known to be selling the meat are a supermarket chain in Hokkaido and another in Ishikawa Prefecture.

Two Korean barbecue restaurant chains -- Den, operated by Osaka-based Zenshoku Co., and another large chain, Yakinikuya Sakai Co. -- have said they are serving U.S. beef. A third, Nagoya-based steak chain Asakuma, said it will follow in November.

Zenshoku public relations official Tae Okuda said she was pleasantly surprised by her customers' confidence after the barbecue chain on Aug. 29 became the first to serve U.S. beef again.

"I think the (safety) issue has been talked out. People think it's safe to eat U.S. beef again," she said, adding that 50 percent, rather than the expected 30 percent, of all customers have ordered U.S. beef.

Demand for U.S. beef, though small, is higher in Japanese restaurants than in American chains.

Calls to numerous American restaurants found that none has plans to offer U.S. beef, partly because of the low cost of Australian beef and partly because of customer concerns.

Akio Uchida, a PR official at WDI Corp., which operates Hard Rock Cafe and Tony Roma's in Japan, said that while the two restaurant chains used to serve U.S. beef, they now mainly go with Australian beef and occasionally offer Japanese beef on special menus.

"When U.S. beef was not available, we established the knowhow on the amount of spices and other ingredients we need to make a good burger using Australian beef. We also have deals for future orders of Australian beef. It's difficult to change now," Uchida said.

Both McDonald's Co. Japan and Sizzler, the California-style restaurant operated in Japan by Royal Casual Dining Co., also said their use of Australian beef leaves no room to consider U.S. beef.

"We've been using only Australian beef with some New Zealand beef, and no U.S. beef for more than 10 years. This is because there are more transport and cost benefits, and not because U.S. beef is unsafe," said Kenji Kaniya of McDonald's.

Yasushi Aoshima of the New York Grill in the Park Hyatt Tokyo said the restaurant will think about returning to U.S. beef in the future.

"We will consider serving American beef once its safety is confirmed and recognized in society," he said.

Koushiro Suzuki of Yakinikuya Sakai said demand for U.S. beef is higher in Japanese and Korean restaurants because American beef, which is grain-fed and fatty compared with the grass-fed and leaner Australian beef, is more similar to Japanese beef but not as expensive.

But this does not apply to Western food because appreciation for fatty meat is a Japanese thing, and in food like hamburgers, the meat in Japan is mixed with other ingredients so the taste of the original meat doesn't matter so much, he said.

The return of U.S. beef may be slow, but consumer groups still fear that because Japan's rules on food labeling are "inadequate," people could unintentionally be eating it even if they don't want to.

The Agricultural Standards Law states that all uncooked meat sold in shops must be labeled with the country of origin. On Monday, the law was expanded to include meat that has been processed once, including marinated raw meat.

However, it does not apply to meat processed more than once, like a hamburger patty that has been mixed with other ingredients and then shaped.

Labeling is also not required for meat when it is less than half of the total

product. For example, U.S. beef does not need to be identified when it makes up 49 percent of a 100-gram ground beef-and-pork mixture.

The rules are even less strict for restaurants.

While the farm ministry drew up a guideline in July 2005 calling for restaurants to label the country of origin for their main ingredients, including steak, it is not an obligation and there is no penalty for noncompliance.

Hiroko Mizuhara, chief of the Consumer Union of Japan, said that replies to a questionnaire her group sent to restaurant owners indicated some consider only their own benefit, like price, when deciding what meat to use.

To protect consumers, her group and other citizen organizations launched a petition drive in September to urge the government to adopt stricter rules on labeling.

"We consumers have the right not to consume U.S. beef, the safety of which is not confirmed. If shops and restaurants do not label it properly, we will simply counter by not eating out, or not buying food we suspect has U.S. beef in it," Mizuhara said.

The Japan Times: Thursday, Oct. 5, 2006
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Dow Jones – Wednesday – October 11, 2006 – 5:24 p.m. CDT

U.S. Loses Steam In Regaining Asian Beef Markets

(Concerns about BSE in Canada, Canadian beef in U.S., bone fragments, silver skin)

WASHINGTON (Dow Jones)--The latest deal struck by U.S. negotiators to resume beef exports to Asia has so far yielded no new business, and trade has even taken a small step backward, with new restrictions now that more mad-cow concerns have surfaced regarding neighboring Canada.

