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December 19, 2018

Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Re: R-CALF USA's Response to Hearing Questions Posed During the November 16, 2018 Public Hearing of the U.S. International Trade Commission Regarding the United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors, Investigation No. TPA-105-003

Dear Ms. Barton:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciated the opportunity to testify before the United States International Trade Commission (USITC) regarding Investigation No. TPA-105-003: *United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors.* Below is R-CALF USA's follow-up to that hearing.

I. INTRODUCTION

A. Supporters of the United States-Mexico-Canada Agreement Have Proved R-CALF USA's Claim that the North American Free Trade Agreement Harmed the U.S. Cattle and Beef Supply Chains.

It is important to note that the testimony of both William Westman, representing the North American Meat Institute (NAMI) and Kelley Sullivan, representing the National Cattlemen's Beef Association (NCBA), prove R-CALF USA's point that the North American Free Trade Agreement (NAFTA) has injured the United States cattle and beef supply chain by displacing U.S. cattle producers and U.S. cattle.

R-CALF USA testified that NAFTA facilitated the beef packers' practice of using undifferentiated imports of cattle and beef from Canada and Mexico as direct substitutes for U.S. cattle and beef, which caused the exodus of U.S. beef cattle operations, shrinkage of the U.S. cattle herd, and elimination of opportunities for aspiring cattle farmers.

Indeed, the NAMI testified that, "The Northwest region imports 227,000 head of Canadian fat cattle per year representing approximately 19 percent of processing capacity in the region. Additionally, another 55,000 of Canadian feeder cattle are imported annually into Oregon, Washington, and Idaho, representing 8 percent of the one-time [packing] capacity [in that region]." Transcript of November 2016 ITC Hearing (Transcript), at 499-500.

The NCBA testified that "especially in the Pacific Northwest," imports of Canadian and Mexican cattle "have supplemented seasonal shortages in our herd and helped our feed yards and packing facilities run at optimal levels." Transcript at 504.

Data show that the number of beef cattle operations in the states of Washington, Oregon and Idaho (the Pacific Northwest or Northwest), declined from 56,500 cattle farms in 1994, the year NAFTA was implemented,[1] to just 37,169 cattle farms by 2012,[2] the last year that census data are available, representing nearly a 34 percent decline in cattle farms.

Data also show that the total number of beef cows in those same states declined from 1.46 million head in 1994[3] to only 1.28 million head in 2018,[4] representing a 12 percent decline in the number of beef cows in the states of Washington, Oregon, and Idaho.

A recent study by Washington State University found that the decline of the beef cow herd in the state of Washington shrank at double the rate of decline of the U.S. herd.[5]

Thus, while the U.S. is importing 282,000 head of fat cattle and feeder cattle from Canada and/or Mexico into the Pacific Northwest (this according to the NAMI and NCBA testimonies cited above), and producing undifferentiated beef from those imported cattle, the domestic beef cow herd in the Pacific Northwest has shrunk by about 180,000 head and 18,831 beef cattle farms have exited the U.S. cattle supply chain. These data and admissions by both the NAMI and NCBA fully support R-CALF USA's position that NAFTA has harmed the U.S. cattle supply chain by displacing U.S. cattle operations and U.S. cattle and the new USMCA is expected to exact the same type of harm in that region and throughout the entire United States.

B. Testimony by the National Cattlemen's Beef Association Proves R-CALF USA's Contention that the NAFTA Does, and the USMCA Will, Allow Multinational Beef Packers to Exploit U.S. Cattle Producers by Using the U.S.A. Label on Foreign Beef Products.

During its testimony, R-CALF USA asserted that the U.S. imports the same types of beef products that it exports from Canada and Mexico, including tongues, by stating, the U.S. "import[s] from Canada over 2,000 metric tons of tongues which are the products [][the beef industry] say[s] we don't eat in America." Transcript, at 555.

In response to R-CALF USA's assertion, the NCBA stated that the U.S. imports Canadian tongues "because the value of the tongues that we produce in the United States carry a higher value in our export markets and so we are able to actually place a higher value on those [imported] tongues to then export to our markets elsewhere." *Id*.

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[1] *See* Cattle, USDA-National Agricultural Statistics Service (NASS), February 1995, at 13, available at https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/wm117r357/bc386m73s/Catt-02-03-1995.pdf.

[2] *See* Table 12, Cattle and Calves – Inventory: 2007-2012, 2012 Census Volume 1, Chapter 1, State Level Data, available for all states at https://www.nass.usda.gov/Publications/AgCensus/2012/Full_Report/Volume_1,_Chapter_1_State_Level/.

[3] *See* Cattle, USDA-National Agricultural Statistics Service (NASS), February 1995, at 5, available at https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/wm117r357/bc386m73s/Catt-02-03-1995.pdf.

[4] See Cattle, USDA-NASS, January 2018, at 6, available at https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/c534fr214/z316q364w/Catt-01-31-2018.pdf.

[5] *See* 2014 Economic Contribution Analysis of the Washington Beef Industry, Washington State University Extension, at 6, available at http://ses.wsu.edu/wp-content/uploads/2014/12/2014-Economic-Contribution-of-Washington-Beef-Industry1.pdf.

This is a clear and unambiguous admission that both the NAFTA and the USMCA empowers beef packers to use undifferentiated foreign beef products as direct substitutes for domestic beef products. It is equally a clear and unambiguous admission that beef packers are doing just this because they know that beef products produced exclusively by U.S. cattle producers command a higher price than comparable beef products produced in Canada or elsewhere.

This admission reveals the substantial harm to U.S. cattle producers resulting from trade agreements like the NAFTA and the USMCA that allow multinational beef packers to indiscriminately substitute undifferentiated foreign beef for domestic beef. This deceptive practice substantially reduces both the demand and price for authentic U.S. beef produced from U.S. cattle, as well as for the U.S. cattle from which the authentic beef is derived.

C. The National Cattlemen's Beef Association Misled the Commission Regarding the Export Market's Contribution to Live Cattle Prices Paid to Cattle Producers.

