

*Fighting for the U.S. Cattle Producer!*



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*USA*

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December 17, 2009

The Honorable Tom Vilsack  
United States Secretary of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250

**Hand-Delivered**

**Re: Response to Dec. 3, 2009 Letter**

Dear Secretary Vilsack:

Thank you for your response to our letter of Oct. 29, 2009, sent by R-CALF USA and its colleagues, regarding *A Desperate Call to Action from the U.S. Cattle Industry* that concerned competition, human and animal health, and trade. Thank you, also, for this opportunity to engage in a meaningful dialog with you on these issues that are of critical importance to independent U.S. cattle farmers and ranchers.

We appreciate your agency's action to begin addressing misuse of market power and anticompetitive behavior, along with your efforts to collaborate with the U.S. Department of Justice to address the competitiveness of agricultural markets. Our immediate concern, however, is that these actions will be too late for perhaps thousands, if not tens of thousands, of independent cattle feeders, backgrounders and stockers and cow/calf producers who lack the financial wherewithal to withstand the horrendous losses experienced since 2007 – losses caused in large part by: a dysfunctional marketplace: an erosion of consumer confidence in the safety of beef, both here and abroad; and, disadvantageous trade policies.

We believe some form of immediate, decisive action must be taken to, at the very least, avert the exodus of those independent cattle farmers and ranchers whose financial conditions have become untenable this year. A new wave of producers is now reaching the financial breaking point because the recently initiated actions described above were not implemented in time to address the misuse of market power and other anticompetitive behavior that has interfered with the competitiveness of our markets for well over a decade.

We fear the recent financial losses experienced by independent cattle feeders – particularly small- to mid-sized feeders who lack the deep pockets of their larger, corporate counterparts – likely will drive thousands, if not tens of thousands, of them out of business. Our industry would then be relegated to having too few remaining cattle feeders to sustain a competitive marketplace needed by the hundreds of thousands of independent cow/calf

producers, backgrounders and stockers, even if USDA and Justice are later able to halt ongoing market power misuses and anticompetitive behavior.

Time is of the essence, and we have offered viable solutions that would provide immediate relief from our industry's list of ills, without necessitating any government expenditure. These viable solutions include: 1) immediately restore our previously weakened U.S. disease protections by rescinding the over-30-month rule (OTM Rule) that allows older cattle of higher risk for bovine spongiform encephalopathy (BSE) to be imported into the U.S. from Canada, and 2) immediately end the packers' strategic use of captive supply cattle that artificially depresses U.S. cattle prices.

**Regarding our first recommendation that addresses human and animal health:** We are extremely disappointed with your stated position that the World Organization for Animal Health's (OIE's) classification of both the U.S. and Canada as "controlled risk" countries provides assurance that measures are in place in both countries to manage "*any possible risk of BSE in the cattle population*" (emphasis added), and, that due to interlocking safeguards in place in both countries, cattle and beef can be "*safely traded by both nations.*" (emphasis added).

We disagree completely and firmly believe your position is directly contradicted by your agency's own risk assessment. The base-case risk model for the OTM Rule assumes that all the OIE-recommended interlocking safeguards you reference are in place. Nevertheless, the model predicts the U.S. *will* introduce 19 BSE-infected cattle from Canada over the course of 20 years.<sup>1</sup> And, the OTM Rule further predicts, under its base-case risk modeling, that two U.S. cattle *would* subsequently be infected with BSE, and that human exposure to the disease likewise would increase as a direct result of the additional, Canadian imports authorized by the OTM Rule.<sup>2</sup>

In addition, USDA estimates that the *cost to U.S. cattle producers*, for the privilege of being exposed to a heightened risk for BSE from Canadian cattle and beef, would be over \$66 million per year (or approx. \$1.3 million each week), for which no compensation can be obtained from anyone.<sup>3</sup> Clearly, the OTM Rule is increasing the risk of introducing BSE into the U.S. from Canada, increasing the risk of infection of BSE in both U.S. cattle and in humans, and causing tens of millions of dollars in financial losses for U.S. cattle farmers and ranchers.

It is illogical to accord such uncritical deference to the OIE, particularly when your agency's own risk evaluation belies OIE's indistinct risk classifications and while the U.S. Centers for Disease Control and Prevention (CDC) provides evidence that the risk of imported Canadian cattle causing BSE to spread among U.S. animals has been understated.<sup>4</sup> The CDC also

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<sup>1</sup> See 72 Fed. Reg., 1109, col. 2; 72 Fed. Reg., 53347, col. 1 (USDA's risk modeling for its over-30-month rule (OTM Rule) predicts the U.S. would import between 19 and 105 BSE-infected cattle from Canada, which would subsequently produce BSE infections in 2 to 75 U.S.-born cattle over a 20-year period).

<sup>2</sup> *Ibid*; see also 72 Fed. Reg., 53,335, col. 1.