Renewed trade relations seemed to be snowballing at the start of the year. Japan and Hong Kong had just begun importing U.S. beef after two years of no purchases, and South Korea seemed ready to do the same.

Over the following nine months, however, Japan reimposed its beef ban, then eased it again and now is buying far less than U.S. producers would like. Hong Kong sporadically stopped and restarted trade from some U.S. packers, and U.S. talks with China failed to produce a much-anticipated deal.

The U.S. still isn't selling any beef to South Korea - once the second-largest foreign market for U.S. beef - despite an agreement reached between governments a month ago.

"We anticipate working with (South) Korea and I believe we are starting to make some progress," U.S. Department of Agriculture Secretary Mike Johanns told reporters Wednesday at an alternative fuels conference in St. Louis.

But just last week Johanns had expressed frustration over the situation when he addressed a gathering of meat producers. He said that he was "still not very satisfied with where we're at with (South) Korea."

Bone Fragments And Silver Skin

The USDA, according to an official speaking on condition of anonymity, recently fired off an official letter to Seoul explaining how some of the country's restrictions aren't necessary and are holding back commerce in what should be an active trading relationship.

South Korea, despite U.S. dismay, maintains the position that it can reject or destroy any U.S. beef that contains even the smallest amount of bone fragments or other materials it believes are

"specified risk materials" that can transmit mad-cow disease, or bovine spongiform encephalopathy.

South Korea's zero tolerance for bone fragments - tiny slivers of bone material considered unavoidable in large shipments - is a risk exporters aren't willing to take.

Another South Korean objection that has U.S. government officials scratching their heads is over "silver skin" – a membrane that separates muscle groups. South Korea

doesn't want it in U.S. shipments, but the USDA is arguing that there is no reason to prohibit it, said a U.S. official who asked not to be named.

The U.S. is now waiting to hear back from Seoul, but in the meantime, no new USDA visits to Seoul on the matter are scheduled. A USDA delegation met with South Korean officials in September but failed to get the country to change its stance on U.S. beef.

Johanns told U.S. beef producers last week at an American Meat Institute conference: "The last I heard which is a few days ago I don't believe we shipped any beef into Korea, and I think the industry is just quietly waiting to see how this settles out."

Concerns About BSE In Canada

It was in March 2003 that Canada announced finding its first native-born cattle infected with BSE. Nine months later, in December 2003, the U.S. also reported finding its first case of BSE. USDA officials eventually said the infection had originated in Canada before the cow was sent to the U.S., but by then most importers has banned U.S. beef.

Taiwan has been buying U.S. beef since the country eased its ban in January, but registered new concerns about U.S. exports this month following new BSE cases in Canada. As of Oct. 9, U.S. shipments containing beef from Canadian cattle that were sent to the U.S. from Canada for immediate slaughter won't be eligible for export to Taiwan.

The prohibition on Canada-origin beef isn't total. Taiwan will still accept it if the cattle were imported and then fed in the U.S., but the new restriction is a reminder of how Canadian BSE problems can effect U.S. exports.

Canada has reported eight BSE cases in native-born cattle, but it was the seventh case that was particularly troubling to many. The infected cow was born more than four years after Canada implemented cattle-feed restrictions in 1997 that were supposed to prevent the spread of BSE.

That seventh case in Canada prompted the U.S. to postpone lifting its ban on older Canadian cattle, but the U.S. still imports animals that are under 30 months old as well as beef from those cattle.

As if to underscore Asian concerns over Canadian beef, the USDA issued a reminder bulletin to U.S. packers that South Korea will accept no Canadian beef in U.S. shipments.

There are no U.S. exports to South Korea now, a USDA official said, but the official reminder was published on Aug. 29 just in case trade does resume. U.S. plants "that receive Canadian cattle for slaughter, either for direct slaughter or from feedlot," must segregate the animals, the USDA said, "to ensure Canadian beef carcasses are excluded from eligible product intended for export" to South Korea.

U.S. Exports Remain Limited To Japan

Japan was expected to be buying much more U.S. beef by now with no restriction on cattle age, but trade is still sharply restricted to product only from very young animals under 21 months old.

It was a deal first struck in October 2004 between U.S. and Japanese negotiators and it was, at least in U.S. eyes, only meant to be a temporary solution to get trade moving before the Japanese would accept beef from cattle of all ages.

