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June 21, 2021

Secretary Tom Vilsack
U.S. Department of Agriculture
Docket No. AMS-TM-21-0034
1400 Independence Ave. SW
Washington, DC 20250

Dr. Melissa R. Bailey
Agricultural Marketing Service, USDA
Room 2055-S, STOP 0201
1400 Independence Ave. SW
Washington, DC 20250

Sent via regulations.gov

Re: R-CALF USA's Comments in Document No. AMS–TM–21–0034: Supply Chains for the Production of Agricultural Commodities and Food Products, Notice and Request for Public Comment

Dear Secretary Vilsack and Deputy Administrator Bailey:

The Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) appreciates this opportunity to comment to the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) regarding the above captioned Docket No. AMS–TM–21–0034 (Notice), available at 86 Fed. Reg., 20,652 - 654 (April 21, 2021).

R-CALF USA is the largest trade association that exclusively represents United States cattle farmers and ranchers within the multi-segmented beef supply chain. Its thousands of members reside in 45 states and include cow-calf operators, cattle backgrounders and stockers, and feedlot owners, as well as sheep producers.

R-CALF USA's comments address the following items identified in the Notice:

> (iv) the defense, intelligence, cyber, homeland security, health, climate, environmental, natural, market, economic, geopolitical, human-rights or forced-labor risks or other contingencies that may disrupt, strain, compromise, or eliminate the supply chain …
>
> (v) the resilience and capacity of American manufacturing supply chains, including food processing (e.g., meat, poultry, and seafood processing) and distribution, and the industrial and agricultural base—whether civilian or defense—of the United States to support national, economic, and nutrition security, emergency preparedness, and the policy identified in section 1 of E.O. 14017, …

> (vii) the primary causes of risks for any aspect of the agricultural and food production supply chains assessed as vulnerable pursuant to subsection (v) of this section;
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> (ix) specific policy recommendations important to transforming the food system and increasing reliance in the supply chain for the sector;
>
> (x) any executive, legislative, regulatory, and policy changes and any other actions to strengthen the capabilities . . . and to prevent, avoid, or prepare for any of the contingencies identified in subsection (iv) of this section; and
>
> (xi) proposals for improving the Government-wide effort to strengthen supply chains, . . .

I. INTRODUCTION

The U.S. live cattle industry is the single largest segment of American agriculture.[1] There are cattle operations in every state. Approximately 43% of all farms raise cattle.[2] It is the economic cornerstone for many, if not most, rural communities. And yet, it underproduces for the domestic market,[3] thus depriving the U.S. economy of an even broader and stronger domestic supply chain associated with more cattle farms and ranches, more input supply chains, and more marketing channel components.

The same public policies that have long prevented the U.S. cattle industry from producing enough cattle to meet or exceed domestic beef consumption are also responsible for the ongoing contraction of the U.S. cattle industry. This contraction is measured in terms of reduced numbers of cattle farms and ranches, reduced size of the U.S. cattle herd, reduced number of marketing outlets in the upstream sector of the live cattle supply chain (e.g., livestock auction yards), reduced numbers of cattle feeding operations in the downstream sector of the live cattle supply chain, reduced numbers of meatpackers at the juncture between the end of the live cattle supply chain and the beginning of the processing sector of the beef industry, reduced returns to both cow/calf producers and cattle feeders, and the reduced share of the consumer's beef dollar received by live cattle producers.[4]

As a result, the domestic live cattle supply chain is weak and continuously weakening, redundancy is lacking, supply-chain resiliency is compromised, and economic and political power over the supply chain has been effectively transferred from disaggregated cattle producers and beef consumers to small groups of concentrated packers and importers. In short, the U.S. live cattle supply chain and the subsequent processing sector of America's beef supply chain are no longer capable of meeting America's food security interests.

The public policies that created this food security crisis are based on neglect, inattention, denial, and pandering to corporate agribusiness self-interests, all of which are underpinned by the misguided

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[1] *See* U.S. Department of Agriculture (USDA) Economic Research Service (ERS), Cash Receipts by Commodity, available at https://data.ers.usda.gov/reports.aspx?ID=17845.
[2] Table 1 Historical Highlights: 2017 and Earlier Census Years, Census of Agriculture, U.S. Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), 2017 Census Volume 1, Chapter 1: U.S. National Level Data, available at https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/.
[3] *See* Chart 2, *infra*, at 13.
[4] *See*, e.g., Charts 5-10 in the Appendix, *infra*.

prioritization of achieving theoretical market efficiencies over the maintenance of a fair, equitable, and competitive food production/distribution system. In short, public policies created this food security crisis by rationalizing and justifying reduced competition using biased economic modeling that predicted largeness of scale would create marketplace efficiencies, which in turn would increase consumer welfare by affording consumers more and lower-cost food.

Today's dysfunctional marketplace proves that economic modeling wrong. History may prove this is one of America's greatest and most consequential blunders, particularly if this Administration and this Congress do not act quickly enough to reverse the ongoing exodus of farmers and ranchers from America's food production system.

The preeminent public policy goal of market efficiency led directly to the neglect of antitrust and fair competition laws that fueled the "merger mania" era in the meat processing sector in the 1980s.[5] Preserving marketplace competition was trumped by promises of greater economies of scale, *i.e.*, greater efficiencies. Globalization – yet another "efficiency" based ideal – soon followed. It effectively amplified the raw market power conferred to multinational beef packers through market concentration and consolidation with cross-border access to both unlimited inputs and expanded market outlets.

Added to this was the political influence of the multinational beef packers arising from both their domestic and global market-power dominance. Their influence caused policy makers to transfer the risks associated with dismantled marketing channels and the systematic weakening of animal health and food safety regulations from the multinational beef packers to farmers, ranchers, and the public. Along with the risks, also transferred to farmers, ranchers, and the public were the substantial costs of maintaining this otherwise unsustainable, multinational beef packer-dominated food system structure.

For example, policy makers force farmers and ranchers to i) fund the promotion and advertising of products the multinational beef packers produce from farmers and ranchers' cattle (through the government-mandated beef checkoff program); and ii) fund and manage preparedness for the inevitable consequences arising from dismantled health and safety regulations (through government efforts to mandate radio frequency identification (RFID) for cattle). Further, policy makers recently forced the public to subsidize farmers' and ranchers' income losses after the multinational beef packers chose to no longer pay a competitive price for cattle – resulting in COVID-19 payments to cattle producers despite the adequacy of beef sales and beef prices that would have substantially *increased* their incomes if the marketplace was competitive.

Above all else, the reason the beef supply chain now threatens United States food security interests is because the forces of competition have been purged from throughout the live cattle and beef supply chains.

Solutions to this crisis – this manifest food security crisis – are destined to fail if they are not preceded by the reintroduction of competitive market forces. In other words, efforts that focus only on addressing the symptoms of this crisis would be only Band Aid approaches, ultimately doomed to

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[5] U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration, Kenneth H. Mathews Jr., et al., U.S. Department of Agriculture, Market and Trade Economics Division, Economic Research Service, Tech. Bulletin No. 1874, April 1999, at 10.

fail. For example, merely increasing the number of beef packing plants and attendant packer capacity, which was reduced when regulators neglected to preserve competition among and between packers, will not reverse this crisis. Similarly, merely increasing the transparency of marketplace transactions, which was reduced when regulators neglected to protect against unfair and deceptive procurement practices that undermined competition, will not reverse this crisis. Both these examples are doomed to fail unless the lost competition that *caused* their respective deteriorations is first restored.

Importantly, to reverse this crisis, Congress and the Administration must work together to meaningfully reintroduce competitive market forces at each transaction point and industry segment along the entire live cattle and beef supply chains where manifestations of negative symptoms have occurred.

II. REVERSING CORE STRUCTURAL PROBLEMS IN THE BEEF SUPPLY CHAIN

The core structural problems in the beef supply chain are: 1) Concentration of the beef packing sector in terms of numbers, capacity, and geographical distribution; and 2) Globalization of input supply chains.

A. Reversing Beef Packer Concentration

As stated above, beef packer concentration manifested in the 1980s. Four multinational beef packers now control 85% of the fed cattle market (*i.e.*, the market for cattle raised exclusively for beef production),[6] and 80% of the boxed beef market.[7] Most of these packers' packing plants are in the High Plains region of the United States, where approximately 75% of U.S. beef packing capacity is centered.[8]

These multinational beef packers succeeded in achieving this ultra-high level of concentration in an era marked by lax enforcement of antitrust and fair competition laws. When they achieved their desired level of concentration, the multinational beef packers consolidated their control over both the supply side (live cattle input side) and demand side (beef and beef product output side) of the packing industry.

1. Supply-side effects of beef packer concentration

On the supply side, the multinational beef packers began minimizing their exposure to the negotiated cash market – the competitive price discovery market where negotiations occur for the sale of cattle fed for slaughter. The multinational beef packers began pushing their concentrated control and market power upstream in the live cattle supply chain by directly owning and feeding their own feeder cattle for slaughter or by gaining control over feeder cattle through newly introduced formula

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[6] Packers and Stockyards Division Annual Report 2019, USDA-AMS Packers and Stockyards Division, at 9, available at https://www.ams.usda.gov/sites/default/files/media/PSDAnnualReport2019.pdf.

[7] Inasmuch as the production of boxed beef begins with the slaughter of fed cattle, it is presumed that the four largest beef packers control a similar percentage of the boxed beef production as they do fed cattle slaughter.

[8] *See* Amended Complaint, United States of America, et al. v. JBS S.A. and National Beef Packing Company, Civil Action No. 08-CV-5992, U.S. District Court, Northern District of Illinois, Eastern Division, Nov. 7, 2008, at 6 (The U.S. Department of Justice states, "Approximately three-quarters of the fed cattle packing capacity in the United States is found in this region [the High Plains], along with close to 80% of all cattle on feedlots.").

contracts, which effectively gave them the same level of control over the cattle as did outright ownership.[9] Feeder cattle controlled by the multinationals more than 14 days before slaughter are considered "captive supplies" – cattle committed to or owned by the multinational beef packers that do not contribute to price discovery and that are unavailable for purchase by other packers.[10]

Other procurement methods, such as entering agreements whereby certain of the largest feedlots would sell exclusively to a single packer also minimized the multinational beef packers' exposure to the competitive price discovery market and increased their upstream control over the supply chain. For example, a Reuters news article reported that Hitch Enterprises, one of the top 15 largest feedlot companies in the U.S., had entered into an indefinite "hand-shake" agreement to sell "100%" of the cattle fed in its 160,000 one-time capacity feedlots to National Beef Packing Co., LLC.[11] Also, a Cattle Feeding Agreement between Tyson Fresh Meats, Inc. (Tyson) and Easterday Ranches (Easterday) was recently disclosed in the *Tyson Fresh Meats, Inc. v. Easterday Ranches, Inc.* lawsuit filed in a Washington state court. The three-year agreement appears to include that Easterday would provide feeding space for between 145,000 and 180,500 cattle that Easterday would procure for Tyson and that Tyson would reimburse Easterday for the cost of the cattle and cost of feeding the cattle.

Obviously, as more and more feeder cattle were captured by the multinational beef packers upstream in the live cattle supply chain, the availability of slaughter-ready cattle for smaller packers to purchase on a timely basis was reduced, creating incentives for them to exit the industry.