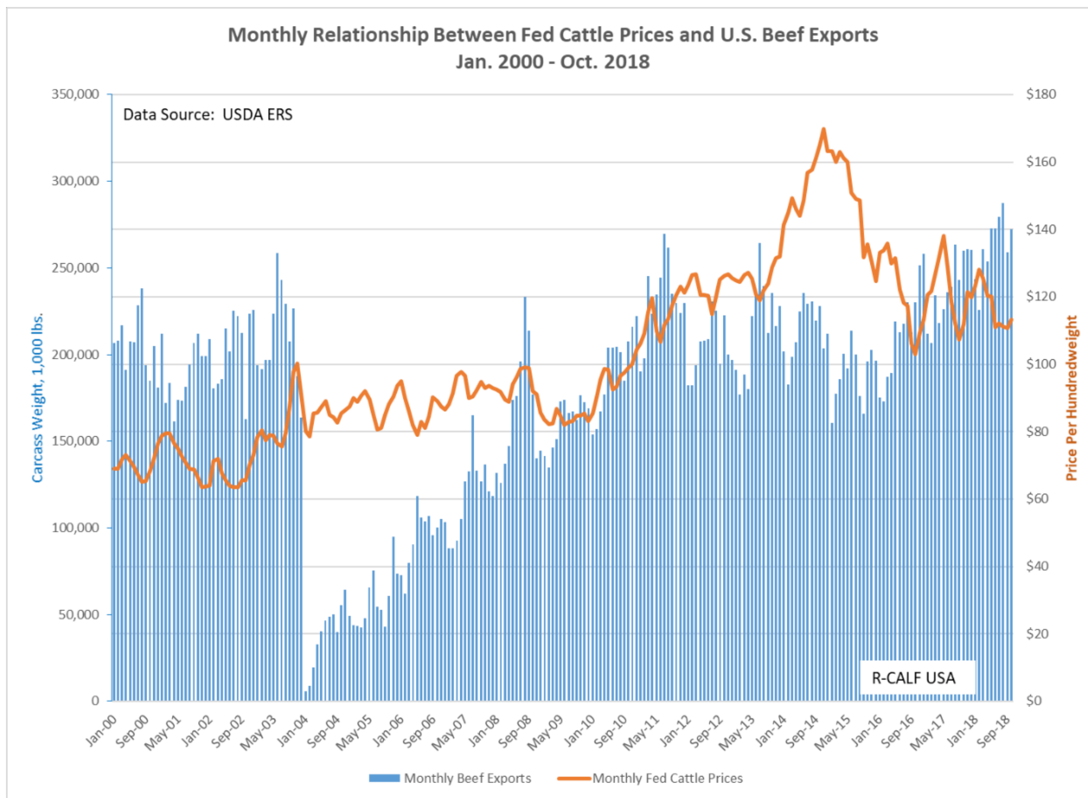
The NCBA testified that "320 dollars per head [is] attributed solely to exports" and exports contribute $320 in value to "every cow, or every steer that [Kelley Sullivan] [] sell[s] for that matter." Transcript, at 503, 537.

Neither the NCBA nor Ms. Sullivan provide any basis for this absurd claim. That is because the claim is baseless. Proceeds from export sales are not based on cattle prices paid to domestic cattle producers. Rather, proceeds from export sales are based on first-tier wholesale prices paid to meatpackers and second-tier wholesale prices paid to exporters/distributers.

Neither the NCBA nor the NAMI proffer any evidence to disprove R-CALF USA's assertion that the profits captured by meatpackers/wholesalers/distributers from exports are not passed to the 729,000 independent cattle producers who comprise the U.S. live cattle industry and who sell live cattle, not wholesale beef. Transcript at 509, 542.[6]

Indeed, the chart below, depicting the relationship between monthly export volumes and monthly fed cattle prices, shows that more often than not during the past 18 years, there was an inverse relationship between increased export volumes and fed cattle prices. This was particularly obvious following the substantial reduction in export volumes that began in 2004, after which fed cattle prices trended upward.

[6] R-CALF USA's testimony stated, "The problem was that, as I described earlier in my testimony, we see beef prices increasing, wholesale prices increasing [][and] record exports; [but] it's the producer that's not receiving that [increased price] at the live-cattle level. Transcript at 542.



Indeed, it would be incredulous if just 13 percent of an industry's production (the percent of U.S. beef production the NAMI stated is exported (*see* Transcript, at 498)) would account for almost one-fourth of the value of every fed animal sold in America.[7] This is a baseless claim on its face, particularly given that the U.S. cattle industry under-produces for the domestic market.

D. The NCBA and the NAMI Grossly Overstate the Importance of Hired Labor to the U.S. Live Cattle Industry.

The previously cited Washington State University study of the Washington cattle and beef industries found that in the state of Washington, wherein the cattle industry is similar to most or all other states' cattle industries, there is not a large number of hired employees within the largest sector of the U.S. cattle industry, the cow/calf sector. The study found that "[o]n average there were 0.0051 FTE [Full-time Employees] per cow."[8]

Applying this result to the entire U.S. cattle industry, in which there are presently 31,723,000 beef cows,[9] reveals that the U.S. cow/calf industry requires on average 161,787 hired FTE's. Given there are about 729,000 beef cattle operations,[10] this represents less than one-fourth of a hired FTE per U.S. beef cattle operation.

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[7] A 1,250 lb. steer at the 2018 average price of $117 per cwt would bring $1,463. If $320 were ascribed to exports as claimed by the NCBA, that would represent about 22 percent of the animal's value.

[8] *See* 2014 Economic Contribution Analysis of the Washington Beef Industry, Washington State University Extension, at 19, available at http://ses.wsu.edu/wp-content/uploads/2014/12/2014-Economic-Contribution-of-Washington-Beef-Industry1.pdf.

[9] Cattle, USDA-NASS, at 4, available at https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/c534fr214/z316q364w/Catt-01-31-2018.pdf.

