Fighting for the U.S. Cattle Producer!
R-CALF USA

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June 12, 2017

Edward Gresser,
Chair of the Trade Policy Staff Committee,
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: R-CALF USA's Request to Testify and Submission of Written Comments in Docket No. USTR-2017-0006

Dear Chairman Gresser:

Please accept this request to testify on behalf of R-CALF USA (Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America) regarding the US Trade Representative (USTR) hearing to be held on June 27, 2017 on the topic of "Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico" (Docket No. USTR-2017-0006) as announced in the Federal Register on May 23, 2017.

Name and Contact Information of Witness:

Bill Bullard, CEO, billbullard@r-calfusa.com, 406-670-8157

Summary of Oral Testimony

Mr. Bullard's oral testimony will cover the following topics: 1) characteristics of the U.S. cattle industry that make it uniquely susceptible to trade-related price distortions; 2) the trajectory the U.S. cattle industry is on after 24 years of NAFTA; 3) market imbalances among the cattle industries in the three NAFTA countries; 4) the trade imbalances in cattle and beef trade resulting from NAFTA; 5) the past winners and losers under NAFTA; and 6) the seven specific measures that would favorably modernize NAFTA.

R-CALF USA's written testimony along with an addendum are also attached. Thank you for your consideration.

Sincerely,

Bill Bullard, CEO

R-CALF USA's Comments in Docket No. USTR-2017-0006

Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement With Canada and Mexico

June 12, 2017

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit comments to the Office of the United States Trade Representative (USTR) regarding Docket No. USTR-2017-0006: *Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement With Canada and Mexico*, published at 82 Fed. Reg., 23,699-700 (May 23, 2017).

R-CALF USA is a non-profit association that represents thousands of independent U.S. cattle farmers and ranchers and sheep producers in approximately 43 states. It is the largest producer-only trade association representing the U.S. cattle industry. R-CALF USA works to sustain the profitability and viability of the U.S. cattle and sheep industries, which are vital components of America's rural economy. R-CALF USA's membership consists primarily of independent cow-calf operators, cattle backgrounders and feedlot owners. Various main street businesses are associate members of R-CALF USA.

R-CALF USA enthusiastically welcomes this opportunity to materially modernize the North American Free Trade Agreement (NAFTA). Expectations originating more than 25 years ago that NAFTA would net new and more profitable markets for American cattlemen (by increasing marketing opportunities for beef derived from American cattle as well as for the cattle themselves) did not materialize. Instead, those expectations were shattered by mounting annual deficits in the trade of cattle, beef, beef variety meats and processed beef. Those mounting deficits have substantially weakened the U.S. cattle industry.

Introduction:

It is vitally important that USTR distinguish the U.S. cattle industry, which is a farming- and ranching-based industry. This industry consists of several segments that, together, comprise the domestic live cattle supply chain.

Differentiated from the cattle industry is the beef industry, which is not a farming- or ranching-based industry. Instead, the beef industry is a manufacturing industry comprised of beef packers

and processors that manufacture and process consumable beef from the raw cattle purchased both from the domestic live cattle supply chain and from supply chains in other parts of the world.[1]

Without a full understanding of this important distinction between the cattle and beef industries, decision-makers could be unwittingly lulled into believing that NAFTA's impact on beef packers and processors (hereafter "packers" or the "beef industry") mirrors its impact on cattle farmers and ranchers (hereafter "cattlemen" or "cattle industry") and vice-versa. This would be a dangerous misunderstanding as it would materially skew NAFTA's actual impacts on the two separate but interdependent industries. For example, Sparks Companies, Inc. (now Informa Economics), a research firm frequently retained by packers, stated, "Vertical integration [of the cattle and beef industries] often attracts investors because of the negative correlation between profit margins at the packing stage and the feeding stage [the feeding stage is the final segment in the live cattle supply chain]."[2] In other words, if NAFTA benefited packers it likely did so to the detriment of domestic cattlemen and the domestic cattle industry.

R-CALF USA, which exclusively represents cattlemen in the cattle industry, will demonstrate that such was the case.

To do so, R-CALF USA will address the question of what impact NAFTA has had on the U.S. cattle industry and what modifications can be made to NAFTA to correct any negative impacts. The importance of accurately answering this relatively narrow question is clear: Generating an average $72 billion annually from the sale of cattle and calves, the domestic live cattle industry is the single largest segment of American agriculture.[3] As such, it is, more than any other agricultural commodity segment, vitally important to the welfare and economic wellbeing of rural communities throughout America.

Industry Characteristics:

There are several structure characteristics of the domestic cattle industry as well as biological characteristics of cattle themselves that make the U.S. cattle industry uniquely susceptible to trade-related price distortions. Throughout these comments, R-CALF USA will refer to cattle that are ready for slaughter as "fed cattle." Fed cattle will typically be around 1 to 2 years of age and weigh about 1,300 lbs.

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[1] *See* U.S. Census Bureau, U.S. Dep't of Commerce, 2012 North American Industry Classification System, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2012. The live cattle industry (classified under sector 112) is a subset of the U.S. agriculture industry (sector 11), whereas beef packers (sector 3116) are a subset of manufacturers (sector 31-33). *Id*.

[2] Sparks Companies Inc. (now Informa Economics), "Potential Impacts of the Proposed Ban on Packer Ownership and Feeding of Livestock", A Special Study, (March 18, 2002) at 24.

[3] *See* Cash Receipts by Commodity, 2010-2017F, USDA Economic Research Service (the average cash receipts from sales of cattle and calves for the past five years was more than $72 billion per year, considerably higher than the second-place commodity, corn, at about $56 billion), available at https://data.ers.usda.gov/reports.aspx?ID=17832.

Unprecedented Concentration

The unprecedented concentration of the U.S. beef packing industry that occurred while NAFTA was in effect has reduced U.S. marketing outlets and created market access risk for domestic cattlemen.[4] Not only did NAFTA not create any new marketing outlets for U.S. cattlemen, it reduced them.[5] For example, cattle exports to Canada and Mexico declined under NAFTA: during pre-NAFTA 1992, the U.S. exported a total of 308,077 cattle to Canada and Mexico. In 2016, cattle exports were reduced to only 65,908.[6]

Limited Demand

The demand for cattle is bounded on a weekly basis by available slaughter capacity, which is a limiting factor on demand for cattle, *i.e.*, slaughter capacity sets the weekly slaughter cattle-marketing limit. Because of this weekly constraint, packers can suppress the weekly demand for cattle offered in the domestic cash market by finishing off their weekly supply needs with imported cattle. The effect of this practice is to hold down or lower domestic prices and prevent a higher starting price for the beginning of each subsequent week.

Perishable Commodity

Fed cattle are perishable commodities. They cannot be stored and must be marketed within a relatively narrow window of about two to three weeks or they will degrade in quality and their value discounted.[7] This factor, combined with market concentration and its attendant market access risk, along with the bounded weekly demand for cattle, inherently disadvantage U.S.

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[4] The four largest packers control 85 percent of total U.S. fed cattle slaughter. (*See* Packers and Stockyards Program 2016 Annual Report, USDA Grain Inspection, Packers and Stockyards Administration (GIPSA), at 11, available at https://www.gipsa.usda.gov/psp/publication/ar/2016_psp_annual_report.pdf.) This level of market concentration is unprecedented and "well above levels generally considered to elicit non-competitive behavior and result in adverse economic performance." (A Review of Causes for and Consequences of Economic Concentration in the U.S. Meatpacking Industry, Clement E. Ward, Current Agriculture Food and Resource Issues, 2001, at 1, available at https://core.ac.uk/download/pdf/6976614.pdf.) The USDA defines market access risk as "the availability of a timely and appropriate market outlet." (GIPSA Livestock and Meat Marketing Study, January 2007, Volume 3, at 5-4, available at http://archive.gipsa.usda.gov/psp/issues/livemarketstudy/LMMS_Vol_3.pdf.

[5] Reuters News reported that the USDA confirmed there were 808 federally inspected livestock slaughterhouses in the U.S. in 2016, down more than a third since 1990. *See* EXCLUSIVE-China's WH Group targets beef and poultry assets in U.S. and Europe, Tom Polansek and Julie Zhu, Reuters News (June 8, 2017), available at http://www.reuters.com/article/us-smithfield-m-a-idUSKBN18Z29Y.

[6] *See* Cattle, Annual and Cumulative Year-to-date U.S. Trade (head), U.S. Dep't of Agriculture (USDA), Economic Research Service (ERS), available at https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/. The average number of cattle exported to Canada and Mexico from the United States during NAFTA's implementation (1994-2016) was 85,318 head and 60,312 head per year, respectively. *Id*. These exports are negligible and represent only about 0.4 percent of the U.S. cattle industry's 2016 calf crop of about 35 million head. *See* Cattle, USDA National Agricultural Statistics Service (NASS), January 2017, at 4, available at http://usda.mannlib.cornell.edu/usda/current/Catt/Catt-01-31-2017.pdf.

