Making the U.S. Cattle Industry Great Again

A Comprehensive 8-Point Plan to Reverse the Decline of the U.S. Cattle Industry

Prepared by R-CALF USA
December 1, 2016

EXECUTIVE SUMMARY/OUTLINE

The U.S. live cattle industry is America's single largest agricultural sector. It also is an industry in serious decline. This is the result of efforts by concentrated meatpackers to capture the live cattle supply chain away from independent cattle farmers and ranchers through vertical integration, a process known to kill competition.

To reverse the ongoing decline of the U.S. cattle industry, decisive steps must be taken to restore and then preserve marketplace competition, protect the health of U.S. livestock, accommodate the unique characteristics of the U.S. cattle industry in trade agreements, promote marketplace transparency, and end the cross-subsidization of lobbying groups that oppose the execution of these essential steps.

The 8-point plan described below will achieve the goals of reversing the cattle industry's decline and reinstating economic opportunities for future generations of cattle farmers and ranchers without requiring a penny in government price supports. However, this plan will be vigorously opposed by dominant meatpackers and their allies because it will wrest market control from their hands and vest that control into the hands of independent farmers and ranchers and competitive market forces.

R-CALF USA pledges to work with President-elect Donald Trump's Administration to implement the plan described in this paper, the highlights of which include:

REVERSING THE ONGOING DECLINE OF THE U.S. CATTLE INDUSTRY

1. **Put in the Hands of Producers the Tools They Need to Allow Beef from Their Cattle to Compete with Beef from Foreign Cattle at the Retail Level.**
    - Reinstate mandatory Country of Origin Labeling (COOL) for beef.

2. **Put in the Hands of Producers the Tools They Need to Self-Monitor and Self-Enforce the Rules of Competition.**
    - Support the USDA's Fair Practices Rules currently being cleared by the White House Office of Management and Budget.

3. **Take from the Dominant Beef Packers the Tools They Use to Reduce Market Competition and Manipulate Cattle Prices.**
    - Pass legislation that allows the largest of packers to be packers but disallows them from also being feedlot owners and cattle feeders. This would effectively block the beef packing industry from capturing the live cattle supply chain through outright ownership and control of the feedlot sector of the live cattle industry.
    - Restore the cattle futures market to its original purpose of providing risk-management to cattle sellers and buyers by requiring the cattle futures market to be asset-based. This will prevent casino-type gambling by speculators and futures market price manipulation by dominant meatpackers.

4. **Stop Dominant Meatpackers from Manipulating Cattle Prices by Controlling the Output and Price of Competing Proteins and Reducing Competition Through Horizontal and Vertical Mergers and Acquisitions.**
    - Vigorously enforce U.S. antitrust laws to prevent competition-reducing mergers and acquisitions and price-manipulating practices by the largest meatpackers.

5. **Take from the Dominant Packers and the USDA the Tools They Use to Lower Domestic Cattle Prices While Substantially Increasing the Risk of Introducing Foot-And-Mouth Disease (FMD) Into the United States.**
    - Amend the Animal Health Protection Act to expressly prohibit the importation of fresh beef from Brazil, Argentina, Namibia, or any other country not free of FMD <u>without vaccination</u>.

6. **Stop Treating Cattle and Beef in Trade Agreements as if they Are Storable Agricultural Commodities that Are Overproduced in the U.S. Market.**
    - Renegotiate NAFTA and other free trade agreements that threaten to supplant U.S. cattle production with ever increasing volumes of imported cattle and beef.

7. **Restore the Integrity of the National Beef Checkoff Program**.
    - Pass the Voluntary Checkoff Program Participation Act (S.3200) introduced by Senator Mike Lee (R-UT) that requires all checkoff programs to be voluntary at the point of sale; and/or,
    - Pass the Commodity Checkoff Program Improvement Act of 2016 (S.3201) introduced by Senators Cory Booker (D-NJ) and Mike Lee (R-UT).

8. **Put in the Hands of Producers Accurate and Real-Time Market Information that Is Not Currently Disclosed by Concentrated Packers.**
    - Update the Livestock Mandatory Reporting Act to capture prices transacted under new cattle procurement methods such as delayed delivery, after-hour, and premium over current cash-price purchases. The update should also require reporting from all regions, regardless of the number of known buyers operating in the region.