2. Demand-side effects of Packer Concentration

As discussed above, with control of 85% of fed cattle slaughter in the U.S. (*i.e.*, supply-side control), the same multinational beef packers control a comparable percentage of all beef derived from fed cattle in the beef distribution channels (*i.e.*, demand-side control). Evidence indicates the multinationals have agreements to distribute beef to retailers comparable to their agreements to procure captive supply cattle.[12] This factor alone is an obvious limitation on the ability of smaller packers to timely access the market. In addition, anecdotal information suggests the multinational beef packers have long term agreements for shelf space in grocery stores, and because they also provide other competing proteins, *i.e.*, pork and chicken, they can defend their exclusive supplier status with grocery stores that may desire to obtain beef from a smaller, local packer by insisting the grocery store accept all or nothing of the multinational beef packers' suite of protein offerings. The

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[9] *See*, e.g., C. Robert Taylor, Legal and Economic Issues with the Courts' Rulings in Pickett v. Tyson Fresh Meats, Inc., a Buyer Power Case 9 (The Am. Antitrust Inst., Working Paper No. 07-08, 2007), available at http://www.antitrustinstitute.org/files/AAI_Taylor_WP07-08_033020070955.pdf (referencing affidavit contained in the *Pickett v. Tyson* litigation record that reveals an acknowledgement by former IBP, now Tyson Fresh Meats, Inc. ("Tyson"), CEO Bob Peterson on how captive supply arrangements provide meatpackers with significant market leverage over cattle feeders, including that IBP (now Tyson) feeds "cattle through the process of formula pricing . . . "that is our way of feeding cattle.").

[10] *See* Captive Supply of Cattle and GIPSA's Reporting of Captive Supply, Grain Inspection, Packers & Stockyards Administration, January 11, 2002, at 2, available at https://www.gipsa.usda.gov/psp/publication/captive_supply/captivesupplyreport.pdf.

[11] Hitch in Cattle Deal with National Beef, REUTERS, Bob Burgdorfer, Jan. 21, 2010, available by request from author.

[12] *See*, e.g., Amended Complaint, United States of America, et al. v. JBS S.A. and National Beef Packing Company, Civil Action No. 08-CV-5992, U.S. District Court, Northern District of Illinois, Eastern Division, Nov. 7, 2008, at 9 (stating, "Many customers purchase their USDA-graded boxed beef from packers on a weekly basis, though some customers purchase under forward contracts or longer-term supply arrangements . . .").

Administration should investigate the veracity of this anecdotal information as this would further limit smaller packers' accessibility to existing market outlets, such as restaurants and grocery stores.

3. Reversing beef packer concentration

To reverse the high level of beef packer concentration in today's marketplace, competition must be reintroduced in both the supply and demand sides of the packing industry. On the supply side, all packers must be afforded the opportunity to compete for all slaughter-ready cattle. This means regulators must enjoin the multinational beef packers from controlling hordes of captive supply cattle each week. Only this will ensure timely access to slaughter-ready cattle for new and expanding packing plants.

On the demand side, the competition inhibiting practices that include long-term, exclusive agreements for sales, shelf space, and multiple proteins must be enjoined if new and expanding packers are to have a reasonable prospect for success when entering the beef marketplace.

4. Addressing the limited geographical distribution of beef packers and feedlots

As stated above, approximately 75% of beef packing capacity is centralized in the High Plains region of the United States, a region consisting only of Colorado, western Iowa, Nebraska, Kansas, Oklahoma, and Texas. In addition, about 80% of all feedlot cattle are also centralized in the High Plains.[13] The distribution of beef from the packers to the public, therefore, is largely a wagon wheel-like system with its principal hub centered over the High Plains.

Achieving resiliency in the beef supply chain demands a disaggregation of both packers and feedlots, but the same factors that caused smaller packers to exit the industry, *i.e.*, limited availability of both inputs and timely access to and availability of marketing outlets, have likewise caused the exodus of 74% of America's feedlots just since the mid-1990s.[14] In that time, small to mid-sized feedlots have disappeared while the largest of feedlots continually expand.[15] Thus, the centralization of America's feedlots within the High Plains region has been and continues to be solidified.

If smaller packers are to enter or expand in new geographical areas in today's marketplace, they will either need to connect somewhere along the spokes of the wagon wheel beef distribution system to access that existing system, or they will need to establish a distribution system of their own. For obvious reasons – principally that they would not be welcome – accessing the multinational beef distribution system would be problematic, which underscores the importance of eliminating all preexisting competitive inhibitors on the demand side of the market so new and expanding entrants can establish new and more expansive distribution channels to their markets.

Importantly, the establishment of new distribution channels for new and expanding packers is a prerequisite to the establishment of cattle feeding opportunities outside the High Plains region. The

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[13] *Id*., at 6.
[14] *See* Chart 7 in the Appendix depicting data from various year's Cattle on Feed Reports, e.g., Cattle on Feed, USDA-National Agricultural Statistics Service (NASS), Feb. 19, 2021, at 15, available at https://usda.library.cornell.edu/concern/publications/m326m174z?locale=en (the various year's reports show the number of cattle feedlots have declined from 112,109 in 1996 to 29,145 in 2020, a loss of nearly 83,000 feedlots during the past 25 years – a loss of 74% of the nation's feedlots).
[15] *See id.*

new and expanding packers must first have reliable outlet opportunities for beef before any new cattle feeding enterprises can make reasonable feasibility determinations.

B. Recommendations for Reversing Beef Packer Concentration

The current beef supply chain has been entrenched for several decades as has its attendant anticompetitive processes and practices. Today's system has likewise solidified its economic and political support despite irrefutable evidence that it is unsustainable and incapable of meeting America's food security needs. Consequently, both the Administration and Congress must resist the ongoing calls for maintaining the status quo and move decisively to rebuild what is now failing and build anew additional components for a more resilient and reliable beef supply system.

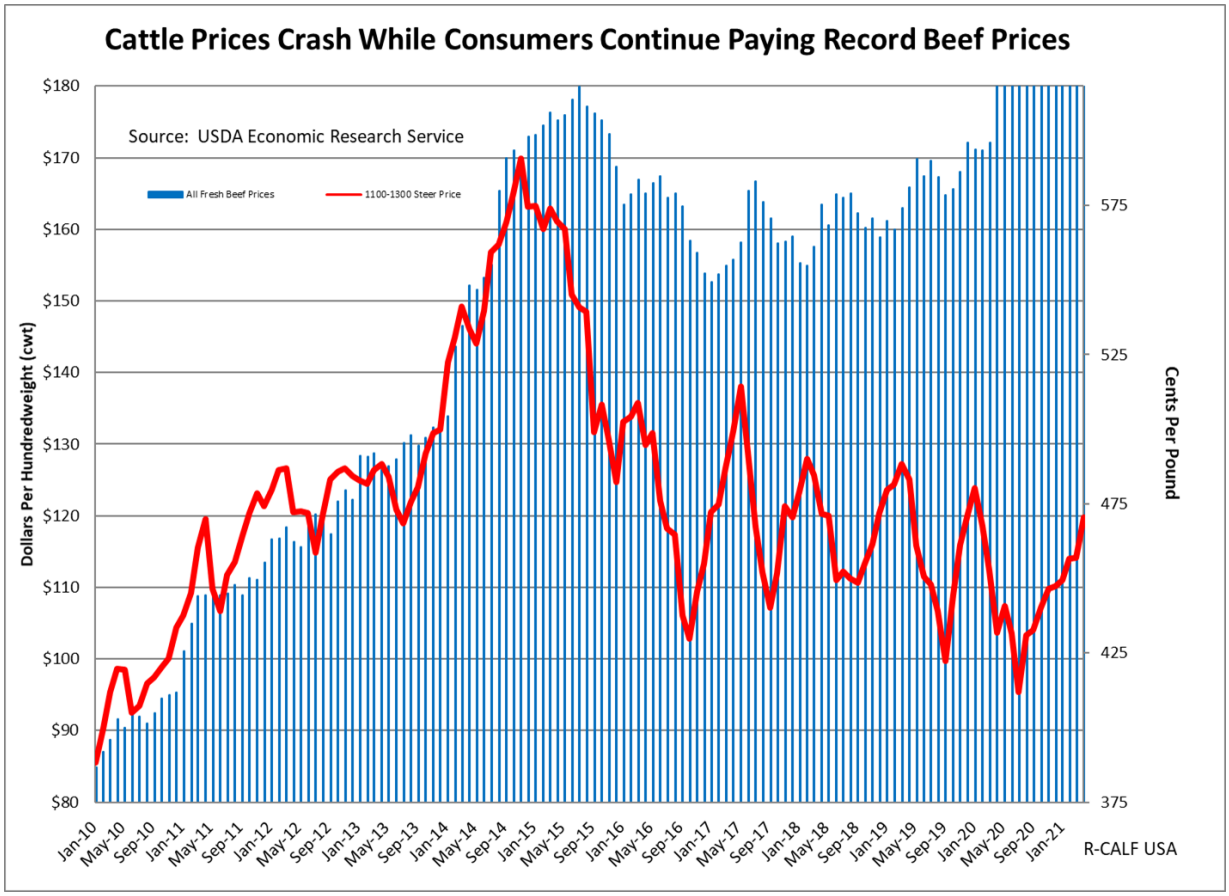
1. What the Administration should do

    a. On the supply side

        i. Reestablish competition as the preeminent regulatory goal.

First and foremost, the Administration must lay to rest the decades-long proclivity to rationalize and justify producer price reductions resulting from reduced competition based on its conventional economic modeling that has persistently and inaccurately predicted offsetting efficiencies, particularly consumer welfare offsets. As shown below in Chart 1, consumers have not benefitted from lower cattle prices for the past six years, and the inverse trajectories associated with increasing beef prices and decreasing cattle prices began long before the market shock in August 2019 – purportedly caused by a fire in one of the multinational's packing plants, the COVID-19 pandemic that began in March 2020, and the more recent cyberattack on beef packer JBS.

Chart 1



ii. Enjoin conduct causing injury to competition.

Second, invoking its competition-protecting authorities under the Packers & Stockyards Act (P&S Act), U.S. antitrust laws, and/or its other powers to strengthen America's family farm system of agriculture[16] and protect national food security, the Administration should declare that the U.S. cattle market is structurally void of competitive market forces needed to maintain any semblance of a synchronous relationship between producers' cattle prices and consumers' beef prices; that this absence of competition is causing irreparable harm to both consumers and producers (*i.e.*, it constitutes a competitive injury); and that this irreparable harm/competitive injury is caused by the multinationals' concerted efforts to supplant competition with their own control over the supply chain through direct ownership and/or contractual control of feeder cattle upstream in the supply chain.

Once these declarations are made, the Administration should exercise its authorities to enjoin the multinationals' competitive injury-causing conduct.

[16] *See*, e.g., 7 U.S.C. 2204 et seq.

iii. Update and clarify farmer/rancher protections under the P&S Act.

R-CALF USA welcomes USDA's June 11, 2021, announcement that it is taking three actions related to rulemakings, including a rule to provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices. A second rule was announced to address the poultry grower tournament system rule, and a third rule to clarify that parties do not need to demonstrate harm to competition to bring an action under section 202 (a) and 202 (b) of the P&S Act. R-CALF USA is further encouraged by the U.S. Department of Justice's statement on the same day welcoming the news that the USDA is moving forward to update the P&S Act and committing to work with USDA to protect America's famers and consumers.

iv. Conduct a referendum of the beef checkoff program.

