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January 19, 2022

David N. Cicilline, Chair
U.S. House Committee on the Judiciary,
Subcommittee on Antitrust, Commercial, and
Administrative Law
2138 Rayburn House Office Building
Washington, D.C. 20515

Re: R-CALF USA's Written Testimony for the Hearing Record Regarding U.S. House Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law: "Reviving Competition, Part 5: Addressing the Effects of Economic Concentration on America's Food Supply," January 19, 2022

Chairman Cicilline, Ranking Member Buck, and Members of the Subcommittee:

As the largest U.S. cattle trade association exclusively representing U.S. cattle farmers and ranchers,[1] R-CALF USA (Ranchers Cattlemen Action Legal Fund United Stockgrowers of America) appreciates this opportunity to submit written testimony regarding "Reviving Competition, Part 5: Addressing the Effects of Economic Concentration on America's Food Supply."

The U.S. cattle industry has suffered under an acutely dysfunctional cattle market for seven years, beginning with the inexplicable collapse of domestic cattle prices in early 2015. The public has only recently become aware of the systemically broken cattle market, a revelation triggered by the aftershock of a packing plant fire in August 2019 and subsequent beef shortages following the outset of the COVID-19 pandemic. What was a chronically dysfunctional market prior to 2015 is today recognized as an acutely dysfunctional market.

The measures of market failure are irrefutable. Consumers have faced beef shortages and have been forced to pay ever-rising, super-inflated prices for beef, when it was available. At the same time, America's cattle farmers and ranchers cannot gain timely access to a market that for years has generated cattle prices and beef prices that move in opposite directions – cattle prices were stair-stepping downward while beef prices were rising to new highs. The acutely broken market since 2015, marked by a profound disconnect between retail beef prices and cattle prices, can be visualized in the chart on page 2.

During the eight-year period from 2007-2014, the then current market structure enabled the concentrated beef packers to purchase steers on average from America's cattle farmers and ranchers at 64% of the average weekly wholesale beef price (the average of Choice and Select cutout values).[2]

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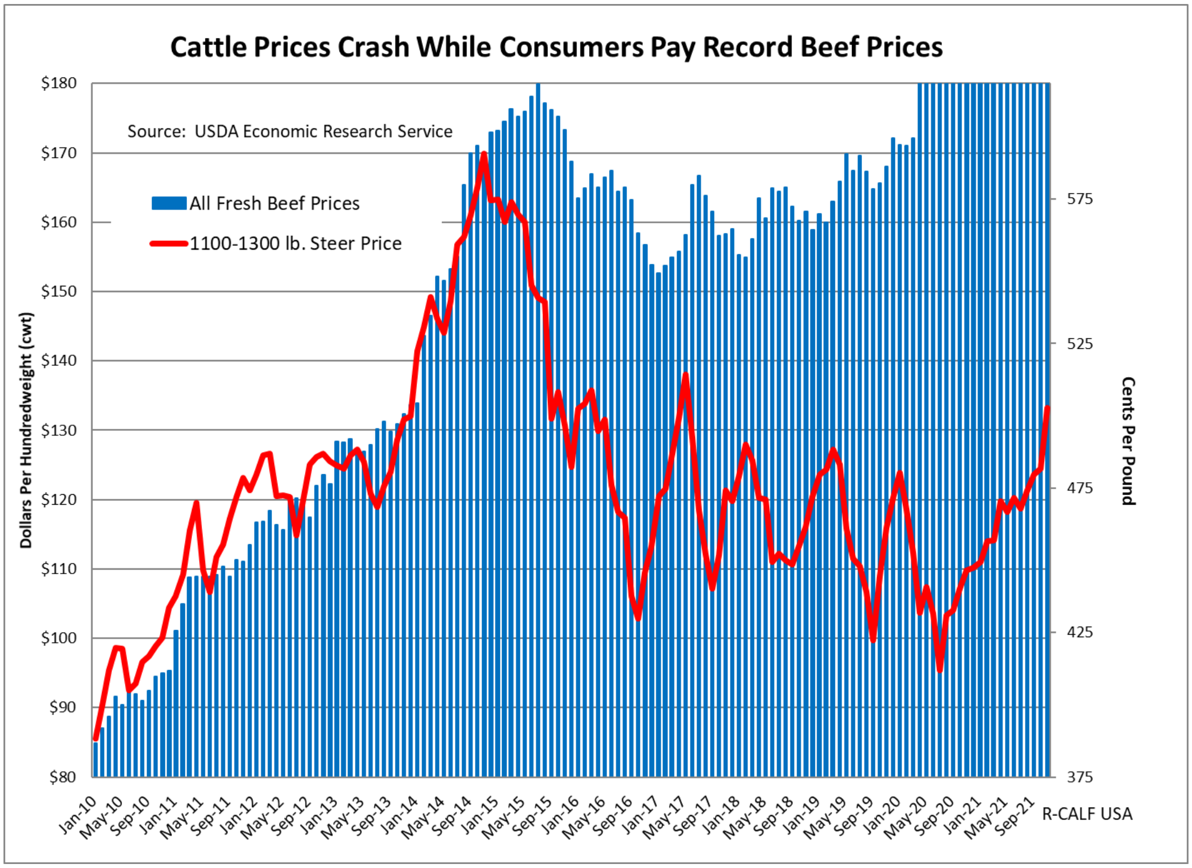
[1] R-CALF USA has approximately 5,000 voluntary dues paying members in 46 states.
[2] Calculation based on USDA Datamart reports: (LM_CT154) National Weekly Direct Slaughter Cattle - Negotiated Purchases and (LM_XB459) Weekly Average Cutout Values.