[10] *See* Farms, Land in Farms, and Livestock Operations: 2012 summary, USDA National Agricultural Statistics Service, February 2013, at 18, available at https://downloads.usda.library.cornell.edu/usda-esmis/files/5712m6524/hd76s244b/3r074x62v/FarmLandIn-02-19-2013.pdf.

The study also found that the feeding sector of the Washington cattle industry employed one FTE for each 1,121.8 feeder cattle placed in Washington feedlots.[11] Applying this result to the 25.1 million head of cattle marketed by U.S. feedlots in 2017[12] suggests the entire U.S. feedlot sector employs about 22,375 full-time employees. Given there are 28,209 feedlots remaining in the U.S.,[13] the U.S. feedlot sector hires on average 0.8 full time employees per feedlot.

These data do not support the NCBA's testimony in which Ms. Sullivan stated, "I will tell you the greatest threat that we have in our industry is labor. We can't find enough skilled people to do the things that we need to do. So that's why our average sized cow herd has gone down so much." Transcript, at 536.

This demonstrates the Commission is being misled by organizations purporting to represent the general interests of the U.S. cattle industry regarding labor issues. It is the beef industry, *i.e*., the manufacturing sector of the beef supply chain as represented by the North American Meat Industry (NAMI), that has a heightened concern for hired labor, not the live cattle segment of the supply chain. Granted, however, the largest of the specialty businesses within the supply chain, including businesses like that of Ms. Sullivan's, and the industrial-sized feedlots, most of which are contractually-aligned with the major beef packers, do have labor needs far in excess of the vast majority of cattle farmers and ranchers and cattle feeders in America. It is also important to note that both the NCBA and the NAMI represent the interests of the major beef packers, hence their common focus with the NAMI on issues such as labor that are not significant to the vast majority of U.S. cattle producers.

II. RESPONSES TO QUESTIONS BY COMMISSIONERS

A. Questions by Commissioner Williamson.

Commissioner Williamson asked if the Sanitary Phytosanitary Standards (SPS) provisions contained in the USMCA address the specific problem or problems faced in the pork or the beef industry. Transcript at 515. He also asked if the SPS provisions were based on "sound science." *Id*. at 521. The answer to both questions is a resounding "No." The SPS provisions do not address the differences in production standards between the U.S., Mexico and Canada for live cattle that directly affects the safety of beef. In addition, many of these differing production standards cannot be identified through testing or inspection of the final beef product. This is particularly true if 14-year-old cow is raised under conditions disallowed in the United States.

One clear example is that Canada continued to import live animals from Europe long after the U.S. banned such imports because of Europe's mad cow disease outbreak. This is how mad cow disease was introduced into Canada in the early 90s, causing the disease to spread throughout Canada's cow herd by the early 2000s. Mad cow disease cannot be identified in meat products through testing or inspection. Therefore, Canada's lax production standard (its failure to take reasonable steps to prevent the introduction of such a pernicious disease) created an unnecessary risk for U.S. consumers that was not mitigated by SPS standards.

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[11] *See* 2014 Economic Contribution Analysis of the Washington Beef Industry, Washington State University Extension, at 20, available at http://ses.wsu.edu/wp-content/uploads/2014/12/2014-Economic-Contribution-of-Washington-Beef-Industry1.pdf.

[12] Cattle on Feed, USDA-NASS, February 2018, at 15, available at https://downloads.usda.library.cornell.edu/usda-esmis/files/m326m174z/xw42n9376/kp78gh90g/CattOnFe-02-23-2018.pdf.

[13] *Id*.

More recently, in 2016, reports indicated that Mexican cattle were administered clenbuterol and the NFL issued a warning to its players not to consume Mexican beef.[14] This occurred in 2016 when Mexico was supposedly subject to the NAFTA's SPS standards. Also, since 2015, the U.S. has subjected U.S. cattle producers to the FDA's Veterinary Feed Directive, requiring veterinary authorization to feed antibiotics to cattle.[15] This food safety-related production requirement does not apply to cattle raised in either Canada or Mexico.[16] Neither the testing nor inspection of meat products entering the United States cannot identify whether the animal from which the meat was derived was subject to the veterinary requirements imposed on U.S. cattle producers.

In summary, the SPS provisions are *not* based on sound science because they ignore and do not take into account the unique characteristics of live cattle production, in which the production standards associated with the rearing of live animals for months and years directly affects the safety and quality of meat. As a result, the USMCA will subject American consumers to undifferentiated meat products that were not produced under the more stringent, safety-related production standards required in the United States.

This is precisely the reason that some export countries impose restrictions on the length of time that animals slaughtered in the U.S. can spend in foreign countries before slaughter, including cattle from Canada, before their resulting meat can be exported. For example, South Korea requires that only beef from cattle less than 30 months of age and that have been raised in the U.S. for at least 100 days is eligible for export.[17] In addition, South Korea specifically states that "[b]eef and beef product derived from certain categories of cattle imported from Canada, imported beef and beef products, and processed beef products are ineligible" for export to that country.[18] Thus, the USMCA, which fosters the comingling of foreign cattle and beef with U.S. cattle and beef will continue to impede exports of U.S. beef based on other countries' concerns for substandard production practices in Canada.

B. Questions from Commissioner Broadbent.

Commissioner Broadbent asked for verification regarding conflicting claims by R-CALF USA and the NCBA. Transcript at 524. She noted that R-CALF USA asserts that NAFTA contributed to the dismantling of the competitive marketing channels in the U.S., *i.e.*, it reduced the numbers of U.S. feedlots and packing plants, and that country-of-origin labeling (COOL) was an effective tool to mitigate this trend. *See id*. The NCBA, on the other hand, asserts that COOL was the cause of this unfavorable condition marked by the consolidation of feedlots and beef packers. *See id*.

In addition to the evidence R-CALF USA previously provided in its pre-hearing brief showing the contraction of the competitive marketing channels in the United States since NAFTA's implementation, the following charts clearly show that this destructive dismantling occurred well before both the partial implementation of COOL that occurred in early 2009, and before the full implementation of COOL from May of 2013 through December of 2015.