<sup>3</sup> See 72 Fed. Reg. 53,356, col. 1.

<sup>4</sup> See BSE (Bovine Spongiform Encephalopathy, or Mad Cow Disease), U.S. Centers for Disease Control and Prevention, June 16, 2009 ("The previously published best estimate of Canada's BSE prevalence in 2006 using the

continues to warn travelers that to reduce the risk of acquiring the human form of BSE in areas with indigenous cases of BSE, they “may consider either avoiding beef and beef products altogether or selecting beef or beef products, such as solid pieces of muscle meat (rather than brains or beef products like burgers and sausages), that might have a reduced opportunity for contamination with tissues that may harbor the BSE agent.”<sup>5</sup>

This issue – the OTM Rule – *is* a human and animal health issue that is exposing U.S. livestock and U.S. consumers to an unnecessary and avoidable health risk and financially harming U.S. cattle farmers and ranchers. However, it appears your Administration has fallen into lockstep with the previous Administration by continuing to ignore completely the OTM Rule’s scientifically determined health risks and is, instead, using the inadequate OIE recommendations and the hazardous OTM Rule to leverage global export markets into conformity with weaker standards. This is, with all due respect, deplorable.

You have the authority to immediately begin protecting U.S. livestock and the people of the United States from the introduction of BSE, the introduction of which your agency scientifically determined *will occur* under the OTM Rule due to the heightened risk for BSE in the Canadian cattle herd.

We implore you to expeditiously exercise your authority to fulfill Congress’ mandate to protect animal health and the health and welfare of the people of the United States by preventing the introduction into or spread within the United States of BSE.<sup>6</sup> This can be accomplished by immediately rescinding the OTM Rule.

**Regarding our second recommendation for immediate relief that addresses the dysfunctional marketplace:** We urge you to immediately declare unlawful the packers’ practice of strategically shifting increased volumes of fed cattle from the competitive cash market to the packers’ hoard of captive supplies. You already have the authority under the Packers and Stockyards Act to immediately end this practice and to protect the integrity of the competitive cash market. Your own 2007 Livestock and Meat Marketing Study scientifically concludes that the practice of shifting cattle away from the cash market manipulates cash prices, as the study found that cattle prices decrease following a shift of cattle procurement from the open market to any one of the packers’ captive supply stockpiles.<sup>7</sup>

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BSurveE model was 23-fold higher than that of the United States and is the estimate of the BSE prevalence in Canada that continues to be used in the Harvard Risk Assessments’ “worst case” analyses when evaluating the risk of imported Canadian cattle causing BSE to spread among US animals.” (emphasis added).), available at <http://www.cdc.gov/ncidod/dvrd/bse/>.

<sup>5</sup> See vCJD (Variant Creutzfeldt-Jakob Disease), Risk to Travelers, U.S. Centers for Disease Control and Prevention, December 28, 2009, available at [http://www.cdc.gov/ncidod/dvrd/vcjd/risk\\_travelers.htm](http://www.cdc.gov/ncidod/dvrd/vcjd/risk_travelers.htm).

<sup>6</sup> See 7 U.S.C. § 8301 (1) (“the prevention, detection, control and eradication of diseases and pests of animals are essential to protect . . . animal health [and] the health and welfare of the people of the United States.”); *see also* 7 U.S.C. § 8303 (a) (1) (The Secretary of Agriculture “may prohibit or restrict . . . the importation or entry of any animal . . . if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.”).

<sup>7</sup> See GIPSA Livestock and Meat Marketing Study, January 2007, Volume 3, at ES-5, available at [http://archive.gipsa.usda.gov/psp/issues/livemarketstudy/LMMS\\_Vol\\_3.pdf](http://archive.gipsa.usda.gov/psp/issues/livemarketstudy/LMMS_Vol_3.pdf).

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Mr. Secretary, our cattle industry is in dire need of decisive action right now. Time is of the essence. You possess the necessary authority to immediately alleviate at least some of the ongoing hemorrhaging within our industry, if only you are willing to exercise that authority on behalf of the people of these United States. We pray that you will do so.

Sincerely,

Buckeye Quality Beef Association (OH)  
Cattle Producers of Washington  
Colorado Independent CattleGrowers Association  
Independent Beef Association of North Dakota  
Independent Cattlemen of Nebraska  
Independent Cattlemen of Wyoming  
Kansas Cattlemen's Association  
Kansas Farmers Union  
Missouri Farmers Union  
National Farmers Organization  
Nebraska Farmers Union  
Nevada Live Stock Association  
Oregon Livestock Producers Association  
Ozarks Property Rights Congress (MO)  
R-CALF USA  
South Dakota Stockgrowers Association

Cc: Recipients of the Original Oct. 29, 2009 letter from R-CALF USA and Colleagues  
Select Members of Congress  
Select Agency Officials