[7] *See, e.g.*, GIPSA Livestock and Meat Marketing Study, January 2007, Volume 3, at 5-4, available at http://archive.gipsa.usda.gov/psp/issues/livemarketstudy/LMMS_Vol_3.pdf.

cattlemen when attempting to negotiate the sale of their cattle. This is because packers can arbitrarily switch back and forth between foreign and domestic supply chains.

Supply Sensitive

The United States International Trade Commission (USITC) confirmed the U.S. cattle market is highly sensitive to even slight changes in supplies. It found the farm level elasticity of demand for slaughter cattle is such that "each 1 percent increase in fed cattle numbers would be expected to decrease fed cattle prices by 2 percent."[8] Because of this extreme price sensitivity, domestic cattle prices are susceptible to manipulation from the packers' strategic importation of live cattle from Canada and Mexico, which are substitute products that compete directly with domestic cattle for the packer's weekly available shackle space. This sensitivity to supply changes was starkly revealed in 2003 after the U.S. border was closed to Canadian live cattle imports due to mad cow disease. Within just five months of the curtailment of Canadian cattle imports, which represented less than 5 percent of U.S. cattle slaughter,[9] U.S. fed cattle prices jumped an unprecedented $26 per hundredweight.[10] One reason cattle prices are ultra-sensitive to changes in supply is that cattle have the longest biological cycle of any farmed animal.[11] It takes about three years for the cattle industry to increase its production in response to low supplies.

Similar Appearance

Beef derived from U.S.-born and -raised cattle appears similar, if not identical, to beef derived from Canadian cattle or Mexican cattle, even when production practices in the three countries are different, including differing uses of antibiotics. Due to the nearly identical appearance of beef regardless of origin, the packers, and not consumers or cattlemen, have unilateral decision-making power to decide from which country's supply chain they will source their cattle to satisfy consumer beef demand. This is because consumers cannot tell the difference unless they are provided with origin information. This lack of differentiation of beef benefits packers because they can strategically source lower-cost cattle from Canada and Mexico to leverage down prices paid to U.S. cattlemen for U.S. cattle.

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[8] Arona M. Butcher et al., USITC's U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, 44 n.26 (2004), available at http://www.usitc.gov/publications/332/pub3697.pdf. The University of Nebraska-Lincoln found this estimate conservative and estimated, instead, that a 1 percent increase in supplies would reduce price by 2.5 percent. (Dillon Feuz, The Economics of Carcass Weight: A Classic Micro-Macro Paradox in Agriculture, Cornhusker Econ., Mar. 20, 2002.)

[9] In 2002, the year before the border closure, the U.S. imported about 1.7 million cattle from Canada. (Cattle, Annual and Cumulative Year-to-date U.S. Trade (head), U.S. Dep't of Agriculture (USDA), Economic Research Service (ERS), available at https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/.) That same year it slaughtered a total of about 35.7 million head. (Livestock Slaughter, USDA-NASS, January 2004, at 3, available at http://usda.mannlib.cornell.edu/usda/nass/LiveSlau//2000s/2004/LiveSlau-01-23-2004.pdf.

[10] In the period from May to October, 2003, Nebraska direct cattle prices jumped from $79.50 per cwt to $105.50 per cwt, which represented an increase in the value of a 1,300 lb. steer of $338 in just 5 months. (*See* Livestock Prices, USDA-ERS, available at https://www.ers.usda.gov/data-products/livestock-meat-domestic-data/livestock-meat-domestic-data/#LivestockPrices).

[11] Economic Models of Cattle Prices, How USDA Can Act to Improve Models to Explain Cattle Prices, U.S. Government Accountability Office (formally the General Accounting Office), (GAO-020246, March 2002), at 30.

Industry Trajectory:

Despite expectations that NAFTA would provide new marketing opportunities for U.S. cattlemen, resulting in the strengthening of the U.S. cattle industry, NAFTA piloted the U.S. cattle industry on a steeply declining trajectory.

Shrinking Number Participants

As the largest segment of American Agriculture, the cattle industry has more farmer and rancher participants than any other U.S. livestock, dairy or poultry industry.[12] The cattle industry is, in fact, the packers' *Last Frontier* because unlike the pork and poultry industries, the packers do not yet control the cattle supply chain from birth to plate or egg to plate as they do the other industries through vertical integration. At least not yet.

In 1994, the year NAFTA was implemented, there were 906,810 U.S. beef cattle operations (not including dairy operations) in the United States.[13] By 2012, the last year data was available, the number of U.S. beef cattle operations had shrunk to 729,000, representing an average loss of more than 9,000 U.S. cattlemen each year during each of the first 19 years of NAFTA's 24-year implementation.

The number of U.S. feedlots with a one-time capacity of less than 1,000 head have been disappearing at an alarming rate as well during the past two decades. These smaller feedlots are often referred to as farmer-feeders because they are typically diversified crop and livestock farms where the farmer feeds his/her own grain to their livestock. In 1996, just two years after NAFTA's implementation, there were 110,000 of these highly sustainable farmer-feeding operations.[14] By 2016, their number shrank to 28,000. This represents a 75 percent reduction in the number of these smaller feedlots in the past 20 years. This represents an alarming loss of competitive buyers for the millions of new calves produced each year by U.S. cattlemen.

Shrinking Production Capacity

The production capacity of the U.S. cattle industry is based on the size of the U.S. cattle herd, particularly the size of its mother-cow herd that gives birth to the new calves that comprise each year's new production. Two years after NAFTA's implementation, in 1996, U.S. cattlemen began liquidating their mother-cow herd. By 2014, year 21 for NAFTA, the U.S. mother-cow

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[12] *See, e.g.,* Farms, Land in Farms, and Livestock Operations 2012 Summary, USDA, NASS, Feb. 2013, at 18-19, available at http://usda.mannlib.cornell.edu/usda/nass/FarmLandIn//2010s/2013/FarmLandIn-02-19-2013.pdf. By 2012, last available data, the number of beef cattle operations was reduced to 729,000; the number of dairy operations was reduced to 58,000, the number of hog operations was reduced to 60,200; and the number of sheep operations was reduced to 79,500.

[13] Cattle, USDA-NASS (February 1996), at 18, available at http://usda.mannlib.cornell.edu/usda/nass/Catt//1990s/1996/Catt-02-02-1996.pdf.

[14] *See* Cattle, Final Estimates, various reports, 1996-2008, USDA-NASS; *see also* Cattle on Feed, USDA, NASS, various reports 2009-2017, available at https://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1020.

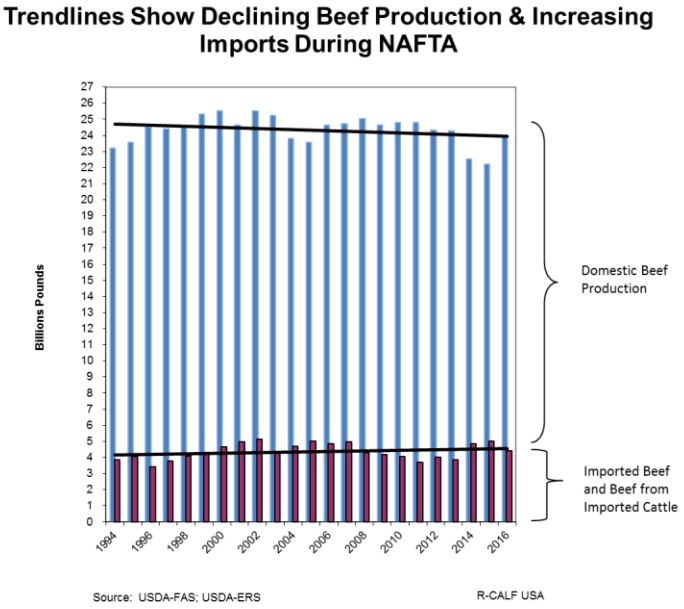
herd had shrunk to the smallest size in more than seven decades.[15] Today, even after several years of purported rebuilding, the beleaguered mother-cow herd consists of only 31.2 million cows, which is 3.5 million head smaller than it was the year NAFTA was implemented (1994).[16]

Shrinking Production

Chart 1 below shows that during NAFTA, the volume of beef produced from U.S. cattle declined. By years 2014 and 2015, years 21 and 22 for NAFTA, the production of beef derived from the U.S. cattle herd fell to the lowest level since 1993, the year before NAFTA's implementation.[17] Also shown in Chart 1 is that during the past three years, imported beef and beef from imported cattle represented about 20 percent of U.S. production.