It is important to note that America's cattle farmers and ranchers unwittingly contributed to the derailment of the very rules the USDA now states it will repropose. They did so with their mandatory financial extracts required under the national beef checkoff program, which helped fund the very organizations that lobbied successfully to block the rules USDA had originally proposed beginning in 2010. The Administration should, on its own, call for a referendum of the beef checkoff program to empower cattle producers to choose whether to continue funding, either directly or indirectly, the organizations that represent the multinational beef packers' interests.

v. Improve transparency in cattle markets.

After the forces of competition are reintroduced to the live cattle side of the beef supply chain through the above recommendations, USDA should begin rulemaking to bring complete and total transparency into the marketplace by reversing what is known as the 3/70/20 confidentiality guidelines that has effectively prevented cattle-price disclosures in regions lacking competition. In addition, to achieve complete and total transparency in all cattle sale transactions, USDA should require full public disclosure of the details of all cattle procurement methods, including non-fixed price contracts (e.g., formula, cost-plus, stop-loss, end-of-year premiums, and related contracts), at the time the agreements are executed (note that we strongly recommend Congress prohibit non-fixed price contracts below, and we encourage the Administration to do the same within our recommendation above).

vi. Restore grazing opportunities on federally managed lands.

A more resilient and reliable beef supply chain will necessarily require more live cattle production in more widely dispersed geographic locations. To accomplish this the Administration must reverse longstanding (and continually increasing) limitations on ranchers' grazing and water rights on federally managed lands. R-CALF USA encourages the USDA and the U.S. Department of Interior to work together to expand grazing opportunities on federally managed lands for both current and aspiring ranchers to effectively disaggregate more livestock production geographically, which will help support more localized beef packing plants.

vii. Close legal loopholes that impede P&S Act enforcement.

Another important initiative, which depending on the nature of the recently announced rulemakings may already be included, is to clarify that packers engaged in unfair or deceptive conduct that harms

cattle producers cannot claim "increased efficiencies" or a "business justification" as a defense of their actions.

viii. Reestablish the risk management function of the cattle futures market.

The Chicago Mercantile Exchange (CME) has lost credibility with cattle feeders, background operators, and cow-calf producers as a risk management option due to extreme daily volatility and the influence of algorithmic trading. R-CALF USA strongly recommends that the Administration, through the Commodity Futures Trading Commission (CFTC), institute changes that require an asset-based system with delivery and based on an industry standard system established by industry professionals. Also, we recommend that trades be tied to actual U.S. beef production and domestic supply fundamentals for both live and feeder cattle trading systems.

b. On the demand side

i. Remove regulatory entry barriers for new and expanding packing plants.

Once the foregoing recommendations are implemented, the Administration should begin revising its food safety regulations governing beef packer certifications to make them scalable for plants of different designs and sizes. Based largely on anecdotal information, R-CALF USA understands that current regulations governing beef packing plant certifications and safety requirements are designed for the largest of packing plants, but are overly cumbersome, prescriptive, and costly for smaller plants as well as inapplicable in some respects. R-CALF USA believes the rewriting of scalable rules is an essential prerequisite to actions and programs designed to encourage the construction of new packing plants and expansion of existing smaller plants.

ii. Support direct farmer-to-consumer beef sales.

In addition to removing regulatory barriers to entry for new and expanding beef packing plants, the Administration should continue exploring new lending and marketing programs to assist aspiring cattle farmers and ranchers who wish to sell beef derived from their cattle directly to consumers. R-CALF USA appreciates the Farmers Market Promotion Program already started to achieve this objective.

2. What Congress should do

a. On the supply side

The past two decades have revealed that Administration-initiated policy reforms can be walked-back in whole or in part by future Administrations. It is therefore necessary for Congress to work in concert with the Administration to codify needed reforms in statute, thereby ensuring their permanence.

Certain members of Congress have introduced key legislative reforms to protect and preserve competition in U.S. livestock markets beginning since at least the early 2000s and continuing through today. Today, had these reforms been implemented, U.S. producers and consumers would not now be facing this current crisis caused by the very loss of competition these unenacted reforms were designed to prevent.

But those same previously unenacted reforms are what Congress now needs to pass into law to restore, preserve, and protect competition, which are the only means with which to ensure a resilient and reliable cattle and beef supply chain for both producers and consumers. Those essential reforms include:

- Spot Market Protection Bill (S.949 in current Congress) to require packers to purchase at least 50% of their weekly cattle procurement needs from the competitive cash market.

- Prohibition on Packers Owning, Feeding, or Controlling Livestock (S.2141 in 112th Congress) to prevent packers from reducing and/or eliminating competition for slaughter-ready cattle.

- Limitations on Use of Forward Contracts (S.1017 in 110th Congress) to prohibit inherently non-competitive forward contracts that do not contain a firm base price that can be equated to a fixed dollar amount when the contract is executed.

Once the foregoing three structural reforms are implemented, Congress should work with the Administration to bolster effective enforcement of both current statutes and the reforms. This would include granting USDA subpoena power under the P&S Act and allowing livestock producers to recover attorney fees after successfully enforcing provisions of the P&S Act through private litigation.

b. On the demand side

After Congress implements the necessary supply-side reforms and competition is reintroduced in the domestic cattle market, it should enact legislation to incentivize the establishment of new packing plants and expansion of existing packing plants, both state-inspected and federally inspected. Examples of legislation to accomplish this include H.R. 2859, the Prime Act, and H.R. 7162, the Expanding Markets for State-inspected Meat Processors Act of 2020.

Simultaneously, Congress will need to address the problem of market access for new and expanded packing plants to ensure they are not shut out of retail markets by the multinational beef packers' use of exclusive long-term agreements for retail sales and retail shelf space or all-or-nothing type agreements for multiple proteins.

C. Reversing Globalization of Input Supply Chains

Failed trade policies that have long encouraged lower-cost, undifferentiated imports of both live cattle and beef – which thus are direct and indistinguishable substitutes for domestic-produced cattle and beef, are a major cause of both the domestic cattle industry's underproduction and contraction.

Importantly, the determining factor regarding whether a consumer chooses to purchase domestic-produced beef or its direct substitute, imported beef, is not based either on competition or consumer choice. Indeed, the domestic product is indistinguishable from imported product. Therefore, the decision to purchase imported versus domestic beef is vested exclusively with the beef purveyor – be that the packer or the retailer, who unilaterally decides from which country's supply chain the cattle and beef will be sourced and subsequently offered to the consumer.

As a result, consumers are deprived even of the opportunity to choose to support the domestic live cattle supply chain and the rural economies it supports because they cannot distinguish between foreign-produced or domestic-produced beef at the grocery store where they make their purchasing decisions.

Consequently, the first and most important R-CALF USA recommendation to the Administration and Congress for reversing globalization of cattle and beef supply chains - as a critical strategy for transforming the food system – is to empower consumers to begin making purchasing choices between foreign beef and domestic beef. This entails reinserting competitive demand forces in the consumers' beef market, which will require all beef sold in America to be conspicuously labeled as to its country of origin that specifically denotes where the animal from which the beef was derived was born, raised, and harvested.

1. Supply-side effects of globalized beef and cattle supply chains

Due to the cattle industry's inability to respond quickly to changes in supply – a direct function of cattle having the longest biological cycle of any farmed animal[17] and the perishable nature of both fed cattle and beef itself – imports of both beef and cattle effectively increase supplies in the domestic market (and are direct, undifferentiated substitutes for domestic production) and have a lasting impact on domestic herd size, production potential, and economic opportunities for participants in the domestic live cattle supply chain (*i.e.*, for independent cattle farmers and ranchers).

Import penetration – the percentage of imports that comprise America's total available beef supply – has doubled during the past few decades as depicted in Chart 2 below. R-CALF USA's analysis of USDA data shows that imports accounted for about 10% of total beef supplies in the early 1980s. Today we estimate import penetration to eb above 20%. A 2012 USDA study found that during the decade 2000-10, "imports of meat into the United States and meat produced in the United States from foreign livestock have accounted for roughly 18 percent [] of US beef [] supplies."[18] Interestingly, the USDA's percentage of 18% was 2% higher than R-CALF USA's 16% estimate for that decade, indicating that R-CALF USA's calculations understate the actual percentage of imports that now comprise America's beef supply.[19]

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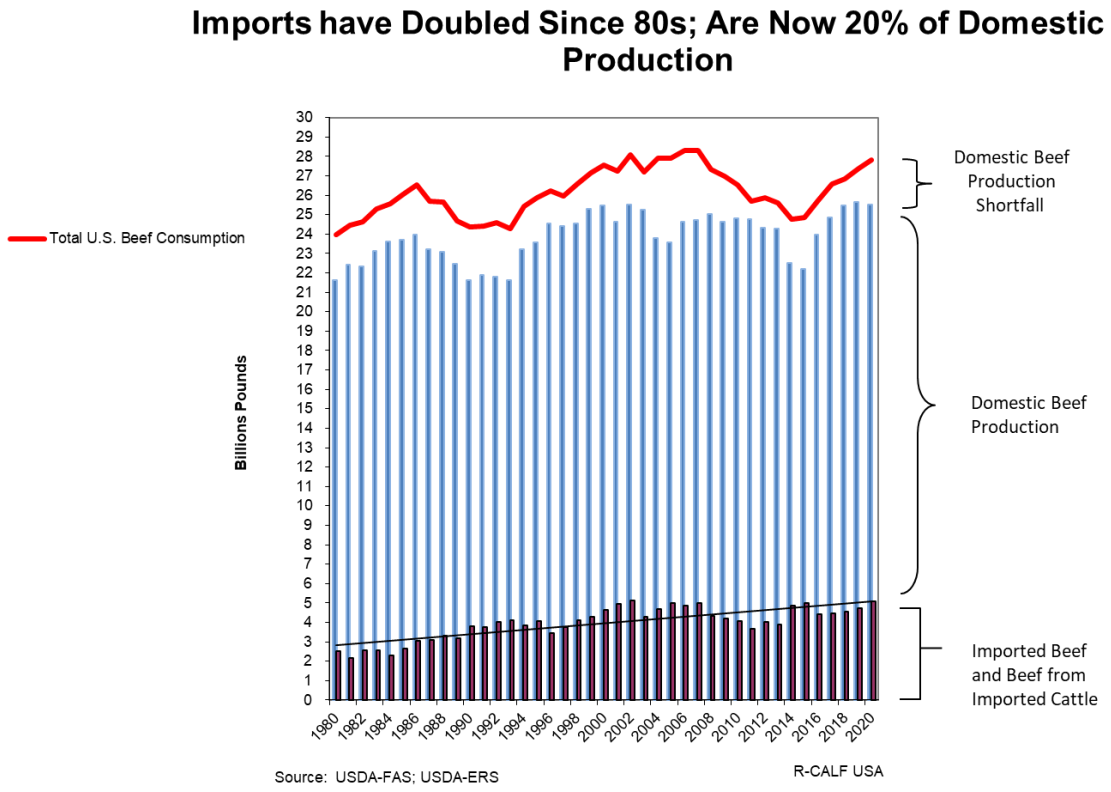
[17] Economic Models of Cattle Prices, How USDA Can Act to Improve Models to Explain Cattle Prices, U.S. Government Accountability Office (formally the General Accounting Office), (GAO-020246, March 2002), at 30.
[18] US red meat production from foreign-born animals, Michael McConnell et al., Agriculture Sciences, Vol. 3, No. 2, 201-207 (2012), at 207, available at https://file.scirp.org/pdf/AS20120200006_23587394.pdf.
[19] The percentage difference between USDA's study and R-CALF USA's analysis may be due to the two types of import measurement methodologies: on a carcass weight, 1,000-pound basis versus actual pounds of imports and production.

