

-Draft-

### **U.S. Comments on Draft Japan Wagyu Labeling Guidelines**

The Embassy of the United States of America appreciates the opportunity provided by the Ministry of Agriculture, Forestry, and Fisheries to comment on its draft 'Labeling Guidelines for Distinctive Meats such as Wagyu.' The Embassy also appreciates the Ministry's efforts to keep us informed throughout the development of the draft guideline. These draft guidelines are the work of a Study Panel on Meat Labeling and cover both beef and port labeling issues and were published on January 11, 2007.

For beef, the United States has a number of concerns with regard to the draft guideline's purpose, impact on future trade, percent for other products, and compatibility with WTO rules. We have communicated these concerns to MAFF on several occasions and we repeat them here as a matter of record. We are also questioning the draft labeling restrictions for Wagyu as part of the World Trade Organization's Trade Policy Review Mechanism for Japan.

The purpose of the draft guideline is to prevent imported beef from using the term 'Wagyu'. This is evident by section 4, 1 (1) ((2)) which requires cattle using the Wagyu label to be born and raised in Japan. We believe, and no one appears to dispute, that beef that meets the other requirements of the draft guideline but is raised outside of Japan, can be Wagyu as well. By preventing Wagyu beef not grown in Japan from being labeled as Wagyu, the provision presents a technical barrier to trade. The United States respectfully requests that MAFF not include section 4, 1 (1) ((2)) in its final published guideline. We are also concerned that section 4, 1 (2) ((1)), which deals with breed registration, could, if improperly administered, present at technical barrier to trade. We also ask that MAFF consider the future inclusion of foreign Wagyu breed registries under this provision.

The draft guidelines, in their current form, will provide a strong disincentive for the future foreign production of Wagyu because they effectively exclude Japan as a potential market. Purebred Wagyu genetics exist and, under WTO rules, should be allowed to be freely traded as Wagyu in Japan. The concerns addressed by the study group, including consumer misunderstanding of the term Wagyu, are easily addressed by other existing regulations that are less trade restrictive (such as country of origin labeling). We also note that the proposed measure is being introduced as an administrative or 'voluntary' guideline with the intent of avoiding Japan's WTO commitments in this regard.

If Japan adopts new measures that restrict the use of the term 'Wagyu' to domestically produced beef only, Japan will be violating its existing international commitments, including the World Trade Organization (WTO). Restricting the use of Wagyu labeling to domestically-produced beef would be inconsistent with Japan's obligations under Articles 8 and 22 of the TRIPs Agreement, Article 2.2 of the TBT Agreement, and Article III of the GATT.

Article 8.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPs Agreement") permits WTO Members to prevent the use of practices that unreasonably restrain trade, provided that the measures are consistent with the provisions of the TRIPs Agreement. Thus, Article 8.2 prescribes the scope of measures that may be taken by WTO Members. The scope of measures regarding geographical indications that are consistent with the TRIPs Agreement is set forth in Section 3. Under Article 22.1, geographical indications are indications which identify a good from a region "where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical region." Under Article 22.2, WTO Members may impose legal measures to prevent the unfair use of indications, such as those that would mislead the public.

It is clear that the characteristics of the term "Wagyu", such as its quality and flavor, are based on genetics and animal husbandry practices and are not based on the fact that an animal happens to be born and raised in Japan (or any other particular geographic region). This argument is strengthened by the fact that most Wagyu cattle raised in Japan are raised using imported feed. Therefore, a prohibition of the use of the term "Wagyu" for foreign-produced beef and the limitation of the term "Wagyu" as a label to indicate Japanese origin, or in other words a geographical indication, would amount to a geographic limitation regulation that would deviate from the scope of those permitted under Articles 22.1 and 22.2 of the TRIPs Agreement. Therefore, such a limitation would unreasonably restrain trade in foreign-produced beef from the Wagyu breed and would be inconsistent with the provisions TRIPs Agreement, thereby creating a violation of the appropriate measures called for under Article 8.2 of the TRIPs Agreement.