Despite expectations that NAFTA would provide new marketing opportunities that would strengthen and grow the U.S. cattle industry, the exact opposite occurred. The cattle industry's trajectory, as measured by the reduced number of cattlemen, the reduced number of competitive feedlots, the reduced size of the U.S. cow herd and the decreased volume of domestic production, is one of decline. Imports of beef and cattle, on the other hand, have trended upward while NAFTA has been in effect.

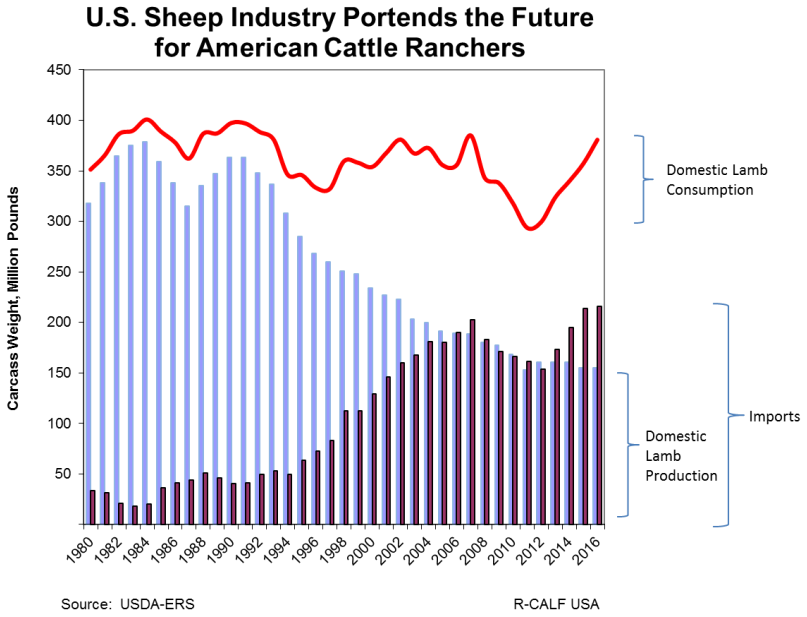
Chart 1



[15] Cattle, USDA-NASS (Jan. 30, 2014), at 1 (lowest cow herd inventory since 1941), available at http://usda.mannlib.cornell.edu/usda/nass/Catt//2010s/2015/Catt-01-30-2015.pdf.
[16] Cattle, USDA-NASS (Jan. 31, 2017), at 4, available at http://usda.mannlib.cornell.edu/usda/current/Catt/Catt-01-31-2017.pdf; *see also*, Cattle, USDA-NASS (February 1995), the number of beef cows in 1994 was 34.7 million head, available at http://usda.mannlib.cornell.edu/usda/nass/Catt//1990s/1995/Catt-02-03-1995.pdf.
[17] *See* Beef: Supply and disappearance (carcass weight, million pounds) and per capita disappearance (pounds), USDA-ERS, available at http://www.ers.usda.gov/data-products/livestock-meat-domestic-data.aspx.

It is informative to compare what happened to the U.S. sheep industry that, in 1995, also experienced imports as a percent of production of about 20 percent. As shown in Chart 2 below, the trend of increased imports of lamb and mutton continued to supplant domestic production until, in 2006, the U.S. sheep industry became the first U.S. livestock industry to be outsourced. During that year, the U.S. began relying more on imports to satisfy the U.S. consumers' appetite for lamb than the beleaguered U.S. sheep industry could produce. The situation has worsened in the last few years; yet, few industry organizations are offering so much as a whisper of opposition to the trade agreements that have and are devastating the U.S. sheep industry. In a 2013 investigative report concerning the U.S. sheep industry, the USDA Packers and Stockyards Administration (PSA) determined that one of the four principle factors causing the decline of the U.S. sheep industry was "low cost imports."[18]

Chart 2



Market Imbalances:

<u>Canadian Market</u>

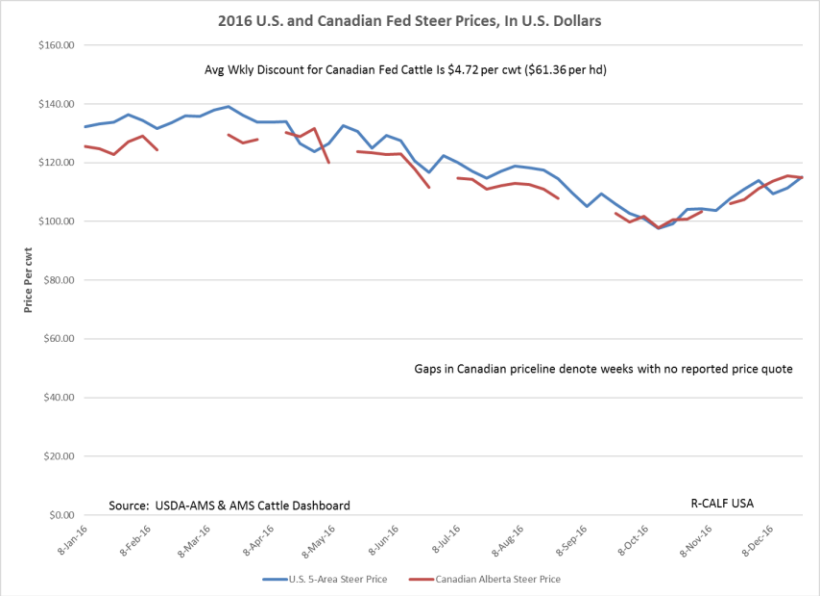
As shown in Chart 3 below, fed cattle in Canada are cheaper than comparable U.S. fed cattle. Throughout 2016, they averaged USD $4.72 per cwt cheaper than U.S. fed cattle, or about USD $61.36 per head cheaper. This explains why U.S.-based beef packers source hundreds of thousands of fed cattle from Canada each year. Cheaper imports reduce packers' input costs and they put downward pressure on domestic cattle prices. As an added benefit, because packers are

[18] U.S. Lamb Market in 2010, 2011, and 2012, U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program (P&SP), December 2013, at 1, available at http://www.r-calfusa.com/wp-content/uploads/sheep/131217LambInvestigationPublicReport.pdf.

not required to disclose the foreign origins of beef derived from cheaper imported cattle, the packers can sell the resulting beef to unsuspecting U.S. consumers as if it was an exclusively U.S.-produced product. This is also true of beef manufactured in Canada from cheaper Canadian cattle that is ultimate exported to the United States by such multinational beef packers as Cargill and JBS that operate packing plants in Canada, the U.S., and elsewhere.

U.S. cattlemen and the U.S. cattle industry have been big losers in the free trade agreements with Canada because those agreements accorded the packers access to alternative supply chains that were direct substitutes to the U.S. cattle industry's domestic supply chain, but at a cheaper cost.

Chart 3



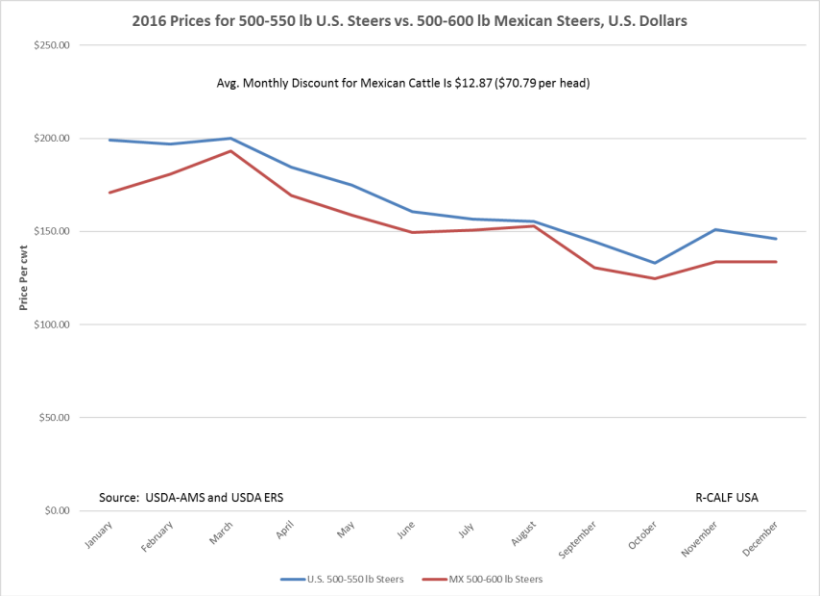
<u>Mexican Market</u>

Unlike Canada, from which the U.S. imports hundreds of thousands of slaughter-ready, fed cattle each year, most of the cattle imported from Mexico are lighter-weight cattle known as feeder cattle. These cattle eventually make their way to U.S. feedlots, many of which are owned or controlled by the nation's largest packers. But like in Canada, these lighter-weight feeder cattle are much cheaper than comparable, lighter weight U.S. cattle. Chart 4 is a comparison of USDA data that report prices for Mexican feeder cattle imports weighing 500 to 600 pounds and U.S. prices for domestic feeder cattle weighing 500 to 550 pounds. The chart reveals that Mexican feeder cattle are $12.87 per cwt cheaper than comparable U.S. cattle.[19] This equates to a per head discount of more than $70.00 per head.