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[14] Players warned too much meat abroad may lead to positive test, ESPN.com News Service, May 4, 2016, available at http://www.espn.com/nfl/story/_/id/15454487/nfl-warns-eating-too-much-meat-mexico-china-result-positive-test.

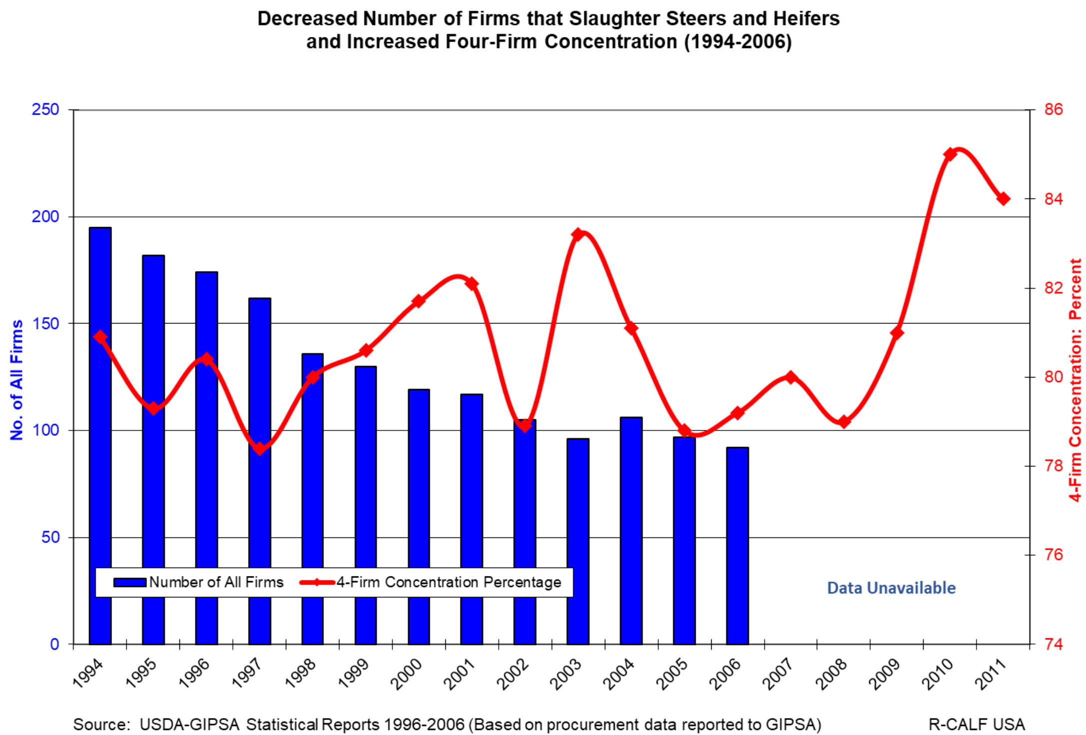
[15] Veterinary Feed Directive (VFD), U.S. Food and Drug Administration, available at https://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/ucm071807.htm.

[16] 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.").

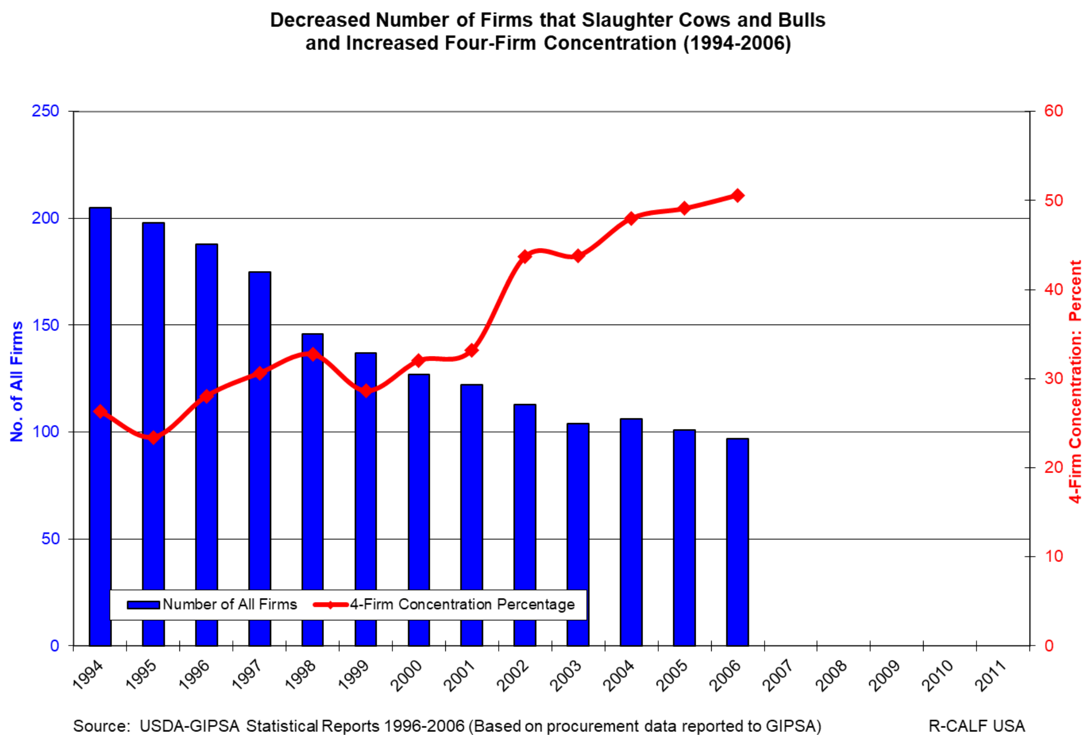
[17] Export Requirements for the Republic of Korea, USDA Food Safety and Inspection Service, available at https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country/Korea.

