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product. The companies who can supply beef and beef offal that are eligible for export to Japan will be listed on FSIS web-site”.

“According o USMFF Japan office,

1, Above also applies to VEAL.

2, Only products produced after QSA Program is approved will be imported, which means you cannot export the current stocks to Japan”.

On December 13, 2005, Mr. Yoshimitsu Ichii, Nihon SiberHegner, again e-mailed Mr. Peerless pertaining to EV approval.

December 13, 2005 4:31pm Email

To: Philip Peerless

From: Yoshimitsu Ichii

“Dear Philip san

I hope your company will be on the list in the below web today!

<http://www.ams.usda.gov/lsg/arc/evjapanlisting.htm>.

Please keep in touch.

Yoshimitsu”

DKSH – Market Intelligence

Yoshimitsu Ichii

Senior Sales Executive IFP Dept.

Nihon SiberHegner. K.K

<http://www.dksh.com>

These e-mails are the first indication that the company Nihon SiberHegner wanted to place an order with Atlantic.

On December 27, 2005, Nobuo Shiraiwa, Nihon Siber Hegner K.K. of Japan, e-mailed Mr. Peerless with an order, listing various veal cuts, as follows:

- 1 box Hotel Rack (7 ribs) – 45 pounds total
- 4 boxes Hotel Rack Chop - Ready (7 Ribs) – 44 pounds total
- 1 box Boneless Ribeye – 16 pounds total
- 1 box Trimmed Loin Boneless (1x1) – 16 pounds total

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- 2 boxes Trimmed Loin (4x4) – 34 pounds total
- 1 box Strip Loin – 13 pounds total
- 1 box Top Round – 18 pounds total
- 6 boxes Breast Boneless Finger Meat – 264 pounds total
- 2 boxes Plates – 50 pounds total
- 1 box Full Tenders – 16 pounds total
- 1 box Loin Tenders – 10 pounds total
- 25 boxes Sweetbreads – 250 pounds total
- 1 box Tongues – 10 pounds total and
- 1 box bones – 60 pounds total

In this email, Mr. Shiraiwa stated, “I’d like you to dispatch our ordering products on the 16th of January.”

Approval Process

Mr. Peerless, President Atlantic, emailed USDA FSIS officials on December 13, 2005 outlining concerns with the process of obtaining approval for export to Japan and the importance of being able to ship products to Japan for his business.

December 13, 2005 4:49pm Email
To: Rick.Harris@usda.gov; dana.stahl@usda.gov.
Cc: Mark Dopp
Subject: Veal export to Japan
From: Philip Peerless

“Mr. Harries,

Atlantic Veal & Lamb is a veal company based in Brooklyn, New York. We have shipped our veal product’s to Japan for the past 15 years. The Japanese market had become a very important part of our business. Previous to the border closing we employed over 300 people. Due to the lack of margin as a result of the Japanese border closing, we had to decrease our work for by 75 people. Relative to the beef industry our numbers are small, but to me and the amount of small mom and pop veal farmers that are affected (including the loss of veal production to Canada), the closing and the subsequent re-opening of the border is very important to us.

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Back in April, I personally went to Japan in anticipation of the border re-opening. All of our customers were waiting eagerly for us to start shipping our veal to them. I had my quality control person, Elvra Cunha, call six months ago the FSIS and ARC to make sure that we would be on track when the border was re-opened. After some back and forth communication we received an e-mail from David Hildreth dated July 12, 2005 stating that per FSIS, dedicated veal plants Do Not need a BEV Japan program. I forwarded this information to my agent in Japan”.

“Last week I spoke to my agent in Japan and was told that in anticipation of the border being re-opened this week, they would have an order for me to ship this week. I asked my quality control person Elvira Cunha to follow up on the export documents with USDA. After waiting for two days and no one from FSIS communicating at all with us, I called around myself. I finally received a call back this morning from Dana Stahl, QSVP Program Manager for ARC, who informed me that veal plants do need an EV Japan QSA and that I would have to submit our request to be approved for the program to be eligible to ship to Japan. She said they might get to my application sometime in January and then an audit would then be scheduled.