[19] In its weekly Mexican cattle price report, the USDA-AMS provides a price range for Mexican steers weighing between 500 to 600 lbs. That range is often considerable, exceeding $20 per cwt during some weeks. In depicting the comparison, R-CALF USA compared the highest price in the range to U.S. monthly prices reported by USDA-ERS. Consequently, Chart 3 should understate rather than overstate the price differential between U.S. and Mexican feeder cattle.

This explains why NAFTA helped develop a market for Mexican cattle in the U.S. but failed to develop a meaningful market for U.S. cattle in Mexico. In 2016, the U.S. imported more than 900,000 cattle from Mexico but exported fewer than 30,000 head.[20]

Chart 4



With access to much cheaper cattle in Mexico, the nation's largest feedlots, several of which are owned or controlled by the nation's largest packers, are able to reduce their input costs while simultaneously leveraging down the value of U.S. cattle in the domestic supply chain by increasing the total supply of cattle in the U.S. with imports.

U.S. cattlemen that exclusively raise U.S. cattle from their mother cow herds have been big losers in the free trade agreement with Mexico because that agreement accorded the packers and their owned or allied feedlots access to an alternative supply chain that produced a direct substitute to the U.S. cattle industry's domestic supply chain, but at a cheaper cost.

Production Practices

One reason for the price disparity between U.S. cattle and cattle from Canada and Mexico is that production practices differ among the three countries. For example, the U.S. implemented costly measures to eradicate bovine tuberculosis (TB) from its domestic cattle herd and nearly did so except for isolated wildlife populations. Mexico did not make a comparable investment to

[20] *See* Cattle, Annual and Cumulative Year-to-date U.S. Trade (head), U.S. Dep't of Agriculture (USDA), Economic Research Service (ERS), available at https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/.

eradicate the disease in its country. Yet, and even though the USDA's Office of Inspector General (OIG) had reported in 2006 that 75 percent of bovine TB cases detected in U.S. slaughtering plants originated in Mexico; that these cases were detected in 12 U.S. states;[21] and that USDA "cannot reasonably expect to achieve its goal and eradicate TB when it is being imported into the United States each year,"[22] the USDA continued to allow the importation of millions of head of Mexican cattle. Unsurprisingly, bovine TB has become more prevalent in the U.S. in recent years.

Also, the U.S. recently imposed a new cost on the U.S. cattle industry in the form of requiring cattlemen to obtain a veterinary certificate before feeding antibiotics in their cattle diets. This requirement, known as the Veterinary Feed Directive (VFD), only applies to cattle production in the United States. Therefore, Canadian and Mexican cattle producers are free to avoid this cost when producing cattle in their two countries.[23]

Anecdotal evidence suggests there are other substances and chemicals used in the production of cattle in Canada and/or Mexico that are prohibited in the United States. The USTR should direct the USDA to investigate the extent to which the two countries' production practices differ from the United States.

Trade Imbalances:

As is fully expected given the disparate price structures among the three NAFTA markets, the United States imports far more cattle, beef, beef variety meat and processed beef from Canada and Mexico than it exports to those countries. This means that reciprocal trade in cattle and beef has not occurred under NAFTA.

<u>Value-based Trade</u>

As depicted below in Chart 5, during the past 25 years the U.S. has amassed a cumulative, value-based trade deficit with Canada and Mexico in the trade of those products of nearly $32 billion. This deficit is getting progressively worse. During each of the years, 2014, 2015 and 2016, the deficit was well over $2 billion.

This means that during the past three years, each time the U.S. sold Canada and Mexico about $2 billion in cattle and beef, Canada and Mexico turned around and sold the U.S. about $4 billion worth of the same commodities. It should be clear that Canada, Mexico, and the multinational packers that benefit from exploiting the U.S. market will continue playing this game until the United States quits.

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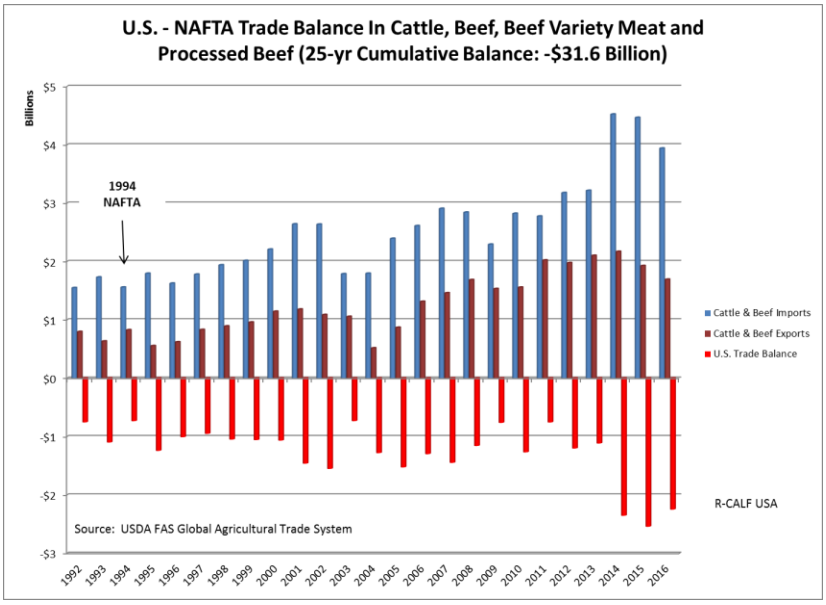
[21] *See* Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, U.S. Department of Agriculture, Office of Inspector General, Midwest Region, Report No. 50601-0009-Ch, September 2006, at 19, 20.
[22] *Id*., at 19.
[23] Correspondence from AskCVM, Center for Veterinary Medicine, U.S. Food and Drug Administration, February 14, 2017 ("The VFD [Veterinary Feed Directive] rule does not apply outside of the United States.")

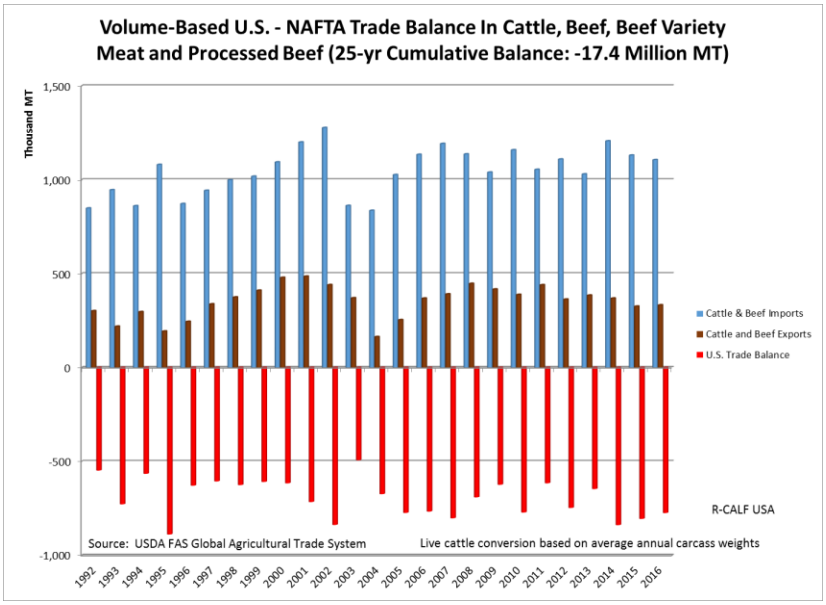
Chart 5



<u>Volume-based Trade</u>

When the full, volume-based trade picture is considered by converting imported cattle to a beef weight equivalent as is done in Chart 6 below, it is revealed that the U.S. value based deficit is mirrors its volume-based deficit in the trade of cattle, beef, beef variety meats and processed beef each year that NAFTA has been in effect. The 25-year cumulative volume-based NAFTA trade deficit is 17.4 million metric tons.

Chart 6



Products Traded

NAFTA advocates often argue that cattle and beef trade deficits do not matter because the U.S. imports a lower-quality lean beef product to mix with its higher-quality beef trim to produce ground beef. The argument continues that if this lower-quality beef product were not imported in large volumes, then the higher-quality beef trim in the U.S. would be steeply discounted, resulting in reduced prices paid to U.S. cattlemen. However, this lower-quality lean product is not what the U.S. principally imports from Canada and Mexico. Most of the 2016 imports from Canada and Mexico, e.g., about 85 percent of imports, were boneless and bone-in fresh chilled muscle cuts[24] which compete directly with U.S. production.