Chart 2



a. Harm to the domestic supply chain

That undifferentiated beef imports from around the world and imported cattle from Canada and Mexico function as substitutes for U.S. cattle and beef and cause the exodus of U.S. beef cattle operations, shrinkage of the U.S. cattle herd, and elimination of opportunities for aspiring cattle farmers and ranchers was evidenced in the 2018 U.S. International Trade Commission (USITC) investigation into the United States-Mexico-Canada Agreement.

During the investigation, the North American Meat Institute (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]."[20]

The National Cattlemen's Beef Association 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."[21]

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[20] United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors, November 16, 2018, Investigation No. TPA-105-003, United States International Trade Commission, Hearing Transcript, at 499-500.
[21] *Id*., at 504.

Data show the number of beef cattle operations in the states of Washington, Oregon and Idaho (the Pacific Northwest or Northwest), declined from 38,500 beef cattle farms in 1994, the year NAFTA was implemented,[22] to just 28,992 beef cattle farms by 2017, the latest available census data.[23] This represents a 25% decline in the number of Pacific Northwest beef cattle farms and ranches under NAFTA.

Data also show the total number of beef cows in those same states declined from 1.46 million head in 1994[24] to only 1.22 million head in 2021[25], representing a 16% decline in the number of beef cows in the states of Washington, Oregon, and Idaho under NAFTA.

Thus, while the U.S. was importing 282,000 head of both fat cattle and feeder cattle from Canada and/or Mexico into the Pacific Northwest (this according to the NAMI testimony cited above), and producing undifferentiated beef from those imported cattle, the domestic beef cow herd in the Pacific Northwest has shrunk by about 240,000 head of cattle and over 21,000 beef cattle farms and ranches 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 increased imports of cattle from which undifferentiated beef is produced has substantively harmed the U.S. cattle supply chain by displacing U.S. cattle operations and U.S. cattle. While these empirical data provide specific evidence for the Pacific Northwest, nationwide evidence of the shrinking numbers of cattle farms and ranches and the declining number of cattle in the U.S. herd provides every indication that this same import-related harm is being exacted in every state.

This outcome of current trade policy – policy that facilitates unlimited imports of beef and cattle – is opposite of what needs to occur to transform the U.S. food system by strengthening domestic food supply chains. Only by making meaningful reforms to the United States' failed trade policies can a positive transformation be expected.

b. Financial harm to cattle producers

The USDA has continually found correlations between increased imports and economic harm to America's cattle producers. For example, in 2013 the USDA Animal and Plant Health Inspection Service (APHIS) used a partial equilibrium model to estimate the impact of additional beef imports from Brazil.[26] APHIS estimated that an increase of 40,000 metric tons (MT) of additional beef would result in a loss to domestic producers of $143 million.[27]

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[22] *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.
[23] *See* Table 12, Cattle and Calves – Inventory, 2017 and 2012, State Level Data, available for WA, OR, and ID, at https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Census_by_State/index.php.
[24] *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.
[25] *See* Cattle, USDA-NASS, January 2021, at 6, available at https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/n009ww19g/9880wj45t/catl0121.pdf.
[26] 78 Fed. Reg., Dec. 23, 2013, at 77,375.
[27] *Id*., col. 2 (while the proposed rule states producer losses would be $165 million, the accompanying regulatory impact analysis clarifies that $143 million would be lost by cattle producers and the remaining losses would be borne by other commodity sectors, particularly the hog sector).

However, APHIS's analysis assumed that about two-thirds of the 40,000 MT of imported Brazilian beef would simply displace beef that would otherwise be imported from other countries.[28] Thus, the $143 million in losses to cattle producers was actually calculated based on a net increase of about one-third of the 40,000 MT of imported beef scenario, or about 13,300 MT, the equivalent of about 29.3 million pounds. Using the relationship that a 29.3-million-pound net increase in beef imports will cause U.S. cattle producers to lose $143 million, it can be roughly estimated that for each 1-million-pound increase to the trade deficit, independent U.S. cattle producers will lose $4.88 million. As shown in Chart 3 below, the 2020 volume base trade deficit in cattle and beef was 1.48 billion pounds, representing an estimated 2020 loss to U.S. cattle producers of about $7.2 billion.

Earlier, in 2007 APHIS conducted an analysis to determine the economic impact of allowing the importation of cattle, including cull cows and processing beef from Canada following the BSE restrictions that, *inter alia*, closed the border to live cattle imports from early 2003 through mid-2005. Under APHIS' chosen scenario, scenario 3 of the four it considered,[29] APHIS determined U.S. cow/calf producers would experience a loss of over $165.6 million annually if the U.S. increased cull cow imports by only 1.76% and processing beef imports by only 4.14%.[30] Combining the increases of both cull cows and processing beef, APHIS determined these additional imports would represent an additional 330.8 million pounds of processing beef.[31] In other words, APHIS found that cattle producers would lose $165.6 million if the combined imports of cull cattle and processing beef increased by 330.8 million pounds, which represents a $100 million loss to cattle producers for each 200 million pounds of processing beef.

This finding is revealing because the meatpacking lobby's decades-long mantra is that the importation of large quantities of this lower quality processing beef does not harm domestic producers. In fact, they say, domestic producers benefit from imports of processing beef because "[w]ithout [processing] beef imports we could not meet domestic demand for commercial ground beef and would likely lose those consumers to other lesser-value proteins.[32] But APHIS' analysis shows whatever the benefits from these imports, they are at the domestic cattle producers' financial expense (APHIS found domestic cull cow prices would decrease by $4.61 per cwt from the 330.8 million pound increase in processing beef)[33] and, consequently, they effectively displace the domestic cattle producers' opportunities to expand their herds and otherwise strengthen the domestic supply chain.

APHIS's finding is also significant because in 2020, for example, the U.S. imported over 1 billion pounds of processing beef.[34] Applying the foregoing calculation of a $100 million loss to cattle producers for each 200 million pounds of imported processing beef, these 2020 processing beef imports resulted in an estimated loss to the domestic live cattle supply chain of over half a billion dollars, not to mention that they have stunted growth and opportunities within the domestic supply chain.

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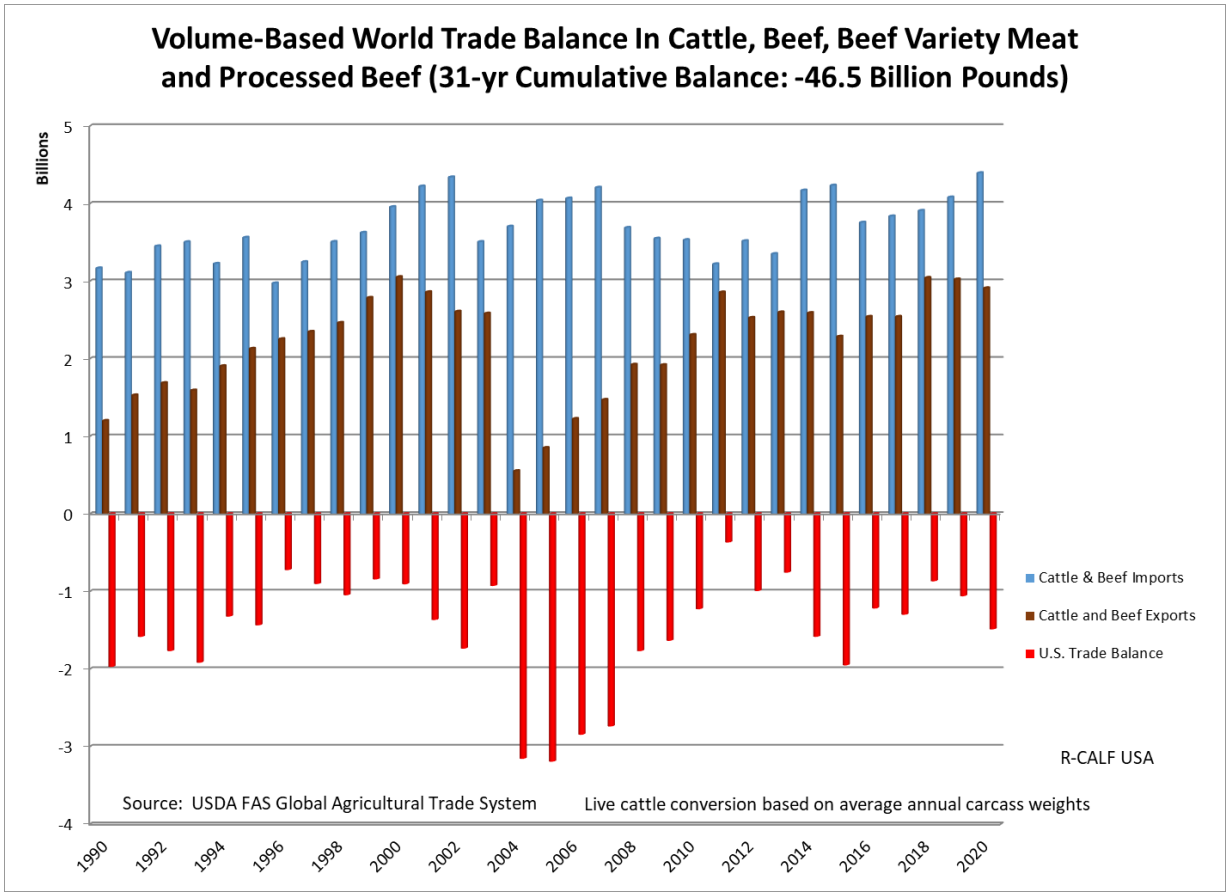
[28] *Id*., col. 1.
[29] *See* 72 Fed. Reg., at 53,373.
[30] *See id*., at 53,369, 371, Tables C, E, respectively.
[31] *See id*., at 53,372.
[32] Comments of the National Cattlemen's Beef Association regarding Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement to the Office of the U.S. Trade Representative, USTR–2017–0006, June 11, 2017, at 3.
[33] 72 Fed. Reg., at 53,372.
[34] USDA FAS Global Agricultural Trade System data, HS 020230 - Bovine Boneless Frozen.