The veal industry never should have been included in the ban to Japan. When Canada had there first case of BSE, the U.S. was quick to close their borders to Canadian ‘bovine’ products. Canada, on behalf of their veal industry complained to the U.S. that veal, because of their age and milk diet never should have been included in the ban to begin with. The U.S. agreed and exempted Canadian veal from the ban and carcass’ were allowed to be shipped to the U.S., even with the SRM’s in them. The U.S. should have made the same case to the Japanese all along about American veal, but unlike the Canadian government, which cares about their veal industry, the U.S. decided it’s better to use the veal industry as canon fodder for the beef industry.

It was interesting to note today when I went on the ARC website to see all the companies that are listed as approved to ship to Japan as of yesterday (I believe yesterday was the day the ban was lifted), I realized that sometimes it would be better to have some local congressmen directly representing us.

At the very least, because of the mis-information from the government, all I asked for is ARC fast track my application and sent an auditor in here next week, we’ve had the program before, we know what to do, I asked for the audit for the BEV

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program six months ago and was told I did not need it. I was told that they can't do help me.

I will tell my agent in Japan to wait because my government made a mistake in what they told me, and the people that have lost their jobs in the veal industry can wait also. The import thing is Cargill and Smithfield can ship this week, that's what's most important to our government and economy.

Thank You,
Philip Peerless
President

Cc: Senator Clinton
Senator Schumer

Ms. Dana Stahl, Quality Systems Verification Program Manager, USDA AMS Audit, Review and Compliance, confirmed through a conversation she had in mid-December with Mr. Peerless, that Mr. Peerless was upset because he wanted to export veal initially to Japan as soon as possible and it would take time for him to apply for EV approval.

Exhibit 5

On December 15, 2005, Elvira Cunha, Quality Assurance Manager, formally requested the services of AMS in an effort to obtain EV certification for slaughter only, of veal carcasses for Golden Veal Corporation and fabrication and distribution of veal products by Atlantic Veal and Lamb Incorporated. This process included the submission of Quality System Assessment (QSA) Quality Manuals for both establishments to meet USDA EV Program for Specified Products for Beef-Japan. Both establishments had previously provided an Application for Service (LS-313) on September 22, 2003. At that time, Atlantic planned on exporting veal products to Canada. AMS begun reviewing previous Atlantic and Golden's QSA Manuals but discontinued the reviews upon notification FSIS had determined dedicated veal establishments were not required to have an EV Program. No additional action was taken by AMS concerning Atlantic and Golden's Service or Manual reviews until Japan notified AMS on December 8, 2005, that all beef establishments, including veal plants, would be required to have an EV Program for export to Japan. It was at this time that Atlantic and Golden requested approval for export certification to Japan. **Exhibit 1, 2 and 3**

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Ms. Cunha requested Dana Stahl, AMS, review the documentation accompanying the letter requesting service from AMS which outlined Golden's and Atlantic's procedures in meeting the requirements of the EV Program. Ms. Cunha also requested on-site audits by AMS to gain certification in the EV Program. **Exhibit 3**

Quality Systems Verification Programs (QSVP) are designed to provide independent verification that special processes or marketing claims are clearly defined and verifiable by an independent third party. The process begins by the company submitting an Application for Service. The company then submits documentation in the form of a QSVP Quality Manual. An AMS Auditor performs a desk audit, a review of the company QSVP Quality Manual to ensure that all program requirements are met. An on-site audit is then conducted by an AMS Auditor at the establishment to verify the establishment conformance with the requirements of the quality standard and compliance with regulatory requirements. The AMS Quality Systems Verification Program Manager makes the final decision on approval based upon the results of the audits. This procedure was followed for the USDA EV Program for Specified Products for Beef-Japan requests submitted by Atlantic and Golden.

During the week of December 19, 2005, AMS Quality Systems Verification Program Manager Dana Stahl stated she spoke on the telephone to Philip Peerless, President of Atlantic and Golden, and Elvira Cunha, Quality Manager for both Atlantic and Golden, about the USDA EV Program for Specified Products for Beef-Japan process. Stahl stated that she clearly discussed with them the requirement that vertebral column must be removed from animals of all ages to comply with the EV program for Japan. AMS Program Manager Stahl stated that if Golden and Atlantic were going to export offal, they would need a control mechanism to identify which offal went with each carcass. Golden and Atlantic did not have a mechanism in place and since no mechanism was in place at either plant, they were not eligible for export to Japan. **Exhibit 2 and 5**