[18] *Id.*

The first chart below uses data from USDA GIPSA's Statistical Reports available only through 2006. It shows that during the first 12 years of NAFTA's implementation, the number of firms that slaughter fed cattle in the U.S. declined by more than 50 percent, falling from 195 firms in 1994 to only 92 firms in 2006.

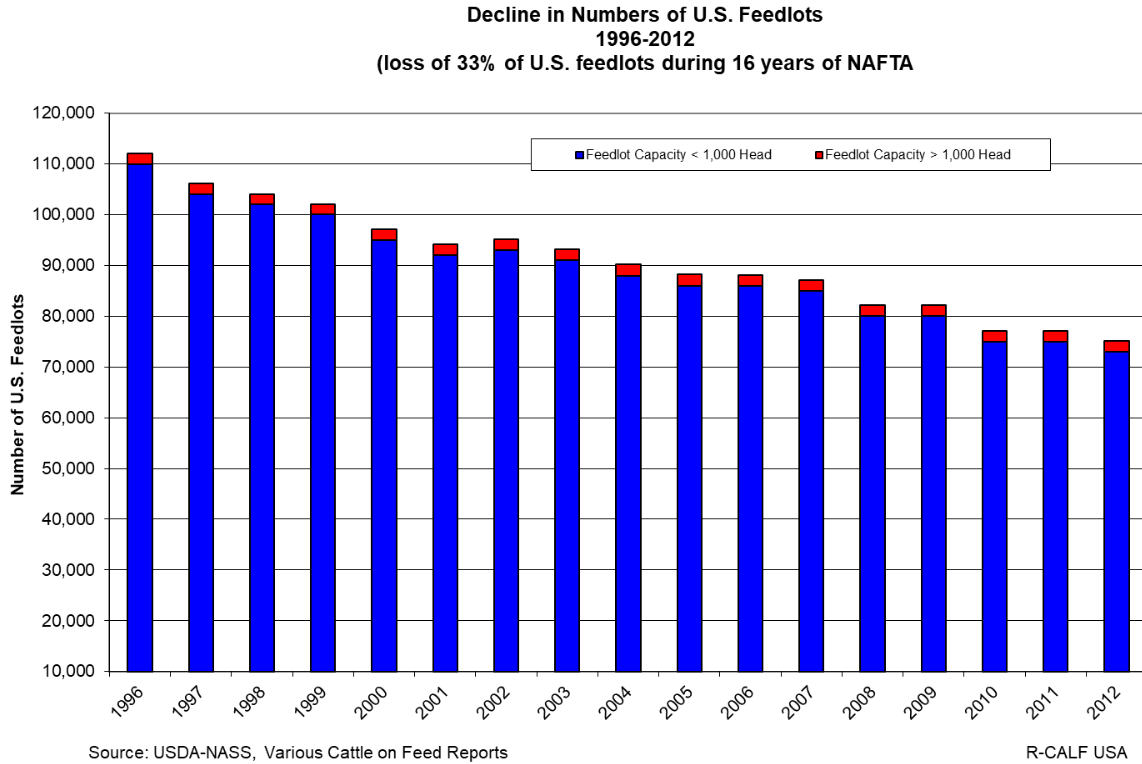


Using the same data source for the same period, the second chart below shows the number of firms that slaughter cows and bulls in the U.S. likewise decreased by more than 50 percent during the first 12 years of NAFTA's implementation.

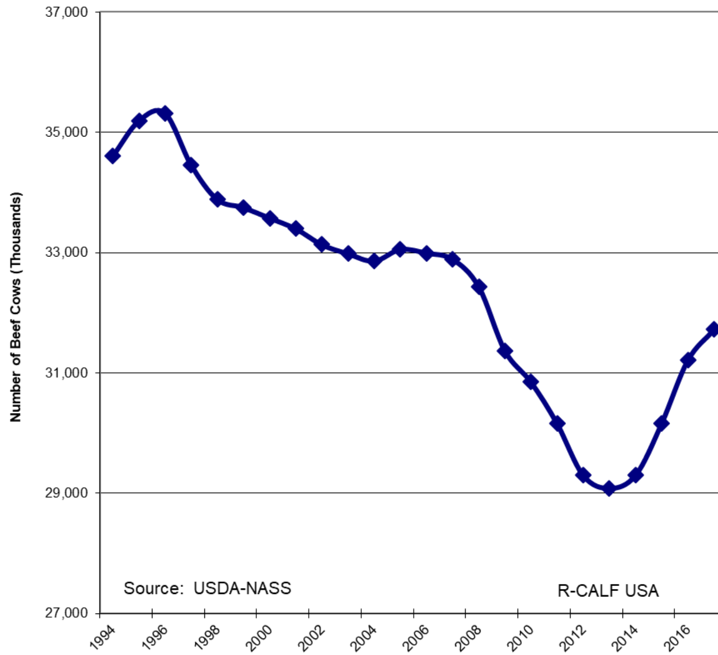


The foregoing charts depicting historical data covering the first 12 years of NAFTA, combined with the more recent evidence R-CALF USA presented in its prehearing brief, definitively prove that the alarming dismantling of competitive marketing channels, particularly the decline in the number of marketing outlets for slaughter cattle, occurred throughout NAFTA and began long before COOL was even partially implemented in 2009. Thus, not only is the NCBA's claim that COOL contributed to the concentration of the beef packing industry baseless, it is erroneous.