INTRODUCTION

The United States' rural economy is largely dependent on a healthy, vibrant and competitive domestic cattle industry. This is because cattle generate more cash receipts than any other U.S. agricultural commodity and are produced in every state of the union.[1]

In less than half a lifetime, over 40 percent of all U.S. cattle operations have exited our industry. By 2014, our industry's factory – its mother cow herd – shrank to the smallest size in over seven decades. In 2015, the volume of beef produced from our U.S. cattle herd fell to the lowest level in over two decades – since the year before NAFTA was implemented.

Based on favorable market fundamentals present in early 2015, the hundreds of thousands of disaggregated U.S. cattle farmers and ranchers remaining in the U.S. cattle industry expected profitable cattle prices for at least three years – until 2018, at which time supplies were expected to increase sufficiently to begin putting downward pressure on prices. This expectation assumed that competitive market forces were still determining cattle prices.

But this assumption proved false. From early 2015 through today the cattle market collapsed, with prices falling farther and faster than any other time in history. This has caused U.S. cattle farmers and ranchers to lose billions of dollars in equity.

These are not indicators of progress. These are indicators that our U.S. cattle industry is in serious decline. This decline is not the result of any natural phenomenon. It is by design.

While equity drains from the cattle industry, the beef industry segment of the cattle-to-beef-to-consumer supply chain is enjoying record profit margins. The CME Group predicts 2016 beef packer margins will set a new 20-year high.[2]

Four beef packers dominate the U.S. beef industry, controlling about 85 percent of the U.S. fed cattle market. These monopolistic packers are attempting to substitute competitive forces within the live cattle supply chain with their own command-and-control regime. They are doing this by acquiring and controlling the competitive marketing channels within the cattle supply chain, a process known as vertical integration and known to kill competition.[3] These same

[1] Cash receipts from the sale of cattle and calves were $78.2 billion in 2015, well above second-place corn that generated $47.7 billion. *See* https://data.ers.usda.gov/reports.aspx?ID=39625.

[2] Daily Livestock Report, CME Group, Vol. 14, No. 177/September 7, 2016.

[3] For a more detailed discussion on how packers are aggressively capturing the live cattle supply chain, *see* "Under Siege: The U.S. Live Cattle Industry," Bill Bullard, South Dakota Law Review, Vol. 58, Issue 3, 2013, available at http://r-calfusa.com/wp-content/uploads/2013/04/130101UnderSiegeSDlAWrEVIEWBillBullard.pdf.

packers have already vertically integrated the hog and poultry supply chains, eliminating opportunities for hundreds of thousands of hog and poultry farmers. In those industries today, the concentrated meatpackers dictate to the few remaining hog and poultry farmers the terms of production, terms of marketing, and, increasingly, the prices they will pay for hogs and chickens.

REVERSING THE ONGOING DECLINE OF THE U.S. CATTLE INDUSTRY

To reverse the decline of the U.S. cattle industry, we must first take steps to reverse the ongoing erosion of competition. This must be done quickly, before our industry's competitive marketing channels are dismantled or destroyed. Once this occurs, a reversal may no longer be possible – as hundreds of thousands of poultry, hog, and sheep producers have already learned.

The following 8-point plan does not ask for or require even a penny in government price supports. Instead, it involves strategies to restore and then preserve marketplace competition, protect the health of U.S. livestock, accommodate the unique characteristics of the U.S. cattle industry in trade agreements, promote marketplace transparency, and end the cross-subsidization of lobbying groups that oppose the execution of such strategies.

1. Put in the Hands of Producers the Tools They Need to Allow Beef from Their Cattle to Compete with Beef from Foreign Cattle at the Retail Level.

Because retail beef is no longer labeled as to its origin, beef packers are empowered to unilaterally decide from which country to source beef to satisfy consumer demand. But genuine competition requires consumers to initiate demand signals, not middlemen like packers, based on consumer buying preferences. Reinstating mandatory country of origin labeling (COOL) for beef will unleash retail-level competition by empowering consumers to choose from which country the beef packers must source the beef to satisfy the consumers' particular buying preference. With COOL, beef packers will no longer be able to unilaterally reduce demand for USA-produced beef by substituting it with beef from unknown sources. Thus, COOL will strengthen competition by enabling beef produced from U.S. cattle to compete at the retail level against beef produced from foreign cattle.