On January 4, 2006, AMS Auditor Darrell Wilson conducted desk audits which entail review of the Golden and Atlantic Quality (QSA) Program manuals to ensure they meet USDA AMS EV program requirements for Japan. Auditor Wilson stated that both firms submitted sufficient documentation to warrant initial on-site audits under the QSA Program requirements and the requirements of the EV Program. **Exhibits 2, 6 and 7**

On January 6, 2006, AMS conducted conformance and compliance on-site audits at both Golden and Atlantic facilities. **Exhibit 8**

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During Golden's audit, they slaughtered 14 head of calves. When AMS Auditor Wilson arrived on the floor, the calves were already hanging as carcasses. These 14 calves were not eligible to be marked as EV certified because the calves were slaughtered for the AMS auditor as a demonstration of Golden's QSA program prior to it being approved. AMS Auditor Wilson observed the removal of the spinal cord, as required by Japan. During this audit, Auditor Wilson also discussed the need for the removal of the vertebral column with Mr. James Fisher, Golden Plant Manager, and Ms. Cunha, Quality Manager. Mr. Fisher said the vertebral column would not be removed at Golden, but would later be removed, as required by Japan, during fabrication at Atlantic.

Also at this time, AMS Auditor Wilson asked Mr. Fisher about offal shipments. Mr. Fisher told AMS Auditor Wilson that Golden did not have plans to ship offal to Japan because Golden did not have a quality management system procedure in place to separate out offal derived from carcasses certified as 20 MOA or younger from offal derived from uncertified carcasses. Under the AMS QSA Program, establishments are required to have documented procedures to identify product (raw materials and/or finished product) by suitable means throughout production and to maintain records of all products identified and records of all changes of identities. **Exhibits 7 and 9**

During Atlantic's audit, AMS Auditor David Hildreth stated that there was no demonstration of fabrication of any veal carcasses or cuts. However, Hildreth stated there had been discussions with Atlantic officials that the vertebral column and other parts needed to be removed during fabrication. Eddie Cruz, Plant Manager for Atlantic, was in attendance during these discussions. In addition, Mr. Hildreth stated that during his audit in the fabrication room, Mr. Cruz displayed yellow containers which Mr. Cruz stated would be used to carry away vertebral column material during the fabrication of any product marked "EV for Japan." The need for the removal of the vertebral column is also documented in AMS Auditor Hildreth's handwritten notes on the Audit Report stating, "vertebral column to be removed during fabrication." AMS Audit Branch Chief James Riva stated the ARS audit procedures do not require an actual observation of SRM removal. Chief Riva stated it is the professional judgment of the Auditor to determine if it is necessary to actually observe the removal of SRMs (e.g. vertebral column). Chief Riva stated the auditor can determine that a QSA Program is in compliance with EV Program requirements through interviews, evaluation of employee training, and review of records and written procedures, without an actual observation of SRM removal. **Exhibits 11 and 36**

AMS ARC Branch Chief James Riva stated that on January 6, 2006, Atlantic and Golden were both approved, respectively, as the only exporter and approved supplier, to export

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veal cuts to Japan. Mr. Riva also stated that Atlantic would have needed certification from Golden in order for the veal offal shipped to Atlantic, intended for export to Japan, to have met EV program requirements. Chief Riva stated Atlantic did not have approval to export veal offal to Japan unless the product was from an approved supplier. Chief Riva advised that the reason Atlantic was not approved to ship offal to Japan was because there was no source of veal offal eligible for export to Japan. Chief Riva further stated Golden did not have a system in place to ensure identification and traceability of offal products and this was the reason Golden could not produce veal offal products that were in compliance with EV Program requirements. Chief Riva advised that Atlantic's approved QSA includes adequate identification and traceability procedures to allow Atlantic to export veal offal to Japan, but only if Atlantic receives veal offal that meets EV Program requirements for export to Japan. **Exhibits 27 and 36**

After the AMS audit, both Atlantic and Golden were verbally notified by Dana Stahl, AMS Program Manager, of the two plants' eligibility and listing on the AMS approved website as of January 6, 2006.

Characteristics of Specific Shipment to Fulfill Order from Japan

On January 10, 2006, Golden slaughtered 202 veal calves. Of these 202 calves, 21 were split, the spinal cords removed, and the carcasses segregated in the cooler for EV approved age certification the following day by AMS Meat Grading and Certification (MGC) Lane Biddle.