Winners and Losers

Unrestrained and non-reciprocal trade with countries that also are, like the United States, major cattle and beef producers, creates clear winners and big losers. In the case of NAFTA, the clear winners are multinational beef packers that are free to source cheaper inputs from Canada and Mexico; and, yet, sell the resulting beef both in the domestic market as well as back to those exporting countries using the good names and reputation of U.S. cattlemen. They can do this because all or nearly all of the beef leaving U.S. slaughter and processing plants is allowed to be labeled (*i.e.*, mislabeled) as a product of the U.S.A.[25] Also winners are margin operators in the U.S. cattle industry whose business models, like that of the packers, includes purchasing some of the million to two million or so cheaper live cattle from Canada and Mexico and later selling them for prices comparable to domestic cattle because, as the packers who will eventually purchase those cattle know, the consumer cannot distinguish beef derived from those cheaper cattle from beef derived from USA cattle.

The big losers, unfortunately, are the majority of the U.S. cattle industry's participants – most of the 729,000 cattlemen who produce the 35 million or so new calves each year from their U.S. mother cows. The price these cattlemen receive for their cattle is reduced because the packers can strategically import substitute cattle and beef to leverage down U.S. cattle prices in the supply-sensitive cattle industry. Also losers are margin operators whose business model is to purchase and feed domestic cattle. They pay more for their domestic cattle but because the resulting meat from those animals is undifferentiated from meat produced from cheaper, imported cattle, their selling prices are likewise reduced.

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[24] *See* USDA Global Agricultural Trade System (GATS), available at https://apps.fas.usda.gov/gats/default.aspx. A standard query of imports based on the harmonized (HS-6) tariff code system reveals that in 2016 the U.S. imported 394,486 metric tons of boneless and bone-in fresh and chilled beef (HS 020130 and HS 020120) while total beef, beef variety meats and processed beef totaled 464,170 metric tons that year.

[25] Food Standards and Labeling Policy Book, U.S. Dept. of Agriculture, Food Safety and Inspection service (FSIS), August 2005, at 155-156 (indicating that packers can apply a "Product of the U.S.A." label on any meat from imported cattle slaughtered in U.S. plants as well as on imported beef products that are subsequently subjected to minimal processing in U.S. plants), available at https://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf.

Modernizing NAFTA:

There are several important modifications that should be made to NAFTA to ensure that it begins to help, and does not continue to hinder, the U.S. cattle and beef industries and the rural economies they support.

Country of Origin Labeling

First, mandatory country of origin labeling (COOL) for beef should be fully reinstated so consumers can differentiate beef from animals born and raised in the United States versus beef from animals born and raised in whole or in part in foreign countries, including Canada and Mexico. With COOL, the value of and demand for beef produced from USA cattle will properly be determined by consumers who will then be empowered to express their origin-based preferences in the marketplace. This will eliminate the unilateral control packers now enjoy to source their cattle and beef from wherever they choose and to price the final beef product to consumers as if the origins were of no importance. As explained in greater detail in the attached Addendum A, country of origin labels should clearly identify where the animal from which the beef was derived was born, raised and slaughtered.[26]

Rule of Origin

Second, the rule of origin for beef in NAFTA should be changed to designate origin as the country or countries where the animal from which the beef was derived was born, raised and slaughtered, which would make the standard for the NAFTA rule of origin identical to the standard for the suggested mandatory country of origin labels. Under current policies, multinational beef packers operating in the United States can import cattle and beef (such as in the form of carcasses, for example), slaughter and process them, respectfully, in a U.S. plant, and then sell the resulting, consumable beef products in the domestic market or sell it back to Canada and Mexico with a "Product of the U.S.A." label.[27] This severely undermines U.S. cattlemen whose cattle are in the care of the U.S. cattle industry from about one-year to two-years before they are sold to packers in the beef industry for slaughter. In other words, the current rule of origin allows packers to erase the contributions of U.S. cattlemen while simultaneously deceiving consumers as to where their beef originates.

Perishable Rules

Third, special rules designating cattle and beef as perishable, import-sensitive products should be added to NAFTA. The special rules should automatically trigger a curtailment of imports, or at least trigger meaningful snap-back tariffs on imports, to protect domestic cattle prices against import surges or other trade-related anomalies that would suppress domestic cattle prices below the U.S. cost of production.

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[26] Attached Addendum A is a white paper titled "Why and How Mandatory COOL Should be Reinstated Through the NAFTA Renegotiations and Why and How the NAFTA Rule of Origin for Beef Should be Amended," R-CALF USA, April 26, 2017.
[27] *See supra*, fn. 25.

Like/Kind Products

Fourth, in order for special rules for perishable beef and cattle to be effective, cattle and beef should be expressly designated as like/kind products. This would ensure, e.g., that any surge in either cattle or beef imports that subsequently cause domestic cattle prices to collapse would trigger a safeguard to temporarily protect the domestic market until the increased volume of beef imports can work their way through the domestic food chain.

Another important reason to designate cattle and beef as like/kind products is that cattlemen and the U.S. cattle industry are precluded from objecting to packer petitions for temporary duty suspensions and reductions pursuant to the American Manufacturing Competitiveness Act of 2016 (the Act). Under the Act, a packer can petition for the elimination or reduction of tariffs on beef products for a period of three years. Recently, a petition was filed with the USITC for a reduction in tariffs on frozen, boneless beef. However, neither the Act nor the USITC recognize cattlemen or the cattle industry as eligible to object to the petition because cattle producers do not engage in the manufacturing process of producing beef. In the context of NAFTA, a U.S.-based packer could hypothetically petition for a reduction of tariffs on beef from New Zealand, and then process that duty-free beef in the U.S. and sell the resulting beef product duty free to Canada and Mexico under NAFTA as a product of the USA, thus undermining products produced exclusively from USA-born and -raised cattle. All the while, U.S cattlemen would have no recourse under the Act because their product, cattle, is not considered a like/kind beef product.

Tariff Reinstatement

Fifth, to prevent multinational beef packers from exploiting U.S. cattlemen and the U.S. cattle industry with their unlimited access to cheaper cattle and beef, which are products that consumers cannot now distinguish and may not ever distinguish depending on the scope of products that would be subject to a reinstated COOL law, tariffs should be reinstated on cattle and beef from Canada and Mexico to offset the discounted prices for those commodities in those countries.

Food Safety

Sixth, under NAFTA's linkage to the World Trade Organization (WTO), Canada and Mexico do not need to have food safety inspection systems that are at least equal to that of the United States. Since 1995 their systems need only be close enough under the more relaxed standard of equivalency.[28] Also, the U.S. was likewise required by its WTO linkage to cease conducting monthly inspections of foreign meat plants and can now only do them on a periodic basis.[29] This

[28] 60 Fed. Reg. at 38,688 ("The United States can no longer require foreign countries wishing to export meat and poultry products to have meat and poultry inspections that are 'at least equal' to those of the United States; instead, foreign inspection systems must be [only] 'equivalent to' domestic inspection systems."
[29] *See* 69 Fed. Reg. at 51,195.

may well explain why in 2012 USDA recalled 2.4 million pounds of Canadian beef products produced in a Canadian packing plant that were tainted with *E. coli* 0157:H7.[30]

Herd Health

Seventh, also under NAFTA's linkage to the WTO, the USDA has ceased requiring foreign countries like Canada and Mexico to eliminate pernicious foreign animal diseases from within their borders as an eligibility requirement for exporting live cattle and beef to the United States. Under what is called "regionalization," the USDA now carves out certain regions in disease-affected countries and classifies them as disease-free, despite the occurrence of the same disease in other areas of the country. This relaxation of import-based disease protections subjects the U.S. cattle industry to an unnecessary and avoidable risk of disease introduction.

Conclusion

Any benefits from NAFTA have flowed to a minority of cattle industry and beef industry participants. Their gains have been realized at the expense of the economic wellbeing of the overall industry and the rural economies the cattle industry helps support.

The contraction of the U.S. cattle industry, in terms of reduced number of participants, reduced number of competitive feedlots, reduced size of the cattle herd and reduced production output did not happen overnight. Each of these disappointing indices point to systemic problems within the cattle industry that began generating downward sloping trends years ago, long before the recent droughts and periods of recession.

This decline of the U.S. cattle industry can be traced back, in large part, to trade agreements like NAFTA that allow multinational beef packers to supplant domestic production with cheaper, imported product, thus rendering many domestic cattle operations uneconomical.