A. **Reinstate mandatory Country of Origin Labeling (COOL) for beef.**
B. Require all trade agreements to adopt a born, raised and slaughtered origin standard for international trade in beef.
C. Address criticisms leveled at COOL by the World Trade Organization:
    a. Too many exemptions for beef from imported cattle.
    b. Inaccuracy of labels when cattle are raised in two countries.

2. <u>Put in the Hands of Producers the Tools They Need to Self-Monitor and Self-Enforce the Rules of Competition.</u>

The Packers and Stockyards Act of 1921 (PSA) aimed to establish the legal framework within which competition for livestock and poultry would unfold. This framework sought to balance the disparity in economic power between highly-concentrated beef packers that purchased cattle and widely-disaggregated cattle farmers and ranchers that sold cattle. Among other things, it was designed to protect individual livestock and poultry producers from unfair, deceptive and unjustly discriminatory buying practices and practices that constitute undue preferences or advantage. Importantly, the PSA protected not only the competitive process within the livestock industry; but also, it protected individual livestock produces from anticompetitive conduct by meatpackers. Thus, the PSA does not require livestock or poultry producers to first prove injury to competition before seeking protections under the act. Unfortunately, for 95 years the concentrated meatpackers and their allied trade associations have thwarted any effort by the U.S. Department of Agriculture (USDA) to promulgate rules with which to implement those important producer protections.

The U.S. Department of Agriculture (USDA) recently announced its intention to issue such rules, now referred to as the "Fair Practices Rules," before the end of this year. Those rules, when promulgated, will empower livestock and poultry producers to not only monitor the rules of competition, but equally important, to enforce those rules without having to rely on the federal government to act.

A. **Support the immediate publication in the *Federal Register* of the USDA's Fair Practices Rules currently being cleared by the White House Office of Management and Budget.**
B. Amend the PSA to clarify that a claim of a legitimate business justification is not a defense for violating the act.
C. Amend the PSA to clarify that livestock producers need not prove intent on the part of a meatpacker whose conduct violates the act.
D. Amend the PSA to allow for the recovery of attorney's fees and treble damages.

3. <u>Take from the Dominant Beef Packers the Tools They Use to Reduce Market Competition and Manipulate Cattle Prices.</u>

Dominant meatpackers serve as market gatekeepers and create market access risk for cattle producers – the risk of not being able to timely market their slaughter-ready livestock. Using their power to limit market access, dominant meatpackers are shifting large volumes of cattle out of the competitive cash market – the industry's price discovery market – and into the meatpackers' cache of captive supply cattle, which are unpriced cattle that are owned or controlled by the meatpacker.

The problem with this arrangement is that the price the meatpackers ultimately pay for their growing cache of unpriced, captive supply cattle is linked directly to the price discovered in the fast-shrinking cash market. Today's ultra-thin cash market is easily manipulated by dominant packers and they are incentivized to do so because a reduction in the cash market price equates to a reduction in the price they pay each week for their hundreds of thousands of unpriced cattle. In 2015, for example, less than 3 percent of the cattle procured by the meatpackers in the Texas/Oklahoma/New Mexico market region were procured in the cash market that then set the base price for the nearly 86 percent of the cattle procured through unpriced contracts.[4]

The meatpackers' strategy for manipulating the ultra-thin cash market is now being replicated in the cattle futures market, which grew ultra-thin following the erosion of confidence that occurred when the price-discovering cash market became too thin to predict competitive cattle prices. Today's cattle future market can be turned on its head with just a few hundred orders by the dominant meatpackers.[5]

A. **Pass legislation that allows the largest of packers to be packers but disallows them from also being feedlot owners and cattle feeders. This would effectively block the beef packing industry from capturing the live cattle supply chain through outright ownership and control of the feedlot sector of the live cattle industry.**
    a. Pass Senator Charles Grassley's (R-IA) bill (S. 2911) that bans the largest packers from owning, controlling or feeding livestock for more than 7 days prior to slaughter.
    b. Introduce and pass a bill to prohibit the largest meatpackers from procuring fed cattle through un-priced contracts, such as formula contracts.
B. **Restore the cattle futures market to its original purpose of providing risk-management to cattle sellers and buyers by requiring the cattle futures market to be asset-based. This will prevent casino-type gambling by speculators and futures market price manipulation by dominant meatpackers.**