c. Accumulation of persistent trade deficits in trade of cattle and beef

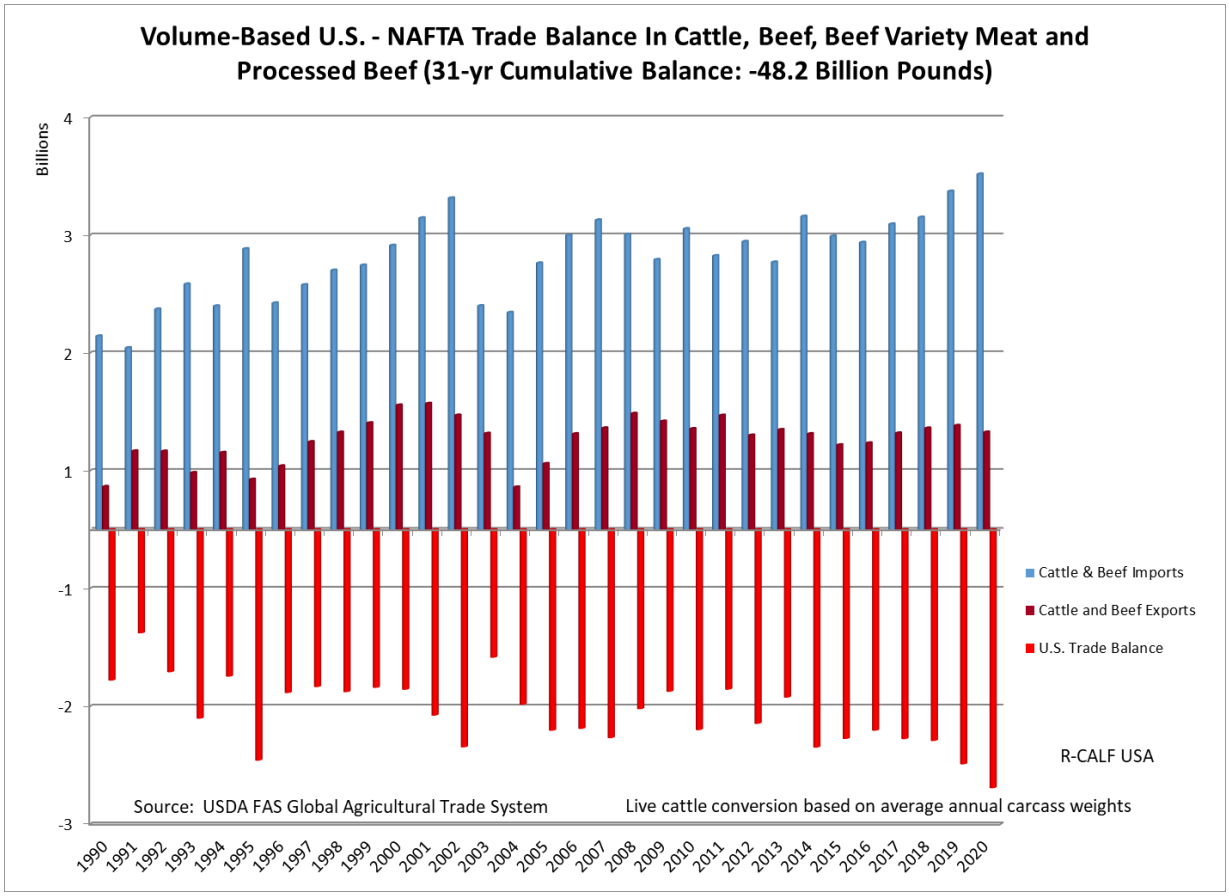
The United States live cattle supply chain has been burdened by a persistent trade deficit in the trade of cattle and beef for decades. As shown in Chart 3 below, since 1990, the average annual volume-based trade deficit has been about 1.5 billion pounds per year, with a cumulative deficit since that time of over 46 billion pounds.

Chart 3



Alarmingly, all of that deficit and more can be attributed to the trade in cattle and beef with Canada and Mexico alone. As shown in Chart 4 below, the cumulative trade deficit with Canada and Mexico since 1990 is over 48 billion pounds and averages about 1.6 billion pounds per year. This means that, at best, the United States beef and cattle trade with the entire world has only served to minimize, but has not overcome, the horrendous cattle and beef trade deficit with Canada and Mexico.

Chart 4



Trade deficits weaken domestic supply chains, and the U.S. live cattle supply chain continues to be severely weakened by persistent trade deficits that relegate the United States to a beef deficit nation – unable to produce sufficient volumes of beef from cattle born, raised, and harvested in the United States to satisfy domestic consumption.

The meatpacking lobby has hoodwinked past Administrations and Congresses into believing this horrendous and persistent cattle and beef trade deficit does not matter because, they say, "[W]e export higher-value cuts like tongues and other offals while we import grass-finished beef trimmings to mix with our fattier trimmings to meet U.S. ground beef demand in commercial markets."[35]

But that is simply not true. According to data contained in the USDA Foreign Agricultural Service's Global Agricultural Trade System (GATS), the U.S. imported over 130 million pounds of tongues and offal in 2020 alone. Also that year, the U.S. imported nearly 400 million pounds of fresh/chilled carcasses and bone-in cuts and prepared beef, which further disproves their baseless assertions.

The fact is that unless the U.S. takes steps to eliminate the horrendous and persistent trade deficit in cattle and beef, strengthening and rebuilding the domestic beef supply chain will remain untenable.

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[35] Comments of the National Cattlemen's Beef Association regarding Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement to the Office of the U.S. Trade Representative, USTR–2017–0006, June 11, 2017, at 3.

d. Imposition of unnecessary production costs and conditions on cattle producers

As stated more fully below, globalization has caused the United States to relax longstanding import restrictions for countries that are either unwilling or unable to deploy necessary recourses to eradicate highly contagious livestock diseases within their borders. As a result, the U.S. cattle herd's risk of exposure to such diseases is greater today than before the outset of the globalization of beef and cattle supply chains. To mitigate this risk, or perhaps more accurately, to better manage foreign animal disease outbreaks in the U.S. now that there is a heightened probability of their introduction, the USDA has imposed new conditions on U.S. cattle producers and is attempting to impose even more, and more costly conditions in the near future.

For example, in the mid-2000s, the USDA attempted to impose a National Animal Identification System (NAIS) requirement on all cattle in the United States following the USDA's relaxation of BSE restrictions on Canadian live cattle imports. In 2013, after encountering a headwind of resistance from U.S. cattle producers, the USDA implemented a scaled-back version of NAIS, requiring all adult cattle moved interstate to be identified with an official government identification device.[36] Several identification devices were approved giving producers some flexibility in identifying their cattle according to what best fit their individual cattle operations. But, in 2019 the USDA issued a guidance document that would have eliminated producer choice as only the costliest form of identification – radio frequency identification (RFID) eartags – would be allowed beginning January 1, 2023. R-CALF USA and several ranchers filed a lawsuit and the USDA withdrew its mandate.[37] However, the USDA has made it clear publicly that it intends to proceed with its one-size-fits-all RFID mandate through a rulemaking.[38]

Eliminating producer choices, imposing mandates that increase producers' production costs, and attempting to control producers' cattle through a centralized government mandate is contrary to what is needed to strengthen the domestic live cattle supply chain and to build a resilient food system. What is needed is to capitalize on the individual's freedom to manage their individual cattle operations according to their best judgement and with minimal government interference and control.

2. Demand-side effects of globalized beef and cattle supply chains

a. Creation of unnecessary and avoidable food safety and herd health risks

The globalization of beef and cattle input supply chains was ushered in following the 1994 Uruguay Round Agreement. In 1995, pursuant to that agreement, the USDA embarked on a systematic course to facilitate the importation of more and more imported beef and cattle. The first step in this systematic process was to lower United States' food safety standards to allow foreign countries that did not meet the higher level of food safety requirements in the United States to nevertheless export beef to the U.S. market. The USDA emphatically stated:

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[36] *See* Traceability for Livestock Moving Interstate, Final Rule, 78 Fed. Reg., at 2,040-75.
[37] *See*, e.g., APHIS Statement on Animal Disease Traceability, undated, available at https://www.aphis.usda.gov/publications/animal_health/traceability.pdf.
[38] *See* USDA Announces Intent to Pursue Rulemaking on Radio Frequency Identification (RFID) Use in Animal Disease Traceability, March 23, 2021, available at https://www.aphis.usda.gov/aphis/newsroom/news/sa_by_date/sa-2021/rfid-traceability-rulemaking (stating that USDA "believe[s] that RFID tags will provide the cattle industry with the best protection against the rapid spread of animal diseases").

> 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.[39]

Next, and beginning in 1997, the USDA took another major step to facilitate more imports by relaxing its longstanding disease-prevention policy of prohibiting imports from countries that had not yet made the necessary investment to eradicate dangerous livestock diseases within their borders. The USDA weakened its policy by adopting what it called "regionalization," which allows regions within a country to continue exporting livestock and/or meat to the U.S. even if the exporting country has ongoing disease problems.

As justification for this significant relaxation of U.S. health and safety standards, the USDA stated:

> We consider this policy [the relaxed regionalization policy] to be consistent with and to meet the requirements of international trade agreements entered into by the United States.[40]

Then in 1999, the USDA further relaxed U.S. import restrictions by ceasing its longstanding practice of conducting monthly inspections at foreign meatpacking plants. Instead, the U.S. began conducting only periodic inspections. The USDA justified this relaxation by explaining that under the United States' WTO obligations:

> FSIS [Food Safety and Inspection Service], acting as a regulatory agency of the United States, may not impose import requirements on inspection systems or establishments in an exporting country that are more stringent than those applied domestically.[41]

Then, in 2005, relying not on the U.S. Centers for Disease Control and Prevention (CDC) expertise regarding how best to protect U.S. citizens from zoonotic diseases, the USDA instead deferred to the WTO to establish U.S. disease prevention policies. The USDA justified its relaxation of its longstanding ban on imports from countries experiencing outbreaks of bovine spongiform encephalopathy (BSE or mad cow disease), which can be contracted by humans and is always fatal. The USDA relaxed its standards even while Canada continued to experience unexplained outbreaks of BSE, and did so on the basis that, "[T]he OIE Code has never recommended banning the trade of cattle or their products even from countries with high BSE risk."[42]

The foregoing four examples show how, following the Uruguay Round Agreement, the USDA has systematically relaxed health and safety standards for imported beef and cattle. As a result, U.S. consumers are subjected to foreign beef that was not subject to food safety systems at least equal to that of the United States, foreign beef from foreign plants that are unlikely to be overseen by a U.S. FSIS inspector for many months, foreign beef from countries that still harbor pernicious livestock diseases, including zoonotic diseases.

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[39] 60 Fed. Reg. at 38,688.
[40] 62 Fed. Reg. at 56,027.
[41] 69 Fed. Reg. at 51,195.
[42] APHIS Fact Sheet, Response to R-CALF, USDA-APHIS, Feb. 2, 2005.

These factors expose U.S. consumers and the U.S. livestock herd to unnecessary and avoidable food safety and herd health risks, which inherently undermines the United States' effort to achieve resiliency in the domestic beef and cattle supply chains.

b. Harm to the domestic economy

Relying upon substantial volumes of undifferentiated imports (as stated above, import penetration has increased to 20%) to satisfy both domestic beef demand and export beef demand (particularly beef derived from Canadian fat cattle imported for immediate slaughter), reduces substantially the opportunity to grow the domestic live cattle supply chain and attract aspiring cattle farmers and ranchers. But equally harmful, it deprives rural economies of such opportunities as well.