The U.S. sheep industry portends the future of the U.S. cattle industry if trade policies are not modernized. The sheep industry, as stated above, was inundated with cheap imports. Recently, it became the first U.S. livestock industry to become effectively outsourced. The U.S. now relies more on imported lamb to satisfy U.S. demand than the beleaguered domestic sheep industry can produce.

We now have the opportunity under President Trump's leadership to modernize NAFTA so that it properly addresses the cattle industry's unique structural and biological characteristics. Doing so will restore opportunities for current and new U.S. cattlemen and will help to rebuild the nation's weakened rural economy.

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[30] FSIS expands public health alert for imported Canadian beef from XL Foods, USDA FSIS, September 28, 2012, updated October 5, 2012.

R-CALF USA would be pleased to provide any additional information USTR may need as it embarks on the important task of rebuilding American industries that were measurably harmed by NAFTA.

Sincerely,

Bill Bullard, CEO

Attachment: Addendum A

ADDENDUM A

Why and How Mandatory COOL Should Be Reinstated Through the NAFTA Renegotiations

and,

Why and How the NAFTA Rule of Origin for Beef Should be Amended

Prepared by R-CALF USA

April 26, 2017

EXECUTIVE SUMMARY

Congress passed the mandatory country of origin labeling (COOL) law in 2002 to provide consumers with information as to the origins of their food. However, it was not until early 2013 that the U.S. Department of Agriculture (USDA) finally implemented COOL in a manner that accurately distinguished beef that was exclusively produced in the U.S. from beef that was partially or wholly imported.

Because it empowered consumers to initiate demand signals for country-specific beef products. COOL ended the packers' ability to unilaterally decide from which countries' supply chain to source the cattle and beef necessary to satisfy the domestic consumers' appetite for beef.

This loss of market control infuriated the multinational packers and the governments of countries from which those packers imported large volumes of beef and cattle. Together, the packer/foreign country duo embarked on a years-long campaign to repeal COOL. After numerous failures within the constitutionally established executive, legislative and judicial branches of government, these adversaries finally found a sympathetic ear on foreign soil, at the World Trade Organization (WTO). In response to the WTO, Congress reacted so haphazardly that it repealed COOL for beef and pork without bothering to ensure that its capitulation would result in a final disposition of the COOL complaint, which it did not.

Moreover, Congress' knee-jerk repeal of COOL was accomplished without regard to the economic interests of independent U.S. cattle farmers and ranchers whose future viability is dependent on their ability to compete against the growing tide of foreign beef and cattle that multinational packers continuously import into the United States.

COOL should be reinstated for beef because it is necessary to ensure that marketplace competition begins with consumers' buying preferences rather than the multinational packers' command and control over global supply chains.

Importantly, COOL is a quintessential element for fulfilling President Trump's directive to "Buy American." Domestic consumers cannot choose to support the domestic cattle supply chain by choosing to buy American beef because American beef is undifferentiated among the beef from the more than 20 countries that multinational packers are currently sourcing cattle and beef. Empowering consumers to

buy American beef with COOL will undoubtedly strengthen Rural America's economy, especially since the U.S. live cattle industry is the largest segment of American agriculture.

During the short period that COOL was effectively implemented for beef and pork (2013-2015), the glaring loophole that previously allowed multinational packers to remove origin labels on imported beef was closed. Upon COOL's repeal, however, packers were once again empowered to engage in the unscrupulous practice of withholding known origin information from consumers by removing the origin labels that were required as a condition of entry into the United States.

Because COOL differentiates meat products based on origin, it ends the deception created by the practice of affixing U.S. inspection stickers on both imported and domestic meat products, implying that all products are domestic. Further, by promoting competition, COOL reduces the multinational packers' ability to exploit the domestic cattle industry's ultra-sensitivity to changes in supplies, particularly imported supplies of cattle and beef. It also ends the packers' ability to exploit the good names and reputations of U.S. farmers and ranchers by sourcing cheaper, undifferentiated imported products and selling them to unsuspecting consumers for the same price that domestic products would command.

Unfortunately, the multi-segmented nature of the combined cattle and beef industries preclude any voluntary solution to correct the market failure caused by the non-disclosure of origin information to consumers. Because the COOL-related, economic interests of farmers and ranchers within the domestic live cattle supply chain are diametrically at odds with the packers' profit potential associated with the non-disclosure of origin information, a negotiated solution is not possible. Thus, COOL must be mandated for benefits to flow to cattle farmers and ranchers on one end of the multi-segmented supply chain and consumers on the other.

The renegotiation of the North American Free Trade Agreement (NAFTA) is the ideal forum with which to reinstate COOL for beef and pork. Given the chronic and substantive trade deficit the U.S. accumulates each year in the trade of cattle and beef with Canada and Mexico (that deficit was $2.25 billion in 2016 alone), the U.S. has considerable leverage with which to obtain concessions for accurate origin disclosures. The reinstatement of COOL would be a relatively straightforward negotiation: 1) The United States should first require in the NAFTA renegotiation that both Canada and Mexico formally withdraw their COOL complaints that are pending before the WTO as well as their WTO-sanctioned authorizations to impose retaliatory tariffs. 2) The United States should then prepare a NAFTA Renegotiation Implementing Act (Proposed Implementing Act) that includes the restoration of the previously repealed COOL statute governing the labeling of beef and pork and a directive ordering the USDA to immediately reestablish beef and pork as covered commodities under the COOL statute.

The Implementing Act could also be used to address known deficiencies in the COOL statute and regulations, some of which were identified and then exploited by the WTO to disparage COOL. Most of these deficiencies involve the overabundance of exemptions that limit the scope of beef products that were covered by the COOL law.

Additionally, the specific rule of origin contained in the NAFTA states that the origin of meat is the country where the animal was slaughtered. Thus, under the NAFTA, multinational packers can import live cattle from Canada and Mexico for immediately slaughter and the resulting beef can be sold domestically and abroad as a "Product of the USA." This places U.S. cattle farmers and ranchers at an

economic disadvantage. It allows multinational packers to steal the good names and reputations of U.S. farmers and ranchers while simultaneously undermining the U.S. live cattle supply chain. The NAFTA rule of origin for meat is patently unfair, deceptive, and seriously threatens the financial viability of U.S. cattle farmers and ranchers. To correct this inappropriate rule of origin, the United States should adopt the same origin standard in the NAFTA as was used in COOL – the origin of meat should be the country or countries in which the animal from which the meat was derived was born, raised, and slaughtered.

INTRODUCTION

Although Congress passed mandatory country of origin labeling (COOL) to inform consumers as to the origins of numerous food products in the 2002 Farm Bill, and most of those products were accurately labeled beginning in 2005, it was not until early 2013 that the U.S. Department of Agriculture (USDA) finally promulgated rules to accurately distinguish beef that was exclusively produced in the U.S. from beef that was partially or wholly imported.[31] It did this by requiring origin labels on beef to list the country or countries where the animal was born, raised, and slaughtered.

COOL effectively reduced the market power wielded by multinational packers, which are major importers of beef and cattle, by empowering consumers to initiate demand signals for country-specific beef products. This ended the packers' ability to unilaterally decide from which countries' supply chain to source the cattle and beef necessary to satisfy the domestic consumers' appetite for beef.

This loss of buyer-power control over the market infuriated the multinational packers and the governments of countries from which those packers imported large volumes of both beef and cattle. Together, the packer/foreign country duo embarked on a years-long campaign to repeal COOL. After failing to repeal COOL in Congress, failing to sustain executive-branch regulations that undermined the COOL law, failing to defeat COOL in a U.S. district court, and failing to defeat COOL before a U.S. appellate court's en banc panel, the packers and foreign countries finally found a sympathetic ear on foreign soil, at the World Trade Organization (WTO). This international tribunal's adverse COOL ruling inexplicably caused Congress to react so haphazardly as to repeal COOL for beef and pork without even bothering to ensure that its wholesale capitulation would result in a final disposition of the COOL complaint, which it did not.

Moreover, Congress' knee-jerk repeal of COOL was accomplished without regard to the economic interests of independent U.S. cattle farmers and ranchers whose future viability is directly dependent on their ability to compete against the growing tide of foreign beef and cattle that multinational packers are continuously importing into the United States.

WHY REINSTATE COOL FOR BEEF

COOL Creates Competition

Mandatory Country of Origin Labeling (COOL) answers the question, "Who decides from which country packers must source their cattle and beef inputs to satisfy domestic beef demand"?

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[31] COOL for beef was only partially implemented in March 2009 as the initial rules allowed beef that was exclusively of U.S. origin to be labeled as if it originated from multiple countries with a "Product of U.S., Canada, and Mexico" label. *See*, *e.g.*, 78 Fed. Reg., 31377, col. 3 (May 24, 2013).

