



How Substantial Transformation and Risk-Based Inspection Weaken U.S. Beef Markets

By: CPAC Ranchers Coalition; Brooke Miller, MD; and Robert Groom

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Summary

The U.S. beef industry has shifted from a competitive marketplace to one dominated by four corporations (JBS, Cargill, Tyson, and National Beef), which now control approximately 85% of fed cattle slaughter capacity, up from just 36% in 1980. While consolidation has drawn increasing scrutiny, a central and often overlooked driver of competitive distortion lies in how the Food Safety and Inspection Service (FSIS) has administratively interpreted and enforced import regulations under 9 CFR Part 327. Federal law requires imported beef to be reinspected at the port of entry and to retain its foreign origin identity unless it undergoes genuine, value-adding domestic processing that meets the legal standard of Substantial Transformation. Yet FSIS policy guidance has permitted foreign beef to be minimally handled and treated as a domestic product, while reliance on risk-based inspection protocols has relaxed or, in many cases, effectively eliminated meaningful physical reinspection in favor of paperwork review and selective sampling. As a result, imported beef is not only deceptively relabeled but also enters the U.S. food supply under substantially lower inspection requirements than those imposed on American producers, all of whose beef must be inspected by a U.S. Department of Agriculture (USDA) inspector before retail sale. USDA does not allow state-inspected meat to be sold across state lines, and beef processed at custom-exempt facilities may not be sold at retail at all, making clear that U.S. beef is held to higher inspection and marketing standards than foreign beef, a discriminatory regime created by administrative interpretation rather than statute.

Problem

Weak Enforcement of Import Reinspection Requirements

Under “Import Inspection Application” 9 CFR §§ 327.5–327.7, imported meat products are required to enter through official import inspection establishments, remain under

government custody until reinspected and approved, and be refused entry, destroyed, exported, or reworked under supervision if they fail inspection. Although “*Products of Importation*” § 327.6 grants FSIS discretion over inspection frequency, that discretion has evolved into a broad risk-based inspection system that has significantly reduced the need for physical reinspection of imported beef, even as import volumes have increased and supply chains have become more globalized. Domestic producers continue to operate under continuous inspection, while imported products increasingly enter U.S. commerce under reduced scrutiny, creating uneven regulatory burdens, weakening confidence in import controls, and undermining the integrity of the inspection system envisioned by the regulation.

Expansion of Substantial Transformation Beyond Its Legal Meaning

Substantial Transformation is a narrow legal standard requiring U.S. processing to create a product with a different name, character, or use, distinguishing true manufacturing from simple handling. FSIS has expanded this definition through informal guidance to include activities such as grinding, slicing, trimming, or repackaging, steps that do not meaningfully change the product, allowing imported beef to lose its foreign origin identity after minimal domestic handling. This expansion was implemented without notice-and-comment rulemaking as required by the Administrative Procedure Act, effectively altering binding regulatory requirements through guidance rather than law, a defect mirrored in FSIS’s Risk-Based Inspection guidance. Longstanding case law indicates that such minimal handling would not satisfy the Substantial Transformation standard and would be unlikely to withstand judicial review, allowing foreign beef to be effectively laundered into domestic supply chains, eroding origin transparency, distorting competition, and directly disadvantaging U.S. cattle producers who remain subject to far stricter legal and inspection standards.

Market Distortion and Competitive Harm

The combined effect of reduced port-of-entry reinspection and overly permissive interpretations of Substantial Transformation has tilted the competitive landscape toward large, vertically integrated packers with extensive global sourcing networks. These firms can import foreign beef, apply minimal domestic processing, and integrate it into U.S. supply channels at scale, effectively classifying it as a domestic product under existing policy guidance. Independent American ranchers, by contrast, bear the full cost of compliance with U.S. animal health, labor, and environmental standards while competing against imported products entering under lighter oversight. This regulatory asymmetry suppresses price discovery, weakens bargaining power for producers, accelerates industry consolidation, and reduces the resilience of the domestic beef supply chain.