John VanSickle, Ph.D., Food & Resource Economics Department, University of Florida, was critical of USDA's economic modeling when the agency proposed to reopen the U.S. market to Canadian cattle and beef in the mid-2000s following Canada's detection of BSE in its cattle herd. Specifically, VanSickle stated that USDA's economic analysis ignores impacts on associated industries and on employment. VanSickle modeled the impact of USDA's proposal to increase the volume of Canadian beef and cattle imports into the United States using Implan multipliers that suggested "that a decline in $1 of sales for the cattle ranching and farming sector will have a $3.87 impact on total output in the economy."[43] The VanSickle study also indicated that "every million dollars in sales of cattle or beef is associated with 43.5 jobs generated in the economy."[44]

Applying these rule-of-thumb conclusions reveals that the $6 billion decline in the 5-year average cash receipts from the sale of cattle and calves, from $71 billion (2011 through 2015) to $65 billion (2016 through 2020),[45] reduced the total output in the economy by $23 billion and deprived the U.S. of 261,000 jobs in each of the past five years.

VanSickle's economic modeling specifically addressed the relationships between increased imports of both beef and cattle and negative economic output and job losses. For example, he found that allowing the importation of an additional 1.3 million cattle (note that live cattle imports increased by over 918,000 head from 2004 to 2006[46]) would result in a total (negative) economic output impact on the U.S. economy of over $2 billion and a loss of 27,000 jobs, and an additional 84,000 tons of beef imports would negatively impact economic output by $1.29 billion and cause a loss of over 11,000 jobs.

The introduction of multiplier effects in the discussion of economic impacts from increased import penetration makes clear that reforming cattle and beef trade policy will have a significantly positive impact on the U.S. economy. It also makes clear that choosing to maintain the status quo with respect to today's globalized cattle and beef supply chains will continue to harm the U.S. economy.

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[43] Economic Analysis of Proposed Rule for Bovine Spongiform Encephalopathy: Minimal Risk Regions and Importation of Commodities (APHIS Docket No. 03-080-1), John J.VanSickle, Florida State University, available at http://r-calfusa.com/wp-content/uploads/2013/04/151103-Expert-Economic-Evaluation-John-VanSickle.pdf.
[44] *Id.*
[45] *See* Annual cash receipts by commodity, U.S. and States, 2008-2021F, USDA-ERS, available at https://data.ers.usda.gov/reports.aspx?ID=17845.
[46] *See* Cattle: Annual and cumulative year-to-date U.S. trade (head), USDA-ERS, available at https://www.ers.usda.gov/data-products/livestock-and-meat-international-trade-data/.

D. Recommendations for Reversing Globalization of the Beef Supply Chain

1. What the Administration should do

First and foremost, the Administration must stop kowtowing to the meatpacking lobby and other corporate agribusiness self-interests and begin carrying out Congress' mandate to "strengthen the family farm system" of agriculture, including to develop solutions to problems faced by "small- and moderate-sized family farming operations."[47]

To accomplish this in part, the Administration must abandon completely its economic models that for decades have rationalized direct financial losses to America's family farm and ranch cattle operations based on erroneous, theoretical consumer welfare benefits.[48]

a. Rewrite 1989 Foreign Products Rule.

The Administration should rewrite its 1989 Foreign Products Rule, 9 C.F.R. § 327.18(a), to properly implement Section 620 of the Federal Meat Inspection Act (FMIA). Although the FMIA required USDA to comply with the labeling requirements of the Tariff Act of 1930, 19 U.S.C. § 1304(a), the 1989 Foreign Products Rule failed to do so. Instead, the USDA deemed all imported beef to be domestic beef after it entered U.S. commerce. The USDA made clear that "[o]nce product offered for entry has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been 'entered' into the United States, and therefore, is the regulatory equivalent of domestic product."[49] Thus, USDA-FSIS regulations regarding the labeling of imported beef are in direct conflict with the labeling requirements of the Tariff Act of 1930. The Foreign Products Rule should be rewritten to require foreign labels on imported beef to be retained through retail sale.

b. Require all federal food programs to source only beef born, raised, and harvested in the United States.

The Administration should first harmonize among all federal beef procurement agencies a new standard for domestic beef to define domestic beef as beef exclusively derived from animals exclusively born, raised, and harvested in the United States and reserve any "Product of the United States" declaration only for beef exclusively derived from animals exclusively born, raised, and harvested in the United States. Second, the Administration should require all federal beef procurement agencies to source only beef born, raised, and harvested in the United States for all federal food programs including, of course, the National School Lunch Program.

c. Reform the Beef Checkoff Program to prohibit mislabeling of beef.

Reform the national beef checkoff program to prohibit the domestic and international use of the "Product of USA" label or its variant, or any "Product of USA" claim or its variant in advertisements

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[47] 7 U.S.C. 2204 et seq.
[48] *See*, e.g., 72 Fed. Reg., at 53,371, Table E (finding that a $165 million financial loss to cattle producers was justified by a $287 million consumer welfare gain); *see also*, e.g., 80 Fed. Reg., at 37,952 (USDA approves additional beef imports from Argentina even though its modeling found they would cause domestic beef production to decline and cattle producers would lose $107 million, which USDA believes is offset by a consumer welfare benefit of $191 million)
[49] 54 Fed. Reg., at 41,045, (October 5, 1989).

or promotions for any beef product not exclusively derived from animals exclusively born, raised, and harvested in the United States.

d. Reinstate identical U.S. food safety standards for imported beef.

Reverse USDA's "Products From Foreign Countries; Eligibility for Import Into the United States" rule, 9 CFR 327.2 and 327.4, that weakened the United States' longstanding requirement that beef exporting countries maintain meat safety inspection systems that are "at least equal to" the United States meat safety inspection system.[50]

e. Reverse USDA's regionalization policy.

Reverse APHIS's guidance Notice: "APHIS Policy Regarding Importation of Animals and Animal Products," that weakened U.S. protections against the introduction of foreign animal diseases and pests by carving out sections of disease-affected countries where risk is believed to be somewhat lower than that of the entire country.[51] In association with this request, R-CALF USA seeks the reversal of APHIS' final rules allowing the importation of fresh and chilled beef from all countries not free of FMD, including where vaccination is practiced. This would include, but is not limited to, Brazil and Namibia,

f. Reinstate monthly inspections at foreign beef packing plants.

Reverse USDA's "Frequency of Foreign Inspection System Supervisory Visits to Certified Foreign Establishments," 9 CFR 327.2, that deleted the longstanding requirement that USDA conduct supervisory visits at foreign beef packing plants "not less frequent[ly] than one such visit per month" and replaced it with a much weaker requirement of conducting only "periodic supervisory visits."[52]

g. Reverse USDA's elimination of import restrictions for countries with BSE.

Reverse USDA's Final Rules: "Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived From Bovines," 9 CFR Parts 93, 94, 95 and 96, and "Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Identification of Ruminants, and Processing and Importation of Commodities," 9 CFR Parts 93, 94, and 95, that abandoned longstanding import restrictions for the importation of both cattle and beef from countries with outbreaks of BSE or mad cow disease, thereby increasing the risk of introducing BSE (classical BSE) into the United States.[53]

h. Empower cattle producers to combat the horrendous trade deficit with COOL.

Demand for cattle born and raised in the U.S. is not in the hands of consumers, who have not been afforded labels denoting the origins of beef they purchase in the grocery store since 2015. Instead, demand for USA-born and -raised cattle is controlled by beef packers, who also control slaughter of foreign born and foreign-born and -raised cattle and imports of foreign beef. The packers, therefore,

[50] 60 Fed. Reg., at 38,667-668.
[51] 62 Fed. Reg., at 56,027-033.
[52] 69 Fed. Reg., at 51,194-196.
[53] 72 Fed. Reg., at 53,314-379; and 73 Fed. Reg., at 3,379-385.

are free to choose when or if to satisfy consumer beef demand with USA-born and -raised cattle, and are free to manipulate whatever balance between imports and exports they choose.

As a result, producers and consumers are wholly without the means to address the persistent trade deficit in cattle and beef by working to achieve a better balance between imports and exports. Indeed, the control is vested with packers.

The Administration can remedy this by taking this control away from the packers and placing it into the hands of consumers, who could exercise choice if country-of-origin labels were on their beef; and into the hands of producers, who could promote their USA-born and -raised beef to consumers if such labels were once again required.

Though Congress should swiftly pass legislation to again require country of origin labeling (COOL) for beef – but this time for all beef in U.S. commerce – the Administration could assuage concerns regarding the United States' *sovereign right* to inform its consumers as to the origins of their beef by engaging in serious negotiations with Canada and Mexico to convince them to withdraw their decade-old complaint over the old COOL law at the World Trade Organization (WTO) and agree to a complete nullification of all COOL-related WTO rulings.

COOL is the only available tool with which to empower both producers and consumers to build demand for USA-born and -raised cattle, and without it efforts to rebuild and strengthen the domestic live cattle supply chain will fall woefully short.

i. Implement safeguard measures to protect against cattle price collapses.

As shown in Chart 4 above, the U.S. experienced a surge in imports in 2014 and 2015 from Canada and Mexico, which coincides with the 2015 collapse in U.S. cattle prices. Since that time, monthly USDA import data show domestic cattle price declines associated with increases in imports, a relationship discussed in the joint congressional letter to the U.S. Attorney General authored by Senators Mike Rounds and Tina Smith and signed by 26 other congressional members. The letter states that "as the price increases for live cattle, there is a subsequent and consistent increase experienced in beef importation."[54] The Administration and Congress should work aggressively to implement safeguard measures to protect the domestic live cattle supply chain – a particularly supply sensitive supply chain, from persistent trade deficits. Such safeguards should include tariffs for countries that persistently maintain trade surpluses with the U.S. and a combination of automatic relief safeguards and tariffs when import surges are associated with cattle price decreases.

j. Revise rules of origin in all trade agreements.

Revise the rules of origin for beef in all trade agreements to require beef's origin to be where the animal was born, raised, and harvested to prevent exporters from stealing the trademark of the U.S. cattle industry – its "Product of the USA" label. Under existing rules, packers can place the USA label on anything that undergoes even minor processing in the U.S. In other words, importers and packers are currently allowed to place a "Product of the USA" label on beef derived from cattle that

[54] Joint congressional letter to U.S. Attorney General Merrick Garland, June 1, 2021, available at https://www.rounds.senate.gov/imo/media/doc/Rounds-Smith%20DOJ%20Beef%20and%20Cattle%20Letter.pdf.

are exclusively born, raised, and harvested in foreign countries and on beef exclusively born and raised in foreign countries.[55]

k. Require permanent markings on all imported cattle.

The Administration and Congress should require all imported livestock to be permanently marked with a mark of origin to protect the domestic live cattle supply chain against the introduction of diseases and pests. This requirement would provide a visual means of quickly identifying foreign-born cattle in the United States. This could be accomplished by removing livestock from the list of exemptions from the general requirement that all imported goods be marked as to their origin (this list was previously known as the U.S. Department of Treasury's "J-List").

l. Prohibit foreign ownership of critical domestic beef supply chain components.

Brazilian-owned JBS and Marfrig now own or control two of the four largest beef packing companies operating in the United States. As documented by the Institute for Agriculture and Trade Policy (IATP) in its report, *The Rise of Big Meat, Brazil's Extractive Industry*,[56] both JBS and Marfrig are a product of the Brazilian government's "National Champions Policy," which was implemented by the Brazilian National Development Bank (Banco nacional de Desenvolvimento Econômico e Social [BNDES]) to catapult Brazil into a global beef packing superpower. The IATP describes a relationship between the two cartel partners and the state-controlled BNDES as that of a state-owned enterprise (SOE). As such, the IATP states the cartel partners receive not only subsidized loans, but also large volumes of resources through the purchasing of debentures and company shares through BNDES's investment arm.