On January 11, 2006, at Golden, AMS MGC Biddle determined the age verification (physiological maturity) of the 21 segregated carcasses, from the previous day's slaughter, to satisfy the EV Program specified product requirement of determining the age verification, AMS MGC Biddle assigned a rating to each carcass. A rating of A40 or less qualifies the veal carcass to be exported to Japan. In this instance, AMS MGC Biddle evaluated each veal carcass as A00, identifying all calves as six months of age or younger. **Exhibits 12 and 13**

AMS MGC Biddle then observed Golden personnel as they stamped the 21 carcasses with a "J," as specified in Golden's Quality Manual. The use of a "J" marking, by Golden, means that the carcass has been certified by the grader and is designated for Japan. Under Golden's program, this "J" stamp, which is marked on each EV certified carcass hindquarter, must remain with the product through processing, packaging, storing, and shipping. After this mark was placed, AMS MGC Biddle then overlapped the "J" stamp with an "Accepted as Specified" stamp. The combination of stamps signified

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that the carcass was age certified as less than 20 months, which permits the carcass to be EV eligible for export to Japan.

No offal products from the 21 certified by physiological maturity calves were segregated or identified at the time of slaughter, and no procedures to do so are included in Golden's approved QSA Program. Under the AMS QSA Program, if Golden had intended to export offal from the certified carcasses, they would have been required to have documented procedures to identify product (raw materials and/or finished product) by suitable means throughout production and to maintain records of all products identified and records of all changes of identities.

Ms. Elvira Cunha, Quality Assurance Manager for both plants, stated on February 2, 2006, the veal sweetbreads and tongues were from the slaughter of EV Program approved veal calves and non EV Approved veal calves on January 10, 2006, at Golden. Ms. Cunha also stated the veal sweetbreads and tongues were co-mingled together and then shipped to Atlantic under Bill of Lading (BOL) G-5140 with a Shipping Declaration that stated, "Product Meets EV Program Requirements for Japan". Ms. Cunha stated it was a "mistake" to co-mingle the EV Program approved veal sweetbreads and tongues with non EV Program approved veal sweetbreads and tongues. **Exhibit 33**

Golden's Plant Manager James Fisher stated on February 2, 2006, the veal sweetbreads and tongues from the EV Program approved 21 carcasses slaughtered on January 10, 2006, were co-mingled with the veal sweetbreads and tongues from the 202 veal calves that were also slaughtered at Golden on January 10, 2006. (clarification note: Total slaughter for the day was 202 veal calves, thus 21 were EV certified and 181 were not EV certified). Mr. Fisher stated veal sweetbreads and tongues were considered "veal offal" and were not specifically listed on the BOL but were in the two barrels of offal listed on BOL G-5140. Ms. Lisa Meese, Administrative Assistant/Auditor for Golden, stated on February 2, 2006, the Shipping Declaration that accompanied BOL G-5140 contained co-mingled EV Program veal sweetbreads and tongues with non-EV Approved veal sweetbreads and tongues but "did not know why." She stated the Shipping Declaration and BOL G-5140 accompanied the shipment because that was how she was trained by Ms. Elvira Cunha. **Exhibits 31 and 35**

Mr. Eliseo (Eddie) Cruz, Atlantic's General/Plant Manager, stated on February 2, 2006, the veal tongues were not specifically listed on BOL G-5140 dated January 11, 2006, but were on the truck from Golden. Mr. Cruz stated it was his understanding that all of the products listed on BOL G-5140 were EV Program approved because the Shipping Declaration "stated so". Mr. Phillip Peerless, President of Golden and Atlantic, stated on

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February 2, 2006, the veal sweetbreads and tongues from January 10, 2006, were co-mingled with offal from non EV certified carcasses from the rest of the 202 veal calves slaughtered at Golden on the same day. Mr. Peerless stated looking back on the program now and the Shipping Declarations and BOLs he sees there were mistakes and he would indeed make changes and would have the offal boxes/barrels marked with a "J" if they were derived from "J" certified carcasses. Golden only receives live calves and slaughters these animals and all the veal products are derived from those calves.

Exhibits 32 and 34

On January 11, 2006, Golden shipped the 21 EV approved veal carcasses and 14 various other veal products to Atlantic utilizing two BOLs, numbers 5140 and 5141.