But negotiations dragged on as U.S. government officials and politicians complained about how long the process was taking.

Japan didn't begin buying U.S. beef again until December 2005, but just about a month later it halted imports again after one U.S. company shipped a prohibited product.

Now trade has resumed again but is still restricted to beef from very young cattle.

USDA's Johanns has said that increasing exports to Japan is a priority and he would like to see new bilateral negotiations this fall to make that happen, but so far nothing has been scheduled.

Source: Bill Tomson, Dow Jones Newswires

 regular page**BEEF NEWS****Tyson, Swift, National Beef all cut beef production**

by Pete Hisey on 10/11/2006 for Meatingplace.com

Tyson Foods, Springdale, Ark., announced Tuesday that it will cut back production hours at its beef plants for the next six to eight weeks, operating 35 to 40 hours per week instead of the 40 hours its plants average at present. That will cut production by about 12,000 cattle per week.

In a similar move, Kansas City, Mo.-based National Beef Packing Co., the nation's fourth-largest beef processor, also announced Tuesday that it will cut operating hours at its Dodge City and Liberal, Kan. plants to 37 hours from a normal weekly schedule of 40 to 48 hours. Tim Klein, the company's president, said the move was made because of continuing bad market conditions in the beef industry.

And at the end of the day, Swift & Co., Greeley, Colo., the nation's second-largest beef packer, said it too would reduce production hours to 32 to 37 hours per week at three of its four U.S. plants. Swift said it had been operating on the reduced schedule for a few weeks, and would remain on that schedule until beef gross margins "materially improve." Swift said that high cattle prices and low demand, including less-than-expected sales in key export markets, had made gross margin "unsustainable."

"Poor demand, tight supplies of cattle and the continued limited access to our export markets" have made the moves necessary, National Beef's Klein said. "We don't expect market conditions to improve for several months. We will make a concerted effort to keep our suppliers, customers and employees abreast of our reduced production schedule."

The three companies in part blamed ongoing problems with major export customers Japan and South Korea for making the cutbacks necessary.

"Access to key export markets remains limited, competing meats such as pork and poultry are significantly less expensive (than beef), and we're in the fall season when beef demand historically softens," a Tyson spokesperson said in a statement.

Tyson also announced that its Boise, Idaho beef plant would close for good at the end of Tuesday, a move it announced in August.

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— **Exh. 1 – Attachment G** —

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U.S. senator seeks blanket BSE testing for exports to Japan

WASHINGTON Oct. 12

U.S. Sen. Jim Bunning has sent a letter to U.S. Agriculture Secretary Mike Johanns urging him to allow beef producers to conduct blanket testing for mad cow disease for their exports to Japan and other countries, according to a copy of the letter made available Thursday.

"This is vital to regaining U.S. market share in Japan, South Korea and other markets critical to U.S. beef suppliers," the Kentucky Republican said in the letter dated last Friday.

Bunning also expressed concerns about the announcement by Johanns in July that the U.S. Department of Agriculture will reduce its nationwide testing program to about one-tenth this year.

"I was troubled to learn that," Bunning said, questioning the objectives of reducing the program to test for mad cow disease, medically known as bovine spongiform encephalopathy, or BSE.

"Testing is one of the best and most effective ways to identify BSE and thereby provide consumers with that extra layer of assurance," he said.

"Robust government testing, coupled with voluntary private testing, would go a long way toward restoring foreign consumer confidence and maintaining domestic confidence in American beef," Bunning said. Consumption of U.S. beef remains low in Japan due to lingering safety concerns among consumers even though more than three months have past since Japan lifted its ban on imports of American beef.

The USDA restricts testing to its own program, banning voluntary testing despite repeated requests for permission from some American meat processors so they can test all cattle for beef exports, especially to Japan to satisfy consumers there

Japan conducts blanket testing on all slaughtered cattle to safeguard human consumption against the disease.

But the United States tests only a small proportion of the total cattle herd because the USDA program is designed to statistically check the prevalence of the disease instead of food safety.

In announcing the reduction, Johanns said the program has confirmed a "very, very low level" of the disease in the United States since it was expanded after the first U.S. case was found in December 2003.

The USDA maintains that human health is protected by such safeguard measures as the removal of brains, spinal cords and other specified risk materials.

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