It is evident that Marfrig and JBS are state-supported, cartel enterprises that are attempting to gain control of America's critical food production facilities, as well as over America's food-production supply chain, particularly its beef supply chain.

The Administration, through the Committee on Foreign Investment in the United States (CFIUS) and the U.S. Department of Justice, should take decisive action to prohibit foreign ownership of critical beef supply chain components to ensure the beef supply chain relied upon by Americans remains in the control of Americans.

m. Cease efforts to impose mandatory RFID and other production-cost add-ons.

As evidenced by Chart 9 in the Appendix, U.S. cow/calf producers are receiving insufficient financial returns for which to pay their production costs, and this has been the case for many years. Without even bothering to conduct an economic cost/benefit analysis to determine the additional burden that producers would bear under a mandatory radio frequency identification (RFID) regime,

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[55] *See*, e.g., Letter from Rachel A. Edelstein, Acting Assistant Administrator, Office of Policy & Program Development, Food Safety & Inspection Service, USDA, to Elizabeth Drake, Schagrin Assocs. (Mar. 26, 2020), available at https://www.fsis.usda.gov/wps/wcm/connect/dba58453-e931-4c1d-9b4e-fb36417049ce/19-05-fsis-final-response-032620.pdf?MOD=AJPERES.

[56] The Rise of Big Meat, Brazil's Extractive Industry, Institute for Agriculture and Trade Policy (IATP), Nov. 30, 2017, available at https://www.iatp.org/the-rise-of-big-meat.

the USDA nevertheless attempted to force such a mandate on U.S. cattle producers in April 2019 with its guidance document discussed above that stated the mandate would take effect January 1, 2023. And, as also stated above, the USDA intends to proceed with a RFID mandate.

United States cattle producers previously made clear that a government mandated RFID regime – a one-size-fits-all regime – that deprives producers of their freedom to exercise choice as to how best to manage their operations is unacceptable in America. Such a regime stifles competition associated with marketing programs that currently provide premiums for voluntary RFID participation, it disadvantages small- and mid-sized producers whose operations do not benefit from volume discounts for RFID eartag and equipment purchases, it disadvantages producers whose operations do not include facilities/equipment for tagging cattle, and it disadvantages producers who reside in states where few beef packers operate as they would be required incur the RFID cost to ship their cattle across state lines to access a beef packer.

As such, a mandatory RFID regime undermines efforts to strengthen the domestic live cattle supply chain and build a more resilient food system.

E. Special Recommendation for Avoiding Future Supply Chain Disruptions.

No one predicted the disastrous consequences the COVID-19 pandemic had on human lives, society, and the economy. In fact, America was led by its government to believe that such an outbreak could not happen, or if it did it would be contained and irradicated quickly. America was wrong, dead wrong. Now, reports continually raise the specter that COVID-19 was released from a bio-secure laboratory in China.

America must learn from this disaster and take decisive steps to protect itself from unnecessary and avoidable disease outbreaks, whether human, animal or zoonotic.

But America appears on track to expose cloven-footed livestock and wildlife to the risk of foot-and-mouth disease (FMD) – the most contagious disease known to such animals. This completely unnecessary and avoidable risk exposure is due to plans to introduce the live FMD virus onto the U.S. mainland to be studied and manipulated within the planned National Bio and Agro-Defense Facility located in the heart of the High Plains – the region where about 75% of beef packing capacity and 80% of all cattle in feedlots are located.[57]

In its 2010 evaluation of the potential risks of researching and studying the FMD virus on the mainland in the heart of the beef cattle industry in Manhattan, Kansas, the National Academy of Sciences concluded that the U.S. Department of Homeland Security's site-specific biosafety and biosecurity risk assessment (SSRA) of the Manhattan, Kansas National Bio and Agro-Defense Facility (NBAF) "indicated that an escape of a pathogen, such as FMD[] [virus], and an ensuing disease outbreak is more likely than not to occur within the 50-year life span of the NBAF."[58]

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[57] *See* Amended Complaint, United States of America, et al. v. JBS S.A. and National Beef Packing Company, Civil Action No. 08-CV-5992, U.S. District Court, Northern District of Illinois, Eastern Division, Nov. 7, 2008, at 6 (The U.S. Department of Justice states, "Approximately three-quarters of the fed cattle packing capacity in the United States is found in this region [the High Plains], along with close to 80% of all cattle on feedlots.").

[58] National Research Council, 2010, *Evaluation of a Site-Specific Risk Assessment for the Department of Homeland Security's Planned National Bio- and Agro-Defense Facility in Manhattan, Kansas*. Washington, DC: The National Academies Press. https://doi.org/10.17226/13031.

In other words, the National Academy of Sciences found that the U.S. Department of Homeland Security's own risk analysis indicates "that a release of FMD[] [virus] resulting in infection outside the laboratory has a nearly 70% chance of occurring with an economic impact of $9-50 billion."[59] The academy further found that human error is the most likely cause of an accidental pathogen release.[60]

If the Administration and Congress are serious about transforming America's food system to achieve resiliency and reliability, they cannot both implement reforms with which to do so while simultaneously exposing America's cattle and supply chain to the completely unnecessary and avoidable risk of a catastrophic outbreak of FMD.

The Administration and Congress should decisively and definitively eliminate the risk of an inadvertent release of the live FMD virus by permanently cancelling their current plans to study and manipulate the live FMD virus in the proposed NBAF facility located on the mainland.

III. CONCLUSION

Decades of neglect, inattention, denial, and catering to the self-interests of corporate agribusinesses has brought about today's food industry crisis marked by rapidly contracting domestic live cattle and beef supply chains. It was, decades ago, the invisible hand of robust competition that fueled the expansion of both supply chains, which resulted in a substantively more resilient and reliable food system.

But that competition has been purged from both the cattle and beef supply chains and replaced with concentrated, agribusiness-controlled markets and a blind, misguided goal of globalization. The solution must be to undo both concentration and globalization so competition can once again reign.

Efforts to merely improve the negative symptoms caused by the underlying purge of competitive forces within the entire cattle and beef supply chain without first restoring competition within each transaction occurring throughout the cattle and beef supply chains and within each segment of those multi-segmented supply chains, will ultimately fail.

R-CALF USA appreciates this opportunity to recommend specific steps to reinstate competitive market forces in the many transaction points and industry segments negatively impacted by competition's loss. We trust these recommendations will assist the Administration and Congress in rebuilding a resilient food system that supports American family cattle farmers and ranchers and American consumers.

Sincerely,

Bill Bullard, CEO

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[59] *Id.*
[60] *Ibid.*

APPENDIX – Charts 5-10 Depicting Downward Trajectories of Cattle Industry Indices