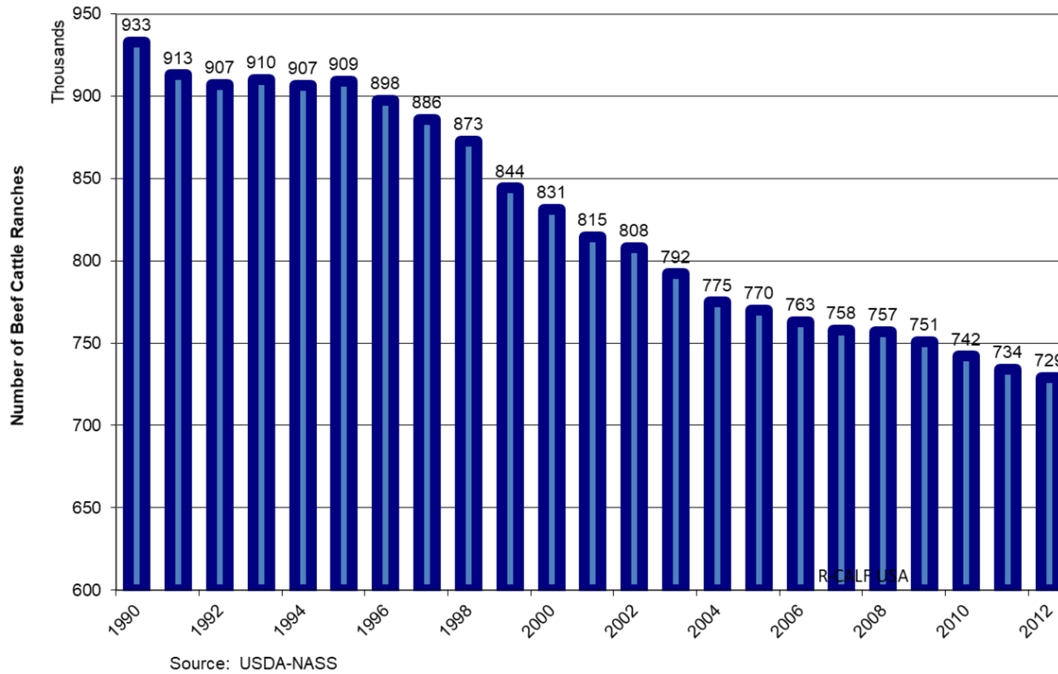
The third chart below shows the decline in the number of feedlots since NAFTA's inception and it too reveals that the number of U.S. feedlots began a precipitous decline long before even the partial implementation of COOL in 2009, with feedlot numbers declining by 33 percent from 1996-2012.



As shown below in the fourth chart, the U.S. beef cow herd – the U.S. cattle industry's factory – began shrinking soon after NAFTA's implementation and remains well below pre-NAFTA levels. Notably, the U.S. beef cow herd began its only meaningful expansion in over two decades after the 2013 full implementation of COOL.



Finally, and as shown in the fifth chart below, the number of U.S. beef cattle operations likewise declined during NAFTA, falling by nearly 20 percent between 1994 and 2012, with 2012 being the latest available census data.

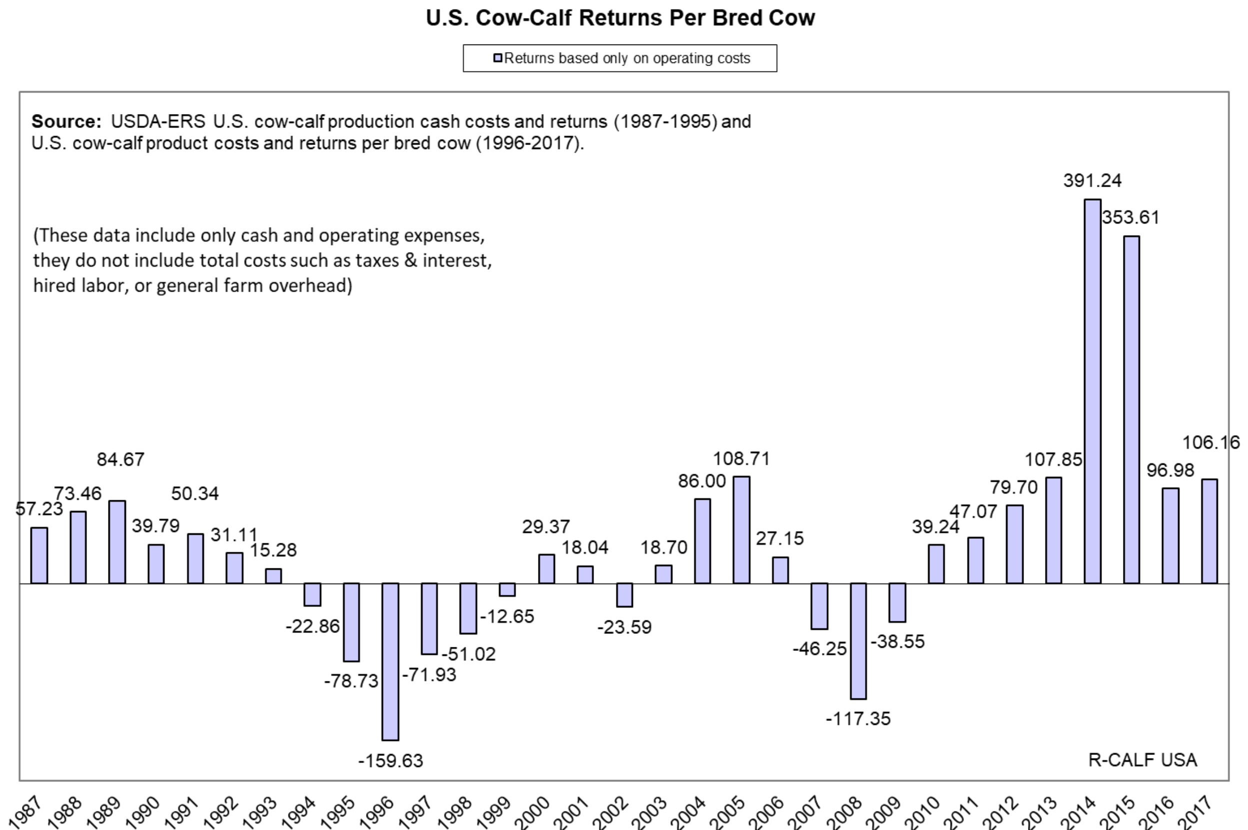


The foregoing charts clearly show that the NCBA's claim that it was COOL that contributed to the dismantling of the U.S. cattle industry, and not the NAFTA itself, is false.