BOL #5140 included:

- 11 boxes Sweetbread – 477 pounds total
- 21 veal carcasses – 5,762 pounds total
- 23 boxes Hind Pieces – 3,135 pounds total
- 2 boxes Fries – 44.4 pounds total
- 2 boxes Cheekmeat – 21.1 pounds total
- 2 barrels Offal – 600 pounds total
- 2 boxes Liver – 2,400 pounds total
- 88 boxes Val Pak Liver – 1,538.6 pounds total

BOL #5141 included:

- 130 boxes 031 Rack/Loins – 3,263.5 pounds total
- 1 barrel Bones – 300 pounds total
- 7 combos Legs – 13,401.8 pounds total
- 25 boxes 246 Chux – 1,293.85 pounds total
- 1 combo 212 Chux – 1,827.8 pounds total
- 1 barrel Clop Tops – 400 pounds total
- 3 barrels Foreshanks – 1,275 pounds total

Shipping Declarations accompanying BOLs 5140 and 5141 indicated that all products from both BOLs had met the EV Program requirements to export to Japan. However, records indicate that the shipments included veal cuts and offal that were not certified under the EV Program requirements for Japan. Ms. Lisa Meese, Administrative Assistant/Auditor at Golden, stated she was not comfortable with the position of an auditor (clarification note: position auditor as defined in the establishment QSA Manual) in regards to the EV Program and part of her job duties were to sign the Shipping Declarations for the EV Program. Ms. Meese stated she was not sure what the program

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EV or BEV means and could not define the term traceability. Ms. Meese stated she understood that all products shipped from Golden to Atlantic must be accompanied by a Shipping Declaration. Ms. Meese stated she verified the product met the EV Requirements through the "metaphysical" report from USDA MGC Biddle. **Exhibits 14 and 35**

Mr. Fisher, Golden's Plant Manager, was interviewed as to why a Shipping Declaration for Japan accompanied all products on BOLs 5140 and 5141, including several products that AMS had not certified eligible for shipment to Japan. Mr. Fisher stated that the AMS Grading Service required the Shipping Declaration for each shipment that included EV certified product and that he knew this could lead to major problems.

AMS personnel Lane Biddle, Darrell Wilson, and James Riva stated they never told Mr. Fisher that a Shipping Declaration was required to be used to identify shipments containing EV certified veal carcasses regardless of whether or not all products met the EV Program requirements for Japan. **Exhibits 7, 13, 15, and 27**

On the morning of January 12, 2006, a fire engulfed the Golden plant causing severe damage. All remaining veal carcasses and offal products were destroyed. However, no damage was done to the office area of the plant, and therefore, all records (plant and FSIS) remained safe. **Exhibit 16**

Atlantic's receiving record #3959, dated January 12, 2006, documented receipt of 21 calves and various veal cuts and veal offal shipped from Golden on January 11, 2006. Their EV Program Receiving Log dated January 12, 2006, listed only the receipt of the 21 EV approved veal carcasses. Mr. Wesley Martinez, Shipping and Receiving Manager at Atlantic, stated on February 2, 2006, that Atlantic received 21 carcasses on January 12, 2006, from Golden marked with a "J" and this was the only item entered on the EV Program Receiving Log since nothing else was marked with a "J". **Exhibits 17, 18, and 37**

Atlantic's daily EV production logs for January 12th and 13th listed various veal products that were assembled and fabricated which included uncertified veal sweetbreads and veal tongues. Both EV production logs identified each product with a code that began with a "7" to denote EV products for Japan. This documentation identifies the uncertified veal sweetbreads and veal tongues as meeting EV program requirements for Japan. **Exhibits 19 and 20**

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In addition, the EV production log dated January 13th listed 1 box of "Veal 7 Rib Rack Blade in" (Hotel Rack) and 2 boxes of "Veal Loin Trim 4x4" (Trimmed Loin), as requested in the December 27, 2005 order from Nihon Siber Hegner K.K. of Japan. Under the EV Program requirements for Japan, and identified in Atlantic's QSA manual, these products were not eligible for export to Japan because the cuts contained portions of the vertebral column.