Solution

Enforce Substantial Transformation as a True Legal Standard

The core problem is clear: under *9 CFR Part 327*, FSIS has explicit authority to regulate imported meat's entry, reinspection, and labeling, yet loose interpretations have allowed foreign beef to be minimally processed and relabeled as "*Product of USA*." *Section 327.14* requires true country-of-origin marking at import unless a genuine substantial transformation occurs; § 327.5 demands detailed origin disclosure before customs release; and §§ 327.6–327.7 require reinspection at official establishments, with risk-based discretion permitted but never excusing the duty to confirm eligibility before domestic sale. Substantial Transformation, per longstanding customs law, means creating a new article with a different name, character, or use, not mere grinding, slicing, trimming, or repackaging that FSIS has permitted for years. Risk-Based Inspection, while authorized, has often meant lighter oversight, sampling, or paperwork instead of thorough checks—favoring large importers over U.S. ranchers who meet strict domestic standards. Until FSIS enforces Substantial Transformation rigorously and ensures consistent, meaningful reinspection, imported beef will continue to enter under false domestic pretenses, depressing prices, weakening independent producers, accelerating consolidation, and heightening supply-chain vulnerability.

Reassert Robust Port-of-Entry Reinspection

FSIS should recalibrate its risk-based inspection framework to ensure that meaningful physical reinspection at ports of entry is the standard practice for imported beef, rather than an infrequent exception. While the agency is authorized to allocate inspection resources based on risk, that discretion does not eliminate its responsibility to verify eligibility for entry before an imported product enters domestic commerce. Sections 327.5 through 327.7 already provide FSIS with authority to increase inspection intensity, detain non-compliant lots, and require supervised rework, destruction, or re-export where necessary. Restoring a consistent emphasis on physical reinspection would promote regulatory parity with domestic producers, strengthen food-safety assurance, and rebuild confidence in the integrity of the import inspection system.

Complement Enforcement with Antitrust Accountability

Administrative reform to tighten import enforcement must proceed alongside the ongoing antitrust scrutiny of the major meatpackers. President Trump's November 2025 directive calling for an immediate DOJ antitrust probe into the "Big Four" packers, JBS, Cargill, Tyson, and National Beef, over alleged collusion and capacity manipulation, later reinforced

by the December 6, 2025, *Executive Order “Addressing Security Risks from Price Fixing and Anti-Competitive Behavior in the Food Supply Chain,”* makes clear that regulatory asymmetries in import oversight don’t just distort markets, they accelerate packer concentration, shield potential anticompetitive conduct, and stifle real competition. Closing these import loopholes complements the DOJ investigation by preventing foreign-sourced products from undermining the domestic producers the probe aims to protect. Without decisive action on both fronts, family ranchers remain squeezed, and the beef industry’s vulnerabilities deepen.

Why Now?

The U.S. cattle herd declined to approximately 86.7 million head as of January 1, 2025, the smallest inventory since 1951, leaving domestic production capacity increasingly constrained. At the same time, beef imports exceeded 4.6 billion pounds in 2024 and are projected to remain elevated in 2025, yet retail beef prices increased by more than 14% over the past year. This divergence suggests that current import practices, which allow minimally processed foreign beef to enter domestic markets under reduced oversight, are not delivering price stability or consumer relief. Instead, they are contributing to ongoing pressure on domestic producers while increasing reliance on global supply chains. Given these conditions, administrative action to enforce existing inspection and Substantial Transformation standards can be implemented immediately, without legislative delay, to strengthen market integrity and supply-chain resilience.

Conclusion

America’s beef industry stands on the foundation of robust laws, yet those safeguards have been undermined by overly permissive administrative enforcement. Substantial Transformation and risk-based inspection were designed as precise, limited tools, not as sweeping exemptions that allow imported beef to bypass meaningful oversight, erode origin transparency, suppress fair competition, and disadvantage domestic producers who adhere to far stricter standards. By reasserting the true legal intent of Substantial Transformation, requiring genuine creation of a new product with distinct name, character, or use, and restoring rigorous, routine physical reinspection at ports of entry under 9 *CFR Part 327*, FSIS and USDA can immediately strengthen food safety for consumers, protect independent ranchers and rural economies from unfair import flooding, and rebuild the resilience and integrity of the U.S. beef supply chain without needing new legislation or protracted trade talks. The moment for decisive administrative action is now, as herd sizes hover near historic lows, imports surge, and prices remain stubbornly high despite the influx of foreign products.