4. <u>Stop Dominant Meatpackers from Manipulating Cattle Prices by Controlling the Output and Price of Competing Proteins and Reducing Competition Through Horizontal and Vertical Mergers and Acquisitions.</u>

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[4] Based on the 2016 report "LMR Purchase Type Breakdown by Region," prepared by the USDA Agricultural Marketing Service Livestock, Poultry & Grain Market News.
[5] This statement is based on the author's personal communications with the CME Group in mid-2016.

In 2008, the Bush Administration took antitrust enforcement action to successfully block a proposed merger between Brazilian-owned JBS, the second-largest U.S. beef packer, and National Beef Packing Company, the fourth largest U.S. beef packer. This was the first antitrust enforcement action undertaken in the U.S. beef packing industry since the early 1920s. It was also the last. Since that time the Obama Administration sat idle while JBS acquired additional feedlots and packing plants in the U.S., resulting in a further erosion of competition. It also sat idle while JBS acquired the nation's largest poultry producer/processor, Pilgrim's Pride. JBS and the other two largest beef packers, Tyson and Cargill are all major producers of competing proteins pork and poultry. Consequently, they can and do control the output and price of the competing proteins they now control from birth to plate to effectively "manage" the demand for beef and prices for domestic cattle.

A. Vigorously enforce U.S. antitrust laws to prevent competition-reducing mergers and acquisitions and price-manipulating practices by the largest meatpackers.

5. Take from the Dominant Packers and the USDA the Tools They Use to Lower Domestic Cattle Prices While Substantially Increasing the Risk of Introducing Foot-And-Mouth Disease (FMD) Into the United States.

The introduction of foreign animal diseases into the U.S. can cause severe economic harm to U.S. livestock industries. Foot-and-mouth disease (FMD), for example, is one of the most contagious foreign animal diseases that affect cattle, hogs and sheep, it has recently caused catastrophic economic damage in several countries, and it was eradicated from the U.S. in 1929. Since that time, the U.S. has maintained restrictions on fresh beef imports from countries known to harbor the FMD virus. Consequently, fresh beef imports have been banned from Brazil for decades because FMD remains endemic in parts of Brazil. Recently, however, the Obama Administration relaxed U.S. import restrictions for Brazil. The first shipments of fresh beef from FMD-affected Brazil began arriving in the U.S. in October. Fresh beef from Brazil significantly heightens the risk of introducing FMD into the U.S. and causing catastrophic harm to the U.S. cattle industry.

A. Amend the Animal Health Protection Act to expressly prohibit the importation of fresh beef from Brazil, Argentina, Namibia, or any other country not free of FMD without vaccination.

a. Pending enactment of the above amendment, the recently implemented USDA rules authorizing fresh beef imports from Brazil and Namibia should be immediately rescinded.
b. There should be an immediate authorization of not less than $150 million for an emergency FMD vaccine bank.

6. Stop Treating Cattle and Beef in Trade Agreements as if they Are Storable Agricultural Commodities that Are Overproduced in the U.S. Market.

Unlike such storable commodities as corn and wheat, live cattle and beef are perishable items whose values are highly sensitive to even small changes in supplies. Also unlike corn and wheat production, U.S. cattle farmers and ranchers do not produce enough beef to meet domestic beef demand. Given these substantive differences, it is nonsensical to treat cattle and beef the same as corn and wheat in trade agreements. Yet, that is precisely what U.S. trade negotiators have done for the past two decades, resulting in a 20-year cumulative U.S. trade deficit of $37.5 billion in the trade of cattle and beef with the 20 countries with which the U.S. has negotiated a free trade agreement.

A. Renegotiate NAFTA and other free trade agreements that threaten to supplant U.S. cattle production with ever increasing volumes of imported cattle and beef.

a. The origins of beef must be the country(s) where the animal was born, raised and slaughtered.

b. The U.S. must be allowed to maintain import restrictions for countries with ongoing disease problems.

c. Provisions must be included to protect the supply-sensitive cattle industry from import surges.

d. The U.S. must reinstate its laws and regulations that, up until the Uruguay Round Agreement, required all imported cattle and beef to be produced under food safety systems that are at least equal to those in the United States.

e. The U.S. cattle industry must be afforded the opportunity to achieve more balanced trade with its trade-agreement partners.