C. Questions by Commissioner Schmidtlein.

Commissioner Schmidtlein generally asked about how the cattle industry fared and operated prior to NAFTA and if there were any studies showing that the number of U.S. cattle producers declined during the course of NAFTA.

The charts presented above, particularly the charts showing the decline in both the U.S. mother-cow herd and the number of U.S. beef cattle operations, show that the U.S. cattle industry has contracted at an alarming rate during the period that NAFTA has been in force. In addition to that evidence, the chart below more fully explains why the U.S. cattle industry has contracted under NAFTA.



The above chart shows that during the 7 years leading up to NAFTA's 1994 implementation, the average return to U.S. beef cattle producers was about $50 per bred cow per year. This means a cattle producer that owned 500 cows earned on average $25,000 per year.

After NAFTA's 1994 implementation and continuing through 2017, the average return per bred cow fell to only $37 per bred cow per year. This means the same cattle producer that owns 500 cows earned on average only $18,500 per year while NAFTA was in force.

Notably, there were only two periods throughout all of NAFTA's implementation during which the average returns per bred cow increased above the $37 average. The first was in 2004-2005, the period when Canadian live cattle imports were prohibited because of the risk of introducing mad cow disease into the United States. As a result of the temporary closure of the Canadian border to live cattle imports, America's cattle producers temporarily earned meaningful and sustainable returns, albeit briefly. The second period began in 2009, the year that COOL was partially

implemented, continued through 2013 through 2015, when COOL was fully implemented, and continued through 2016 and 2017, even after COOL was repealed. During COOL's partial and full implementation, America's cattle producers earned near-record to record returns. After COOL's repeal, returns subsided to levels proximate to what they were in the mid-2000s when the border was temporarily closed to Canadian live cattle.

It is clear from these USDA data that returns to U.S. cattle producers were substantially reduced during NAFTA and the only two times in the past 25 years that U.S. cattle producers enjoyed sustainable profits were when the Canadian border was temporarily closed to live cattle imports and after COOL was first implemented in 2009.

D. Questions by Commissioner Kearns.

Commissioner Kearns posited that because the new USMCA changes nothing in the NAFTA as it effects the U.S. cattle industry, it cannot be said that the USMCA will "accelerate" the ongoing contraction of the U.S. cattle industry. *See* Transcript at 569. R-CALF USA respectfully disagrees.

Because the USMCA represents a new trade agreement, it will now incorporate provisions identical to those first implemented in 1994 under NAFTA. And, the results of those provisions first implemented in 1994 are now known and measurable. For example, 20 percent of U.S. beef cattle operations were eliminated during the first 18 years (1994-2012) of those provisions; so too were 33 percent of all U.S. feedlots eliminated during the same period; returns per bred cow were reduced on average by $13 per bred cow per year through 2017; and the U.S. beef cow herd shrank by nearly 3 million head through 2017. Thus, the most likely economic impact of the new USMCA is that the numbers of U.S. beef cattle operations will be expected to shrink by at least 20 percent from their present numbers, feedlots too will be expected to shrink by at least 33 percent from their present numbers, returns to cattle producer will be expected to decrease by at least $13 per head from their present levels, and the U.S. beef cow herd will be expected to decrease by nearly 3 million head from their present numbers.

Faced with the most likely prospects that the new USMCA will cause this level of industry contraction upon its implementation, the new USMCA will most likely cause what the NAFTA agreement did not – the elimination of the critical mass of competitive marketing channels and industry infrastructure needed to support a sufficiently competitive market structure necessary to sustain an independent family farm and ranch system of cattle production in the United States. In that sense, the new USMCA will accelerate the destruction of the U.S. cattle industry as we know it today.

E. Questions by Chairman Johanson.

Chairman Johanson asked how the USMCA will impact the competitiveness of the U.S. meat industry vis-a-vis our competitors, such as our competitors in some of the major countries including Brazil, Argentina, Australia and Canada for that matter. Transcript at 547.

R-CALF USA responded to Chairman Johanson's question by stating that the USMCA will make it impossible for U.S. cattle producers to compete with their counterparts in foreign countries because the rule of origin in NAFTA, the USMCA and all other trade agreements allow multinational meatpackers to import cattle and beef from foreign sources and to pass the resulting meat off to consumers as a product of the U.S.A. *See* Transcript at 551-553.

Chairman Johanson also asked how product differentiation was established prior to NAFTA. Product differentiation has long been a problem for the U.S. cattle industry, including prior to

NAFTA. That is why beginning in 1999, R-CALF USA worked to pass COOL, which was ultimately passed by Congress in the 2002 Farm Bill, though its implementation was subsequently delayed until 2009 when the USDA partially implemented COOL. The 2009 partial implementation of COOL corrected the improper implementation by the USDA of the Tariff Act of 1930 that required imported product to retain its foreign label to the ultimate purchaser unless the product was substantially transformed in the United States. In 1989, the USDA issued its Foreign Products Rule to implement § 620 of the Federal Meat Inspection Act. Unfortunately, that rule ignored even the basic marking and labeling requirements of the Tariff Act of 1930 and allowed foreign labels on imported meat to be removed even when the product was subjected to only minor processing, such as unwrapping and rewrapping the product. The 2009 partial implementation of COOL corrected this improper rule by requiring foreign labels to be retained through retail sale, meaning all the way to the actual consumer. Then, when COOL was repealed in 2015, the labeling requirements for imported meat reverted back to the improper 1989 rule, leaving U.S. cattle producers without the means to differentiate their product from imported product.

In 2013, COOL was fully implemented by further requiring the differentiation of meat derived from cattle imported into the U.S. from Canada and Mexico from meat produced exclusively from U.S.A. cattle. The 2013 full implementation required labels to denote where the animal from which the meat was derived was born, raised and slaughtered. Again, after the repeal of COOL, products derived from animals imported into the U.S. are no longer differentiated from products produced exclusively in the United States.

