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22 July 2016

Mr Gavin Jones
Director Adjudication
ACCC
Mail to: CTMs@acc.gov.au

Dear Mr Jones

RE: CTM 1749229 – Ceres Agricultural Company - Certified Free Range Pasture Finished Cattle

The Australian Lot Feeders' Association (ALFA) the peak representative body for the grain fed cattle industry, welcomes the opportunity to comment on Ceres Agricultural Company Pty Ltd (Ceres) application to register a Free Range Pasture Finished certification trade mark (the CTM).

ALFA does not support the approval by the ACCC of Ceres's CTM. ALFA has a number of concerns with the application from both a consumer protection perspective, the potential for confusion in domestic and export markets, and the precedent for a certification and verification scheme to be established outside the highly respected certification systems that are in place and being developed by Industry through the Australian Meat Industry Language and Standards Committee (under the auspices of AUS-MEAT Ltd).

There are over 400 accredited feedlots in Australia and the grain fed cattle industry has a value of production of approximately \$2.6 billion and employs some 28,600 people directly and indirectly. Approximately 40% of Australia's total beef supply, 80% of beef sold in domestic supermarkets and the majority of beef industry growth over the last 20 years has been due to the expanding feedlot sector. The Australian cattle feedlot sector exports around 66% of its production to over 100 countries around the world.

The Industry relies extensively on Australia's systems and programs including standards, definitions and codes of practice that enable the industry to maintain a reliable reputation as a supplier of quality Grain fed beef products, being produced and sold in compliance with these requirements. Importantly, 'Grain fed' certified beef can only be produced from a National Feedlot Accreditation Scheme (NFAS) certified feedlot. AUS-MEAT Ltd has carriage of the Rules and Standards through both the Australian Meat Industry Language and Standards Committee, and more particularly the Feedlot Industry Accreditation Committee.

The NFAS Standards are referenced in the Export Control Act 1982 and the Export Control Orders 2005, providing the necessary guidance for beef produced to achieve the trade description for Grain Fed Young beef (symbol GFYG) or Grain Fed beef (symbol GF). The two relevant references are shown below:

Export Control (Meat and Meat Products)

Orders 2005

as amended

made under regulation 3 of the *Export Control (Orders) Regulations 1982*

Compilation start date: 1 September 2014

Includes amendments up to: Export Control (Meat and Meat Products)
Amendment (2014 Measures No. 1) Order 2014

“Grain Fed*"

5.1 The description Grain Fed must not be applied to meat and meat products unless the meat and meat products:

- (a) are derived from a carcase that meets the carcase criteria; and
- (b) meet the meat quality assessments; specified for Grain Fed (symbol GF) or for Grain Fed Young Beef (symbol GFYG) in the *Australian Meat Industry Classification System Manual 1*.

Note 1: For the meaning of ***Australian Meat Industry Classification System Manual 1*** see suborder 8.1.

Note 2: For the use of the word ***beef*** see paragraph 1.2(b) of Schedule 6. See also the meaning of ***beef*** in suborder 8.1.

5.2 The description Grain Fed is taken to be applied to meat or meat products if any of the circumstances specified in paragraphs 15(2)(a) to 15(2)(c) of the Act exist.

Note: For accuracy requirements for raising claims generally see section 15 of the Act which creates offences for false trade descriptions applied to prescribed goods.”

* Reference

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Export Control (Meat and Meat Products) Orders 2005
Federal Register of Legislative Instruments F2014C01057

Export Control Act 1982

No. 47, 1982

Compilation No. 26

Compilation date: 10 March 2016

Includes amendments up to: Act No. 4, 2016

Registered: 10 May 2016

“15 False trade descriptions*"

(1) A person shall not:

(a) apply a false trade description to:

- (i) any prescribed goods intended or entered for export; or
- (ii) any prescribed goods put on any ship or aircraft for export or brought to any wharf, airport or other place for the purpose of export; or

(b) export, enter for export or put on any ship or aircraft for export any prescribed goods to which a false trade description is applied.

Penalty: Imprisonment for 5 years. Authorised Version C2016C00422 registered 10/05/2016

(1A) A person shall not:

(a) apply a false trade description to any prescribed goods in respect of which:

- (i) notice of intention to export the goods has been given under subsection 6(1) by the person or another person; and
- (ii) notice has not been given, in accordance with the regulations, that the intention to export the goods has been abandoned; or

(b) give, under subsection 6(1), a notice of intention to export any prescribed goods to which a false trade description is applied.

Penalty: Imprisonment for 5 years.

(1B) In subsections (1) and (1A), strict liability applies to the physical element of circumstance, that the relevant goods are prescribed.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(1C) In subsection (1A), strict liability applies to the physical element of circumstance, that the giving of the notice is (or was) under subsection 6(1).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) For the purposes of this section, a false trade description shall be deemed to be applied to goods if:

- (a) it is applied to the goods;
- (b) it is applied to any covering, label, reel or thing used in connection with the goods; or
- (c) it is applied to, or stated in, any document relating to the goods or used in any other manner likely to lead to the belief that it describes or designates the goods.

(3) In this section:

enter for export includes enter for export to a specified place.”

Section 15

Export Control Act 1982

page 49

Compilation No. 26

Compilation date: 10/3/16

Registered: 10/5/16

*Reference

Export Control Act 1982 Compilation No. 26 Compilation date: 10/3/16 Registered: 10/5/16

Pre conditions for specific market access or operational requirements to meet importing country requirements require compliance with the existing grain fed Standards.