Atlantic was aware of this requirement because their QSA Program states that "Conforming product must meet the specified product requirements of the QSA Program requirements for Japan referenced in [AMS Audit, Review, and Compliance Branch Form] ARC 1030J, Section 5.1.1." Section 5.1.1 includes a requirement that products must be produced in a manner that ensures the hygienic removal of the vertebral column. **Exhibit 3**

On January 13, 2006, Atlantic requested, as required under Title 9 of the Code of Federal Regulations, Section 322.2, from FSIS, an Application for Export Certificate MPF-455142. The completed application had all the same products listed as Nobuo Shiraiwa had ordered to Phillip Peerless on December 27, 2005. The difference in Mr. Shiraiwa's order and the actual Application and Export Certificate's (Number MPF-455142) products listed were the 25 boxes of sweetbreads, totaling 250 pounds. MPF-455142 stated 25 boxes at a total weight of 203.7 pounds. Consumer Safety Inspector (CSI) or provided the Application for Export Certificate MPF-455141 to Ms. Cunha, Quality Manager. The Application was signed by Mr. Robert Buxbaum, Export Coordinator at Atlantic and CSI Or. The Export Certificate MPF-455142 was signed by Public Health Veterinarian (PHV) Wills. This certificate reflected a total of 928.4 pounds/48 boxes of products. Ms. Cunha later asked that the certificate be voided because there were some boxes being removed. MPF-455142 was voided by FSIS personnel. **Exhibit 21**
This is the 1st order.

- 1 box Hotel Rack (7 Ribs) – 60.15 pounds total
- 4 boxes Hotel Rack Chop - Ready (7 Ribs) – 105.1 pounds total
- 1 box Boneless Ribeye – 16.9 pounds total
- 1 box Trimmed Loin Boneless (1x1) – 17 pounds total
- 2 boxes Trimmed Loin (4x4) – 38.8 pounds total
- 1 box Strip Loin – 14.8 pounds total
- 1 box Top Round – 19.5 pounds total
- 6 boxes Breast Boneless Finger Meat – 299.3 pounds total
- 2 boxes Plates – 54.85 pounds total
- 1 box Full Tenders – 15.4 pounds total

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- 1 box Loin Tenders – 12.5 pounds total
- **25 boxes Sweetbreads – 203.7 pounds total**
- 1 box Tongues – 10.4 pounds total and
- 1 box Veal Bones – 60 pounds total

Subsequently on January 13, 2006, a second Application, Export Certificate MPF-455143, was requested by Atlantic. The Application was signed by Mr. Robert Buxbaum, Export Coordinator at Atlantic and CSI Or. The Certificate package was completed by Atlantic. MPF-455143 was signed by Dr. Chaudhry M. Saleem. Ms. Cunha later explained there was a problem with this certificate concerning weights, and indicated a request for a third certificate would be forthcoming. The difference between MPF-455142 and MPF-455143 was the 25 box count of sweetbreads was changed to 19 boxes of sweetbreads but no change to the weight on the sweetbreads. This certificate reflected a total of 928.4 pounds/42 boxes of products. MPF-455143 was voided by FSIS personnel upon the request of Atlantic. **Exhibit 22**
This is the revised 2nd order.

- 1 box Hotel Rack (7 Ribs) – 60.15 pounds total
- 4 boxes Hotel Rack Chop - Ready (7 Ribs) – 105.1 pounds total
- 1 box Boneless Ribeye – 16.9 pounds total
- 1 box Trimmed Loin Boneless (1x1) – 17 pounds total
- 2 boxes Trimmed Loin (4x4) – 38.8 pounds total
- 1 box Strip Loin – 14.8 pounds total
- 1 box Top Round – 19.5 pounds total
- 6 boxes Breast Boneless Finger Meat – 299.3 pounds total
- 2 boxes Plates – 54.85 pounds total
- 1 box Full Tenders – 15.4 pounds total
- 1 box Loin Tenders – 12.5 pounds total
- **19 boxes Sweetbreads – 203.7 pounds total**
- 1 box Tongues – 10.4 pounds total and
- 1 box Veal Bones – 60 pounds total

On January 18, 2006, Atlantic requested a third complete export certificate (MPF-455144). CSI Or stated at approximately 09:30 a.m. on January 18, 2006, while he was at Water Lillies Food Inc., Ms. Cunha called him on his personal cell phone and informed him of a problem with the weight on MPF-455133 and that he needed to get to Atlantic