Without COOL, packers unilaterally decide whether to purchase their inputs (*i.e.*, cattle and beef) from the domestic supply chain or from any of the lower-cost foreign supply chains located in the more than 20 foreign countries from which packers annually import cattle and/or beef.[32]

With COOL, such unilateral market control is taken from the hands of the packers and placed into the hands of consumers. This occurs because COOL empowers consumers to express buying preferences for beef produced in a particular country. When consumers express such buying preferences, they send demand signals to the packers directing them to source cattle and beef from the supply chain in the particular country chosen by the consumers.

Thus, COOL creates marketplace competition. With it competition appropriately starts with the consumer, who sends origin-specific demand signals upstream into the beef supply chain. But without it, multinational packers obstruct consumer-driven demand signals, enabling them to provide the American consumer with beef sourced from whichever country the packer chooses. This destroys marketplace competition.

In other words, without mandatory COOL domestic cattle and beef supply chains cannot compete with foreign supply chains in the domestic market because consumers are deprived of any origin information with which to express a competitive buying preference. Consumers, therefore, are precluded from choosing to "buy American." Instead, packers remain artificially insulated from competitive market forces and are free to import cheaper cattle and cheaper beef whenever they wish to leverage-down domestic cattle prices paid to U.S. farmer and ranchers. And, when they do this, they nevertheless continue selling undifferentiated, imported beef to unsuspecting American consumers for the same price as if the product were exclusively domestic. Thus, the packers are deceptively commandeering the good names and reputations of U.S. farmers and ranchers to market their imported beef and to reap windfall profits.

COOL Fixes a Gaping Loophole

Enacted long before COOL, the Tariff Act of 1930 requires imported beef to be labeled as to its origin to "an ultimate purchaser in the United States."[33] However, prior to the passage of the COOL law, the USDA crafted the definition of "an ultimate purchaser" in such a way as to allow packers and retailers to remove origin labels *before* the beef is sold to American consumers.[34] The COOL law was passed by Congress in part to close this gaping loophole by requiring the origin labels on meat imports to remain on the product "*through retail sale*" (emphasis added).[35] However, Congress unwittingly reopened this gaping loophole for imported beef and pork when it repealed everything in the COOL law related to beef and pork. Thus, the gaping loophole remains closed for imported chicken, lamb, goat meat, and venison – American consumers will continue to be notified of the origins of those products because Congress did

[32] Beef: Annual and Cumulative Year-to-date U.S. Trade - All Years and Countries, USDA Economic Research Service (showing the U.S. imported more than 3 billion pounds of beef on a carcass weight equivalent from Australia, Canada, New Zealand, Brazil, Uruguay, Mexico, Nicaragua, Costa Rica, Honduras, Chile, Denmark, Croatia, Japan, Ireland, Netherlands, Belgium, Poland, Thailand, China (Mainland), Lithuania, Philippines, and St. Lucia), available at https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/.
[33] 19 U.S.C. § 1304(a).
[34] *See* 19 C.F.R. § 134.1(d).
[35] 7 C.F.R. § 65.300(f)(2).

not repeal the COOL requirement for them. In other words, even though the WTO found no fault with the way the COOL law ensured that imported beef would retain its origin label all the way to the American consumer, Congress inexplicably flushed this important consumer notice when it repealed COOL for beef and pork.

COOL Stops Consumer Deception

It is not just the non-disclosure of origin information that harms both consumers and cattle producers by frustrating the competitive process; but also, consumers are being outright deceived in two ways:

First, a prominent "U.S." or "USDA" inspection sticker is affixed to every package of beef sold at retail, including on all imported beef. Lacking other origin information, the only origin information available to consumers is the prominent "U.S." or "USDA" sticker, which clearly and erroneously implies to unsuspecting consumers that the beef is of U.S. origin.

Second, the USDA has established internal policy guidelines to allow U.S. packers to mislabel beef derived from Mexican and Canadian cattle today; and, unless COOL is reinstated, Australian, Brazilian and Columbian cattle tomorrow. The USDA guidelines allow beef to bear a "Product of the USA" country of origin label if the beef is simply processed in the United States.[36] Today that means all the beef from the approximately 2 million head of live cattle imported each year from Canada and Mexico (including cattle imported for immediate slaughter that are not fed or grazed in the U.S.)[37], and which will produce about 1.5 billion pounds of beef[38], can be labeled as a USA product. This is the case even if the animals spent their entire lifetimes in a foreign country (except for the transportation time to a U.S.-based slaughtering plant). This clearly is deceptive.

COOL Reduces Market Manipulation

Multinational packers manipulate domestic cattle prices by importing foreign cattle and deceptively using them as identical substitutes for domestic cattle because the resulting beef from both is undifferentiated in the marketplace. Indeed, the packer lobby, which includes the National Cattlemen's Beef Association (NCBA), argued to the U.S. district court in their unsuccessful 2013 lawsuit against COOL (*American Meat Institute et al. v. USDA et al.)* that, "In short, beef is beef, whether the cattle were born in Montana, Manitoba, or Mazatlán." Thus, packers import hundreds of thousands of slaughter-ready cattle and transport them extraordinarily long distances to U.S. packing plants, even when domestic cattle supplies are plentiful and even when such long-distance transportation costs make individual shipments uneconomical. They do this because the presence of these imported cattle in the U.S. market reduces both the demand and price for domestic cattle. This occurs even if consumers would be unwilling to pay the same price for beef from imported cattle as they would beef from

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[36] Food Standards and Labeling Policy Book, U.S. Dept. of Agriculture, Food Safety and Inspection service (FSIS), August 2005, at 155-156 (indicating that packers can also apply a "Product of the U.S." label on imported beef products that are subsequently subjected to minimal processing in U.S. plants), available at https://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf.

[37] Cattle: Annual and Cumulative Year-to-date U.S. Trade - All Years and Countries, USDA Economic Research Service (note the U.S. imported 29 head of cattle from Australia in 2008 and 3 head of cattle from Ecuador in 2016), available at https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/.

[38] This is a conservative estimate using a 750-pound carcass weight for each animal slaughtered.

domestic cattle. This, of course, does not matter because the American consumer is kept in the dark as to the origins of beef from imported cattle.

Domestic farmers and ranchers witnessed first-hand the impact that imported cattle, from which meat is indistinguishable, have on their domestic cattle prices. Within just five months from the 2003 date that Canadian live cattle imports were banned from the United States because mad cow disease was detected in Canada, U.S. fed cattle prices jumped an unprecedented $26 per cwt, or about $325 per head.[39] The fact that this occurred even though Canadian cattle represented only about 5 percent of the U.S. annual slaughter volume reveals just how ultra-sensitive the U.S. cattle industry is to even slight changes in supplies – a factor that the packers can fully exploit when COOL is unavailable to consumers in the retail marketplace.[40]

COOL Facilitates Price Discovery

In 2010 the USDA conducted an investigation and found that, "Packers were not able to sell beef with 'Canada' or 'Mexico' labels for the same prices as beef produced entirely within the United States."[41] In 2014 Oklahoma State University reported in its Food Demand Survey that "consumers valued beef that was born or born and raised in Canada $0.89 and $1.05 less, respectively, than beef that was born, raised, and slaughtered in the U.S."[42] These two examples demonstrate a high probability that consumers will assign different values to different beef products depending on origin. However, this genuine form of price discovery, wherein consumers assign values to retail products based on their origin preferences, cannot occur unless consumers are first afforded COOL. Until such time, genuine price discovery, hence competition itself, remains stymied.

COOL Strengthens Rural America's Economy

As stated above, COOL empowers consumers to exercise buying preferences that dictate to multinational packers where they must source the beef and cattle to satisfy consumers' country-specific demand for beef. Thus, presuming U.S. consumers will heed President Trump's directive to "Buy American," COOL will empower consumers to support the domestic live cattle supply chain – hence the nation's farmers and ranchers who raise and sell U.S. cattle. In addition, the U.S. appeals court in *American Meat Institute et al. v. USDA et al*. identified several compelling reasons U.S. consumers would consider making origin-specific purchasing decisions that would likely give U.S. cattle farmers and ranchers a home-court advantage in their home marketplace. The court explained, *e.g.*, that COOL can

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[39] *See* Under Siege: The U.S. Live Cattle Industry, Bill Bullard, South Dakota Law Review, Vol. 58, Issue 3, 2013, at 587-588, available at https://www.r-calfusa.com/wp-content/uploads/2013/04/130101UnderSiegeSDlAWrEVIEWBillBullard.pdf.

[40] *See* Under Siege: The U.S. Live Cattle Industry, Bill Bullard, South Dakota Law Review, Vol. 58, Issue 3, 2013, at 587 (stating that researchers have found that the farm level elasticity of demand for slaughter cattle is such that 'each 1 percent increase in fed cattle numbers would be expected to decrease fed cattle prices by 2 percent.'), available at https://www.r-calfusa.com/wp-content/uploads/2013/04/130101UnderSiegeSDlAWrEVIEWBillBullard.pdf.