AUS-MEAT Ltd is an industry owned company operating as a joint venture between Meat and Livestock Australia (MLA) and the Australian Meat Processor Corporation. The Australian Meat Industry Language and Standards Committee (AMILSC) is made up of industry representatives, including Australian Lot Feeders Association and provides advice to the AUS-MEAT Board on matters relating to the AUS-MEAT National Accreditation Standards. These standards are designed to protect the integrity of the AUS-MEAT language and the interests of the Australian Industry in relation to the sale, distribution and export of Australian meat and the reputation of the industry as supplying product that is consistent with the standards and are subject to independent audit.

This framework has served all of industry, and supported the integrity of beef product provided in domestic and export markets. ALFA would recommend that Ceres avail themselves to this already well recognised and robust framework to work with industry to collectively agree definitions and guidelines for animal raising claims, that ensure producers, processors, customers and consumers can have confidence and certainty in the beef product attributes being provided, allowing brand owners to effectively compete and market product.

The Australian Meat Industry Language and Standards Committee has been working on defining Animal Raising Claims for a number of production systems in order to reduce ambiguity, provide increased clarity and transparency around trade descriptions to assist industry. The Claims fall into two categories, essentially export and importing country requirements and domestic consumer expectations. The importance in allowing brand development without hindering innovation and creativity is acknowledged by AMILSC in the development of these definitions. Whilst acknowledging the challenge of reaching a consensus on suitable definitions to meet all requirements, the Committee in broader consultation with industry has made progress. A number of industry agreed definitions are in place and include:

- Free range
- Hormonal Growth Promotant Free
- Antibiotic Free
- Never Ever 3
- Natural
- Organic

The Committee is working to agree on definitions for cattle fed outside the certified feedlot (NFAS) environment, but are fattened on grass or pasture with the assistance of cereal based diets (non-feedlot production).

The ACCC would be aware of the National Feedlot Accreditation Scheme (NFAS). These standards have been designed to:

- Protect the reputation and integrity of NFAS
- Enhance the integrity of product described as grain fed
- Address food safety issues
- Enhance the image of feedlots held by the community, particularly relating to environmental impact and animal welfare issues
- Protect the integrity of the AUS-MEAT language.

In recognition of the total supply chain approach to food safety and quality the NFAS Standards are consistent with the Livestock Production Assurance (LPA).

The Ceres CTM application provides an outline of the rules for the Free Range Pasture Finished Assurance System (FPAS) certification program that is designed to verify the manner in which cattle have been raised including supplementary production arrangements. The FPAS proposes the standards for achieving certification.

Certified Free Range Pasture finished raises a number of concerns for ALFA, and have the potential to create confusion in the marketplace with existing schemes including NFAS production standards specified in attachment 1. The CTM terminology and logos proposed by Ceres has the potential to mislead consumers if they perceive the standards to be the same as already established certified industry standards.

ALFA is prohibited from supporting this application due to the number of negative aspects raised with this CTM application, its cross over and inconsistency with existing industry standards, and ALFA's strong support for the role of AMILSC and AUS-MEAT in the development of industry Standards in relation to the description of beef products and the consequential benefit to the broader beef industry and customers.

ALFA does not consider that the ACCC can be satisfied that the approval of the CTM is in the best interests of industry.

Kind regards.

A handwritten signature in black ink that reads "Polly Bennett". The signature is written in a cursive, flowing style.

Polly Bennett
Chief Executive Officer
Australian Lot Feeders Association

Attachment 1.

AUSTRALIAN GRAIN FED BEEF MINIMUM STANDARD SPECIFICATIONS

The Australian Grain Fed cattle industry through the National Feedlot Accreditation Scheme, administers the certification and specification for minimum standards for Grain Fed Beef.

CERTIFICATION

Cattle slaughtered and processed as Grain Fed must be sourced from a feedlot accredited with the National Feedlot Accreditation Scheme (NFAS) and audited by AUS-MEAT. All cattle from accredited feedlots must have the necessary NFAS Delivery Documents at time of slaughter. Australian Quarantine Inspection Services (AQIS) are the responsible organisation for the administration of declaration/documents on plant.

AUS-MEAT is the organisation responsible for post-slaughter monitoring of Grain Fed product. Carcasses eligible for Grain Fed Certification must comply with the following criteria for meat quality assessments.

GRAIN FED – *SYMBOL – GF*

- **Number of days on feed:** 100 days
- **Age of animal (Dentition):** 6 permanent incisor teeth (maximum) except where carcasses with thoracic vertebrae are only partially ossified.
- **P8 Fat depth (mm):** 7 mm (minimum)
- **Meat Colour Score:** 1 a-b-c – 3
- **Fat Colour Score:** 0 – 3

Feed Ration

Cattle must have been fed in a feedlot for not less than 100 days, and for not less than 80 days of that, on a nutritionally balanced ration of a recognised high energy feed of which grain is the highest single component. Rations must have an average metabolisable energy (ME) content greater than 10 megajoules (MJ) per kilogram of dry matter.

GRAIN FED YOUNG BEEF – *SYMBOL – GFYG*

- **Number of days on feed:** 70 days (Females not less than 60 days)
- **Age of animal (Dentition):** 0 to 2 permanent incisor teeth
- **P8 Fat depth (mm):** 5 mm (minimum)
- **Meat Colour Score:** 1 a-b-c – 3
- **Fat Colour Score:** 0 – 3

Feed Ration

Cattle must have been fed in a feedlot for not less than 70 days, and (females for not less than 60 days) and not less than 50 days of that, on a nutritionally balanced ration of a recognised high energy feed of which grain is the highest single component. Rations must have average metabolisable energy (ME) content greater than 10 megajoules (MJ) per kilogram of dry matter.