Attached as an Appendix is a more detailed explanation of the improper labeling requirements that are now memorialized in the USMCA, leaving the U.S. cattle industry unable to differentiate its products from imported products.

III. CONCLUSION

The likely impact of the USMCA on the U.S. cattle industry will be substantial, and it will be negative.

The USMCA will stifle investments in both U.S. packing plants and U.S. feedlots, particularly small feedlots upon which many rural communities are dependent.

The USMCA will accelerate the exodus of beef cattle operations in the U.S. and the shrinking of the U.S. cattle herd.

The USMCA will dismantle the U.S. cattle industry’s critical infrastructure and will encourage the outsourcing of the U.S. cattle and beef supply chains. It will accomplish this by exacting economic injury on the U.S. cattle supply chain resulting from the unlimited influx of cheaper priced, direct product substitutes – undifferentiated imports of the same products produced by U.S. cattle farmers and ranchers.

The USMCA will shield the dominant multinational beef packers and their contractually-aligned, multinational feedlots from market competition while simultaneously precluding U.S. cattle farmers and ranchers from competing against their foreign counterparts in Mexico and Canada.

Finally, the USMCA gifts to multinational beef packers and their contractually-aligned feedlots the power to reverse domestic cattle price rallies and, concurrently, to effectively manage the price of domestic cattle, thus destroying what remains of a competitive marketplace for U.S. cattle farmers and ranchers.

Sincerely,

William Bullard, CEO

Appendix

Appendix

Overview of USDA's Improper Labeling Requirements for Imported Beef and Pork

The Tariff Act of 1930 (Tariff Act) states the foreign-origin designation of imported products, which include meat and poultry, must be retained to the ultimate purchaser.[19] The Federal Meat Inspection Act (FMIA) implements the labeling requirements of the Tariff Act with respect to meat and poultry.[20] It establishes that imported meat must comply with the labeling requirements set forth in the Tariff Act by stating that imported meat "shall be marked and labeled as required by such regulations for imported articles[.]"[21]

The regulations implementing the Tariff Act state the ultimate purchaser is generally considered the last person to purchase the product in the same form in which it was imported.[22] A processor, even if considered the ultimate purchaser, cannot change the country of origin designation of the beef, pork, or non-chicken poultry meat unless they subject the imported meat product to a process which results in the substantial transformation of the meat product.[23] If the imported meat is subject only to minor processing, the Tariff Act requires the foreign-origin designation must be retained by the person purchasing the meat from the processor, who is then deemed to be the ultimate purchaser.[24]

However, the regulations implementing the FMIA, which incorporates by reference the Tariff Act's labeling requirements, omit the FMIA's requirement that imported meat shall be subject to the labeling requirements of the Tariff Act and, instead, they declare that all meat in the United States is domestic.[25]

The U.S. Congressional Research Service (CRS) has long recognized a conflict between the labeling requirements of the Tariff Act and the regulations of the Food Safety and Inspection Service (FSIS) and stated in 2016:

> All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry destined for U.S. plants for further processing also have had to bear country-of-origin marks. However, once these non-retail items have entered the country, the federal meat inspection law has deemed them to be domestic products. When they are further processed in a domestic, FSIS-inspected meat or poultry establishment—which has been considered the ultimate purchaser for purposes of country-of-origin labeling—FSIS no longer requires such labeling on either the new product or its container. FSIS has considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.
>
> Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules but also with Tariff Act labeling regulations. Because

[19] *See* 19 U.S.C. § 1304(a).
[20] *See* 21 U.S.C. § 620(a).
[21] *Id*.
[22] *See* 19 C.F.R. § 134.1(d).
[23] *See id*.
[24] *See id*. § 134.1(d)(2).
[25] *See* 9 C.F.R. § 327.18(a).

> Customs generally requires that imports undergo more extensive changes (i.e., "substantial transformation") than required by USDA to avoid the need for labeling, a potential for conflict has existed between the two requirements.[26]

From 2009 into 2016, under the requirements of the mandatory country-of-origin labeling law, USDA required that imported beef and pork be labeled through retail sale, so that consumers buying those goods at retail could determine the meat's country of origin.[27] This temporarily corrected the decades-long conflict between the Meat Inspection Act's statutory text (which mandates such labels in certain circumstances) and the agency's Meat Inspection Act regulations (which had not required such labeling).[28]

However, in 2016, acting on a bill that removed *other* country-of origin labeling requirements, USDA removed the regulations that had brought its application of the Meat Inspection Act into compliance with the statutory text. The agency then reinstituted its prior rules, allowing beef and pork from animals slaughtered abroad to be reclassified as domestic goods, despite the fact that the agency itself had previously recognized those rules conflicted with the Meat Inspection Act's text.[29]

Under USDA's FMIA regulations, a domestic processing plant merely needs to unwrap and rewrap an imported piece of meat in order to remove the Tariff Act's required label because the rules only require the country-of-origin label to be retained if the product is sold in the same package in which it was imported.[30]

To make matters worse, the USDA FSIS' Food Standards and Labeling Policy Book (Policy Book) authorizes the use of the "Product of U.S.A." label if "[t]he product is processed in the U.S. (i.e., is of domestic origin)."[31] This means that imported products that escape the Tariff Act's requirements for the retention of a foreign label by undergoing the minor process of unwrapping and rewrapping can be sold to unsuspecting U.S. consumers bearing the new label, "Product of U.S.A."

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[26] Joel L. Greene, Cong. Research Serv., Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling, 31 (Mar. 8, 2016).
[27] 78 Fed. Reg. (May 24, 2013), at 31,385, col. 3.
[28] *See* 21 U.S.C. § 601 et seq.
[29] *See* Geoffrey S. Becker, Cong. Research Serv. Country-of-Origin Labeling for Foods, 2 (June 3, 2005).
[30] *See* 68 Fed. Reg. at 61948.
[31] Standards and Labeling Policy Book. U.S. Department of Agriculture Food Safety and Inspection Service. Office Policy, Program and Employee Development. Aug. 2005.