[41] USDA-GIPSA Investigative Report on COOL, at 1, 347, available at http://www.r-calfusa.com/COOL/090205File3COOLstudy.pdf (there is a temporary technical problem with this link but this document can be provided by e-mail upon request).

[42] Food Demand Survey, Oklahoma State University, Vol. 2, Issue 7, November 2014, available at http://agecon.okstate.edu/faculty/publications/4934.pdf.

empower consumers to express their patriotism by making origin-based purchasing decisions, take country-specific differences in safety practices into account, and COOL can confine the impact of a disease outbreak to only the specific country affected by the outbreak. Because the U.S. cattle industry is the single largest segment of American agriculture,[43] and because this industry operates in every state, increasing demand for beef sourced from the domestic live cattle supply chain holds substantial promise to positively impact the economy of Rural America.

COOL Cannot Be Voluntary

COOL benefits live cattle producers in the U.S. cattle supply chain because it enables beef from their animals to compete with the growing tide of lower-cost cattle and beef imported by the packers. However, the multinational packers that U.S. cattle farmers and ranchers rely on to purchase their cattle at competitive prices are the same packers that are importing increasing volumes of lower-cost cattle and lower-cost beef to leverage down domestic cattle prices. This effectively lowers the packers' overall input costs – the largest of which is their cost of cattle and beef.

Thus, it is overwhelmingly contrary to the financial interests of packers to voluntarily differentiate the beef they produce from domestic cattle from the beef they produce from cheaper imported cattle and the cheaper beef they import as a commodity when they can price all the beef the same to unsuspecting consumers.

Now that it is established that COOL is not in the financial interests of multinational packers, it is important to note that the packer, and the packer alone, possesses the power to decide whether to voluntarily apply origin labels. This is because the packer owns the 15- to 20-month-old cattle, and thus the resulting beef, at the time of slaughter. The cow/calf producer, who represents the largest segment of the U.S. live cattle industry and who directly benefits from the competition that COOL creates, would have sold the cattle to the next segment in the live cattle supply chain 9 to 12 months before the packer purchased them from the cattle feeder, who represents the final segment of the live cattle supply chain. In other words, given the segmented nature of the U.S. live cattle supply chain, the farmers and ranchers who stand to benefit from COOL have no means to cause the downstream packers to affix labels on beef products derived from their cattle because the packers, and not the farmers and ranchers, own the cattle at the time of slaughter.

It is important to note that domestic packers and other COOL opponents want the beef they sell in export markets to be labeled as to their U.S. origin so foreign consumers can distinguish between U.S.-supplied beef and beef supplied by their competitors in Brazil, Canada, Mexico, Australia, Uruguay, Indonesia, New Zealand and elsewhere. The rational for wanting to label beef as a U.S. product in foreign markets is based on their belief that U.S. beef is coveted the world over because of the outstanding reputations U.S. cattle farmers and ranchers have earned for producing the best beef in the world under the best of conditions. The packers want to capitalize on the world markets' preference for U.S.-produced beef. This position, of course, is totally inconsistent with their official mantra that

[43] *See* Under Siege: The U.S. Live Cattle Industry, Bill Bullard, South Dakota Law Review, Vol. 58, Issue 3, 2013, at 560, available at https://www.r-calfusa.com/wp-content/uploads/2013/04/130101UnderSiegeSDlAWrEVIEWBillBullard.pdf.

consumers don't care where their beef originates and beef is simply beef once it is removed from the animal.

HOW TO REINSTATE COOL FOR BEEF

The renegotiation of the North American Free Trade Agreement (NAFTA) is the ideal forum with which to reinstate COOL for beef and pork. Given the chronic and substantive trade deficit the U.S. accumulates each year in the trade of cattle and beef with Canada and Mexico (that deficit was $2.35 billion in 2014, $2.54 billion in 2015, and $2.25 billion in 2016; and the 25-year cumulative deficit in beef and cattle trade with Canada and Mexico is $31.62 billion),[44] the U.S. has considerable leverage with which to obtain concessions for accurate origin disclosures of beef products sold in the U.S. market.

The reinstatement of COOL would be a relatively straightforward negotiation: 1) The United States should first require in the NAFTA renegotiation that both Canada and Mexico formally withdraw their COOL complaints that are pending before the WTO as well as their WTO-sanctioned authorizations to impose retaliatory tariffs. 2) The United States should then prepare a NAFTA Renegotiation Implementing Act (Proposed Implementing Act) that includes the restoration of the previously repealed COOL statute governing the labeling of beef and pork and a directive ordering the USDA to immediately reestablish beef and pork as covered commodities under the COOL statute.

The Proposed Implementing Act could also be used to address known deficiencies in the COOL statute and regulations, some of which were identified and then exploited by the WTO to disparage COOL. For example, the WTO found that while importers were required to track the origins of all imported cattle, a significant percentage of the beef from those cattle was likely exempt from the labeling requirement. This was because the COOL statute only applied to certain retailers as defined by the Perishable Agricultural Commodities Act of 1930, did not apply to food service establishments such as restaurants, and because the USDA promulgated regulations that inexplicably exempted many meat products simply because they had undergone very minor processing steps.

The solution to this criticism would be to amend the COOL statute in the Proposed Implementing Act to: 1) broaden the definition of retailer to include more marketing outlets for meat; 2) require food service establishments to begin labeling meat as to its origin, or at least require packers to transfer accurate origin information to food service establishments so those establishments can choose to inform their customers as to the origins of the meat they are serving; and, 3) limit the amount of meat excluded from labeling requirement by the present exemption for meat that is considered an ingredient in a processed food item.

Additionally, the WTO alleged that the requirement to label beef and pork as to where the animals from which the meat was derived were born, raised, and slaughtered was not completely accurate because it did not take into account all the countries where the animals had been raised. This would be true in circumstances, *e.g.*, where the animal had been raised for some time in Mexico or Canada prior to being raised for an additional period in the United States. This, of course, can be readily corrected by simply

[44] The source of these data is the USDA Foreign Agricultural Service's Global Agricultural Trade System. The author's compilation of these data along with a chart depicting the 25-year trade deficit with Canada and Mexico are available by e-mail upon request.

requiring all countries in which the animal had been raised for a certain duration to be included on the label.

Finally, the WTO criticized COOL because it believed the requirement for labeling each production step (*i.e*., where the animal had been born, raised, and slaughtered) increases the record keeping for upstream producers, the number of labels, and results in more segregation of meat and livestock. This can be resolved in the Proposed Implementing Act by directing packers to rely on whether or not live animals bear official import markings for purposes of making origin declarations, thereby minimizing the amount of record keeping and segregation required to affix accurate labels. The United States currently requires all imported cattle from Mexico and Canada to be permanently marked with a mark of origin and identified with an official ear tag from their originating country.[45] These mandatory markings and ear tags minimize, if not eliminate, the need for additional recordkeeping for the purpose of making origin declarations when the cattle are presented for slaughter. Of course, any animal presented for slaughter that is void of any such import markings and ear tags could be none other than domestic cattle that had been exclusively born and raised in the United States. This simple and accurate methodology for ascertaining the origins of live cattle is known as a presumption of domestic origin.

WHY AMEND THE NAFTA RULE OF ORIGIN FOR BEEF

The specific rule of origin contained in the NAFTA states that the origin of meat is the country where the animal was slaughtered, which results in the requisite change to a harmonized tariff heading denoting beef products from another chapter (in this case from the chapter comprised of live animals).[46] Thus, under the NAFTA, multinational packers such as Brazilian-owned JBS can import live cattle from Canada and Mexico, immediately slaughter the imported cattle in their U.S. plants, and then export the resulting beef anywhere in the world as a "Product of the USA," or market it domestically also as a "Product of the USA." This, of course, places U.S. cattle farmers and ranchers at a severe economic disadvantage. It allows multinational packers to steal the good names and reputations of U.S. farmers and ranchers while simultaneously undermining the integrity and viability of the U.S. live cattle supply chain. The NAFTA rule of origin for meat is patently unfair, deceptive, and is seriously threatening the financial viability of U.S. cattle farmers and ranchers.

HOW TO AMEND THE NAFTA RULES OF ORIGIN

The NAFTA rule of origin for beef should be amended to mirror the standard contained in the recently repealed COOL law that accurately identified the country of origin of beef as the country or countries in which the animal from which the meat was derived was born, raised, and slaughtered.

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[45] *See* 9 C.F.R. §§ 93.420, 93.427(c)(1), 93.429, and 93.436(b)(3).
[46] *See* Section B – Specific Rules of Origin, NAFTA Annex 401, available at http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/NAFTA_Annex_401_1.asp.

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