Chart 5 - Annual change in the number of U.S. beef cattle operations since 1990

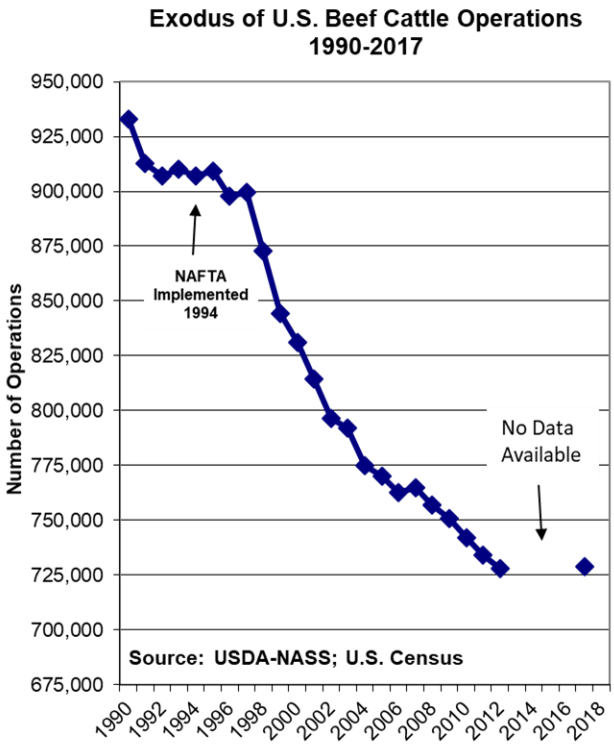


Chart 6 – Annual change in the size of the U.S. beef cow herd since 1975

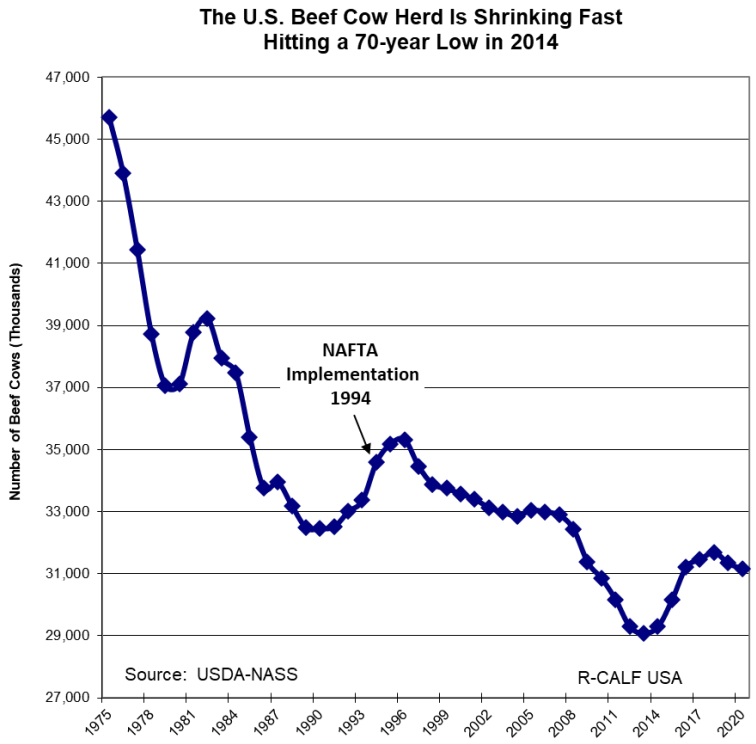


Chart 7 – Exodus of U.S. cattle feedlots since 1996

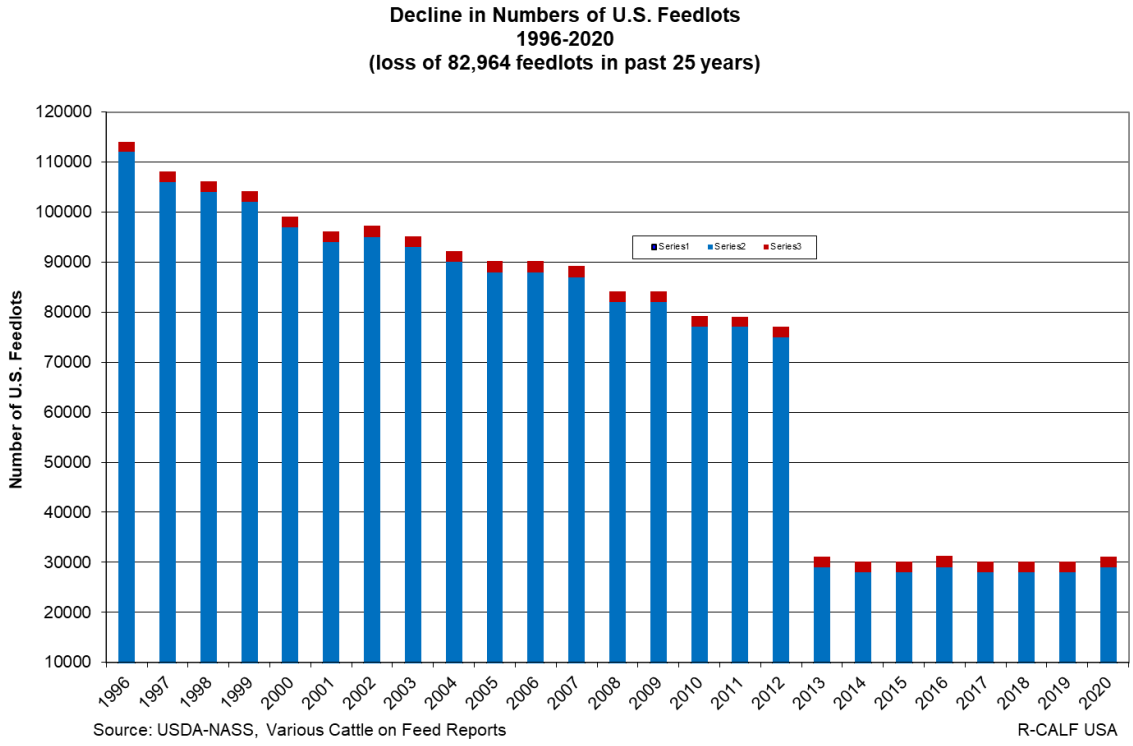


Chart 8 – Monthly change in returns to cattle feeders since January 2000 (with trendline)

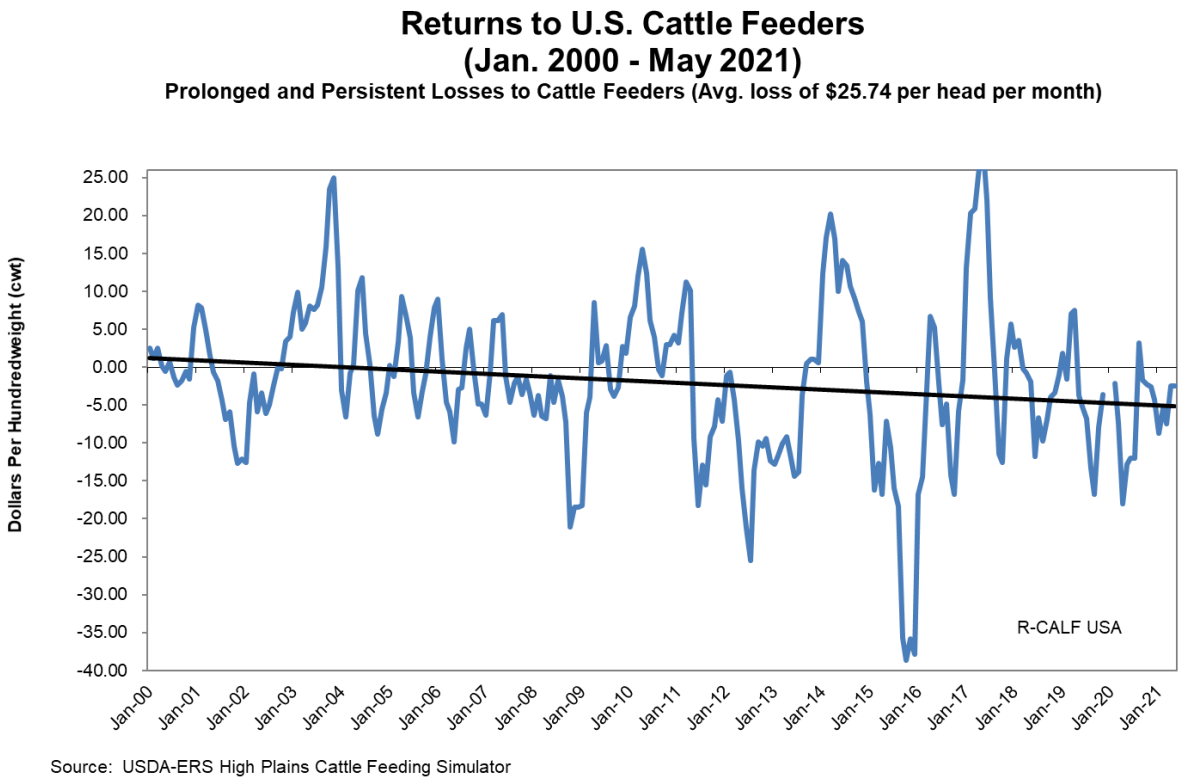


Chart 9 - Annual change in returns to U.S. cow/calf producers since 1996 (with trendline)

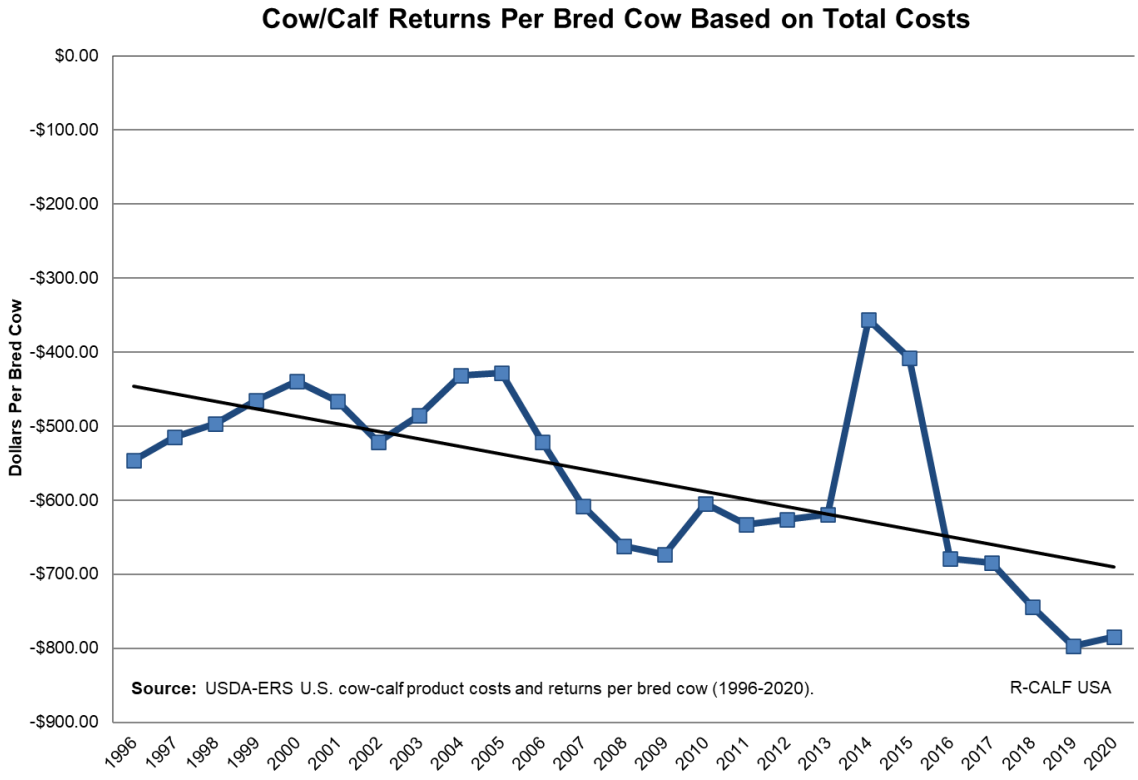
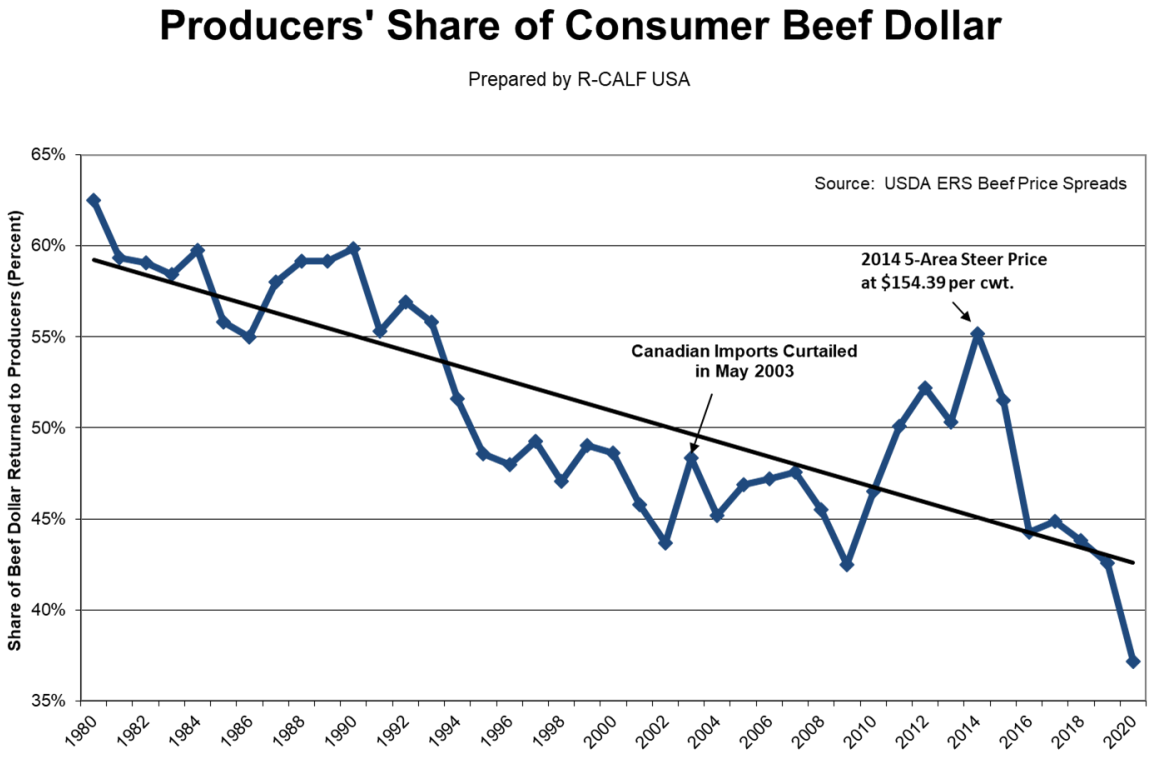


Chart 10 - Monthly change in the share of the consumer's beef dollar allocated to live cattle producers since 1980 (with trendline)



There are no known government price supports, nor any other known regulatory requirements affecting the allocation of the share of the consumers' beef dollar passed upstream in the beef supply chain to live cattle producers. The presumption, therefore, is that the allocation is made by the invisible hand of market competition. Consequently, a long-term decrease of the producers' allocation, as is occurring here, is presumed to be the result of inadequate market competition, *i.e.*, a lessening of market competition or the application of competition inhibitors.