7. Restore the Integrity of the National Beef Checkoff Program.

The U.S. Supreme Court determined that the national beef checkoff program is not an industry self-help program controlled by cattle producers; but rather, it is a government program that funds government speech under the explicit control of the USDA. Nevertheless, the USDA allows a political lobbying organization to cross-subsidize its lobbying efforts by not only receiving approximately $40 million per year in checkoff funds: but also, by housing and controlling the Federation of State Beef Councils – representatives from which are accorded influential roles in awarding checkoff program contracts back to the same lobbying group. The Beef Checkoff-funded lobbying group has violently opposed important initiatives supported by R-CALF USA and other groups representing independent cattle producers. Moreover, the program itself advertises and promotes beef regardless of whether the beef is derived from foreign or domestic livestock. Thus, U.S. cattle producers are forced to promote and advertise their competitor's products alongside their own as well as finance a lobbying group that works against many of their interests.

A. Pass the Voluntary Checkoff Program Participation Act (S.3200) introduced by Senator Mike Lee (R-UT) that requires all checkoff programs to be voluntary at the point of sale; and/or,

B. Pass the Commodity Checkoff Program Improvement Act of 2016 (S.3201) introduced by Senators Cory Booker (D-NJ) and Mike Lee (R-UT).

a. This legislation would ban lobbying groups from receiving checkoff dollars, prohibit conflicts of interest in contracting and decision-making; increase transparency of checkoff spending, require regular audits, and stop the funding of any anticompetitive program or program that disparages other commodities.

b. This legislation should be amended to allow funds collected domestically to advertise and promote beef produced exclusively in the United States.

8. <u>Put in the Hands of Producers Accurate and Real-Time Market Information that Is Not Currently Disclosed by Concentrated Packers.</u>

The Livestock Mandatory Reporting Act (LMR) has not been updated to reflect the novel cattle procurement methods recently introduced by dominant meatpackers. In addition, the LMR does not require dominant meatpackers to report prices if there are too few competitive cattle buyers in a particular reporting region. This is nonsensical as timely and accurate price reporting is needed most in regions where the risk of non-competitive cattle pricing is greatest, *i.e.*, in regions where there are too few competitive buyers to establish a competitive market.

A. Update the LMR to capture prices transacted under new cattle procurement methods such as delayed delivery, after-hour, and premium over current cash-price purchases. The update should also require reporting from all regions, regardless of the number of known buyers operating in the region.

CONCLUSION

The nation's single largest agricultural sector – the U.S. live cattle industry – is on a trajectory to be captured and controlled by the concentrated meatpackers. When the meatpackers captured the supply chains of the hog and poultry industries, they eliminated economic opportunities for hundreds of thousands of independent farmers and ranchers, which contributed to the hollowing-out of Rural America. The same outcome is expected for the U.S. cattle industry unless immediate, decisive action is taken to tear the live cattle supply chain from the meatpackers' grip.

Incremental changes or a few tweaks here and there will have little to no impact on reversing the meatpackers' capture of the live cattle supply chain – today's meatpackers are too powerful and too sophisticated to allow one or two hurdles to get in their way. The foregoing 8-point plan will restore and preserve robust competition in the U.S. cattle industry, providing economic opportunities for independent cattle farmers and ranchers for generations to come, while simultaneously revitalizing Rural America's ailing economy.

This plan, because it permanently disrupts the dominant meatpackers' plans to apply their tried and proven hog and poultry models of vertical integration to the U.S. cattle industry – which is the meatpackers' last frontier – will be violently opposed by very powerful meatpacker representatives and allies. Therefore, to be successful, this plan must be championed by a strong leader who possess the will, courage and stamina to stand up to some of the most powerful and influential agricultural lobbying groups in Washington, D.C.

We trust that President-elect Donald Trump possess those very traits and that he will want to help the U.S. cattle industry to be great again. To that end, R-CALF USA pledges its full support, expertise and resources.

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