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as soon as possible as the product had to be at the airport by 3:00 p.m. CSI Or stated he informed Ms. Cunha that he would be there as soon as possible but the firm still needed to get the signature from the Supervisory Veterinary Medical Officer (PHV). Ms. Cunha informed CSI Or she would take care of that part and obtain the signature. Upon CSI Or's return to Atlantic, he provided Atlantic with a blank FSIS Form 9060-6, "Application for Export Certification," and the establishment's secretary completed blocks 3 through 17 on the application. CSI Or stated that he performed a visual check of the boxes, counted the boxes, determined the poundage was correct, and then completed blocks 18 through 20 on the application. The application accompanied FSIS Form 9060-5, "Meat and Poultry Export Certificate of Wholesomeness" and FSIS Form 9290-1, "Certificate for Export to Japan." FSIS Forms 9060-5 and 9290-1 were completed by the plant's secretary. CSI Or stated at approximately 12:30 p.m. to 1:00 p.m. Atlantic returned with the export package (Meat and Poultry Export Certificate of Wholesomeness, the Certificate for Export to Japan, and the Letterhead Certificate for Export for Beef and Beef Offal to Japan) bearing the signature of PHV Keith Wills.

Exhibit 24

On January 18, 2006, FSIS Public Health Veterinarian (PHV) Keith Wills received the export certificate package from Atlantic to review and sign at his duty station (Est. 20138, Bo-Bo Poultry Market, Brooklyn, New York). In two separate sworn statements, PHV Wills stated he never saw the product at the establishment. PHV Wills stated he looked for CSI Or's signature to verify that inspection was performed. PHV Wills also stated that he was not aware of any concerns regarding an AMS approved EV establishment, and that he never had any conversation with Atlantic regarding exporting products to Japan. PHV Wills stated he was not aware that Atlantic had an approved Export Verification (EV) Program, nor did he know what EV was prior to this incident, because there was no communication between AMS and FSIS at the field level.

Exhibit 25

Once CSI Or received the completed export certificate package with PHV Wills' signature, CSI Or performed a random visual check on some of the product. Upon completion of the random visual inspection, CSI Or personally stamped each box with the export stamp. CSI Or stated he never received or observed any documentation stating that the product was under 20 MOA and was unaware of any concerns regarding an AMS approved EV establishment. **Exhibit 23**

The changes from the previous certificate, MPF-455143, to Export Certificate MPF-455144 was the removal of 1 box (60 pounds) of bones. This change was made at the

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request of Mr. Shiraiwa, Nihon Siber Hegner K.K. of Japan, who e-mailed Mr. Peerless on 1/18/06 stating, "After having discussion here, I found it much better not to load bones one case, which might make a mess of everything. Please unload one case of bone for our smooth custom clearance here so that my forwarder [Mitsui O.S.K. Lines, Ltd.] can urgently coordinate the air freight shipment." **Exhibit 28**

This certificate reflected a total of 865 pounds/41 boxes of products. Both the Application for Export Certificate and the Meat and Poultry Export Certificate for Wholesomeness number MPF-455144 listed the following products for export to Japan:

- 1 box Hotel Rack (7 Ribs) – 60 pounds total
- 4 boxes Hotel Rack Chop - Ready (7 Ribs) –104.7 pounds total
- 1 box Boneless Ribeye – 17 pounds total
- 1 box Trimmed Loin Boneless (1x1) – 17 pounds total
- 2 boxes Trimmed Loin (4x4) – 38.6 pounds total
- 1 box Strip Loin – 14.9 pounds total
- 1 box Top Round –19.2 pounds total
- 6 boxes Breast Boneless Finger Meat – 298.6 pounds total
- 2 boxes Plates – 54.6 pounds total
- 1 box Full Tenders – 15.3 pounds total
- 1 box Loin Tenders – 12.4 pounds total
- 19 boxes Sweetbreads – 202.3 pounds total and
- 1 box Tongues – 10.4 pounds total.

The Application for Export Certificate bore the statement "Product meets EV Program requirements for Japan" and was signed by Ms. Elvira Cunha, Quality Control Manager. The Letterhead Certificate for Export of Beef and Beef Offal to Japan bore the statement, "The exported beef to Japan fulfilled all the required conditions described in the EV Program" and was signed by PHV Keith Wills.