Under Article 2.2 of the Agreement on Technical Barriers to Trade (the "TBT Agreement"), WTO Members must not prepare, adopt or apply technical regulations that create unnecessary obstacles to international trade. In addition, technical regulations may not be more trade-restrictive than necessary to fulfill, a legitimate objective, taking into account the risks non-fulfillment would create.

The scope of the "technical regulations" under the TBT Agreement is defined in the Annex 1 and includes requirements regarding mandatory labeling. The labeling requirements are not limited to those related to the technology matters but include labeling on all products. Therefore, the labeling of "Wagyu" labeling falls under a "technical regulation" of the TBT Agreement.

Under WTO rules, a technical regulation must be necessary to fulfill a legitimate objective. Article 2.2 provides as an example of a "legitimate objective" the prevention of deceptive practices. However, as explained above in, the Wagyu characteristics – the quality of meat, texture, and flavor-are derived from the animal's genetics and the practices used to raise the animal. From this perspective, use of the term "Wagyu" to indicate the type of breed does not amount to labeling that causes consumer confusion. Japan also already has in place laws that require beef sold in Japan list its country of origin, so concerns about Japanese consumers not knowing that the beef is imported have already been addressed. Thus, restricting the use of the term "Wagyu" to only beef produced in Japan would not amount to a "legitimate objective" under Article 2.2 of the

TBT Agreement but rather a technical regulation that creates an unnecessary obstacle to international trade.

Article 2.2 of the TBT Agreement also prohibits technical regulations that are "more trade- restrictive than necessary." If it is possible to achieve the objective using a method that is not trade restrictive than the one adopted by the WTO Member, the measure adopted by the Member will be deemed to be "more trade-restrictive than necessary." Japan already has in place laws and rules requiring the country of origin for meat, such as the Perishable Foodstuffs Quality Labeling Standards and under the Meat Fair Trade Covenants. Because there already exists an alternative measure that is less trade-restrictive, a new restriction that limits "Wagyu" labeling to only domestically-produced beef would constitute a technical regulation that is "more trade-restrictive than necessary" and would be a measure that is inconsistent with Article 2.2 of the TBT Agreement.

GATT Article III: 1 provides that "laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products. ..shall not be applied to imported or domestic products so as to afford protection to domestic products." Article III:4 provides further that the "products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use." Under these provisions, the products of other WTO Members must be accorded the same treatment as Japanese products in Japan.

Restricting the use of the "Wagyu" term to only domestically-produced beef while prohibiting its use for foreign-produced beef creates additional, non-tariff, protection for domestic production and create disadvantages for foreign-produced meat. Thus, it is clear that such a measure would be inconsistent with GATT Article III: 1 and Article III:4.

## Conclusion

The characteristics of Wagyu beef, such as meat quality, texture, and flavor, which give Wagyu its product value, are derived from the breed and the practices used to raise the animal, not the fact that the animals happen to be or raised in Japan. Japan also already has in place laws that require beef sold in Japan list its country of origin. Any measure that limits "Wagyu" labeling to only domestically-produced beef would be inconsistent with the WTO Agreements.

In summary, the characteristics of Wagyu beef, such as meat quality, texture, and flavor, which give Wagyu its product value, are derived from genetics, feed, and animal husbandry practices used to raise the animal. None of these factors is constrained by geography or otherwise limited to Japan. Japan already has in place laws that require labeling of beef sold in Japan to show country of origin. Any measure that limits the labeling of Wagyu beef to animal raised in Japan would be inconsistent with Japan's WTO commitments. The United States respectfully requests that MAFF not include

section 4, 1 (1) ((2) in its final published guideline. We also asked that MAFF consider the inclusion of foreign Waygu breed registries under section 4, 1 (2) ((1)).