The following products did not meet the EV Program requirements for Japan.

- The "Hotel Rack (7 ribs)" and the "Trimmed Loin (4x4)" were not eligible because the vertebral column was not removed from these products cuts.
- The "Sweetbreads" and the "Tongues" were not eligible because these offal products did not meet the EV program requirements for export to Japan. Note: even if Golden had procedures in place to segregate and

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identify veal sweetbreads for EV certification, the maximum amount that could have been harvested from the 21 EV approved calves would have been about 21 pounds (approximately 1-pound per veal carcass).
Exhibit 26

AMS ARC Branch Chief James Riva stated that if Atlantic only received 21 veal carcasses from Golden, all meeting EV program requirements, the 21 carcasses could not have reasonably obtained the volume of offal listed on BOLs 5140 and 5141 and the Export Certificate, MPF-455144. **Exhibits 26 and 27**

Mr. Hector Lopez, Fabrication Manager for Atlantic, stated on February 2, 2006, stated he remembers only using 5 – 8 of the veal carcasses marked with a “J” in order to fill the whole muscle orders for Japan under Export Certificate MPF-455144 dated January 18, 2006. Mr. Lopez stated the rest of the “J” marked 21 veal carcasses received from Golden on January 12, 2006, were cut up and sold to other customers. **Exhibit 38**

On January 18, 2006 Atlantic shipped the veal products, as listed on Export Certificate MPF-455144, to Japan. **Exhibit 29**

Destination Arrival of Specific Shipment to Fulfill Order from Japan

On January 19, 2006, the veal products arrived in Japan. Upon arrival in Japan, an inspection revealed that three of the 41 boxes contained vertebral columns, which were prohibited from entering Japan from the United States under Japan’s EV Program.

On January 20, 2006, FSIS received notification that the country of Japan had suspended importation of all beef products from the United States. This decision resulted because of Japan receiving an export shipment of veal, originating from Atlantic, which contained three (3) boxes of product that included portions of the vertebral columns (Hotel Rack and Trimmed Loin), and was in violation of their EV Program requirements.

The shipment also included veal sweetbreads and veal tongues which did not meet EV Program requirements for Japan. **Exhibit 30**

Investigative Facts

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- Golden's EV Program did not address the harvesting, processing, shipping, or exporting of any veal offal products. As such, none of these offal products were eligible for EV certification.
- Golden did not segregate or identify veal offal products for certification by the EV Program at the time of slaughter.
- Golden shipped 21 veal carcasses that met EV Program requirements for Japan and 14 other veal products that did not meet these requirements on 2 separate BOLs with accompanying Shipping Declarations which indicated all products had met EV Program requirements for Japan.
- AMS personnel Lane Biddle, Darrell Wilson, and James Riva stated they never told Mr. Fisher that a Shipping Declaration was required to be used to identify all shipments of veal carcasses whether the products met or did not meet the EV Program requirements for Japan.
- Atlantic Daily Production Logs (EV) listed various veal products including veal sweetbread and veal tongues, which were unapproved and did not meet EV Certification requirements.
- According to Atlantic's QSA program, all EV products are identified with a "7." On Atlantic's Daily Production Logs (EV), the plant listed unapproved veal product codes starting with a "7."
- Atlantic Export Certificate package MPF-455144 included the statement "Product meets EV Program Requirements for Japan" when in fact the hotel rack (7 ribs), loin, veal sweetbread, and veal tongues do not meet EV Program Requirements for Japan.
- Atlantic exported 202.3 pounds of sweetbread. With the approximate yield per veal carcass being one pound, and only 21 veal carcasses having been EV approved, the largest total poundage which could have resulted would be approximately 21 pounds of sweetbread. Approximately 181.3 pounds of unapproved sweetbread could not be attributed to the 21 EV approved carcasses.
- Golden's records document that products supplied under the EV Program did not meet requirements to export to Japan.
- Atlantic's records document that the exported veal cuts and offal to Japan did not meet EV Program requirements in order to export to Japan.

Next Steps

On January 24, 2006, the USDA Office of Inspector General (OIG) issued a Case Opening Memorandum (COM), HY-24381.

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The FSIS, OPEER, will provide its investigative report to OIG, and will support OIG, as requested, in the further investigation of this matter and in any legal action under the jurisdiction of the appropriate United States Attorney.