In other words, during that period, the concentrated beef packers used their available market power to purchase steers at the average price of $110 per hundredweight (cwt), which represented 64% of the average wholesale beef price during the period of $172 per cwt.



During this same 2007-2014 period, data generated by the U.S. Department of Agriculture (USDA) estimate the average monthly return to America's cattle farmers and ranchers for feeding those slaughter-ready steers was a negative $26 per head per month (based on a 1,300 lb. steer).[3] In other words, when the concentrated beef packers exercised their then available market power, they captured about 36% (after paying the cattle producer 64%) of the wholesale value of the beef derived from those steers before sending the beef into the retail beef supply channels, and this caused the U.S. cattle industry to struggle for many years under an economic cost-price squeeze.

This long-term economic cost-price squeeze is further borne-out by the USDA's estimated returns to America's cow/calf producers – the farmers and ranchers who raise and sell light-weight calves that are subsequently fed to slaughter-weight in America's feedlots before being sold to the beef packers for harvesting. According to those estimates, America's cow/calf farmers and ranchers realized an average annual operating return of $67 for each bred cow that calved while suffering a loss of $598

[3] Calculations based on data reported in USDA-Economic Research Service's (ERS') High Plains Cattle Feeding Simulator.

for each of those bred cows when total costs of the farm or ranch operation (not just operating costs) are considered.[4]

Either this USDA data is wrong or the beef packers, between 2007-2014, had the market power to pay America's cattle farmers and ranchers a non-competitive price for their cattle (a price that would not return their cost of production). What's more, this was occurring long before the fateful collapse of cattle prices in 2015.

Sadly, the USDA is not wrong, as evidenced by the exodus of 43% of all beef cattle farms and ranches,[5] 75% of all independently-owned farmer feedlot operations,[6] and millions of mother cows from the U.S. cattle industry during just the past few decades.[7] These are the red flags that should have signaled the need for congressionally enacted structural reforms. Indeed, as early as 2001 Oklahoma State University Economist Clement Ward asserted that concentration levels in the U.S. meatpacking industry were already among the highest of any industry in the United States, "and well above levels generally considered to elicit non-competitive behavior and result in adverse economic performance."[8] And yet, no reforms were enacted.

And then came 2015, bringing with it a collapse in cattle prices, only to be followed in ensuing years with more price collapse. During the seven-year period from 2015-2021, the more contemporary market structure enabled the concentrated beef packers to purchase steers on average from America's cattle farmers and ranchers at only 55% of the average weekly wholesale beef price.[9] In other words, during this more recent period, the concentrated beef packers used their enhanced market power to purchase steers at the average price of $122 per hundredweight (cwt), which represented only 55% of the average weekly wholesale beef price during the period of $223 per cwt.

During these last seven years, data generated by the USDA estimate the average monthly return to America's cattle farmers and ranchers for feeding those same slaughter-ready steers was a negative $69 per head per month (based on the same 1,300 lb. steer through November 2021), which is more than twice the loss experienced from 2007-2014.[10] In other words, when the concentrated beef packers have exercised their enhanced market power since 2015, they successfully captured about 45% (compared to 36% during the earlier period) of the wholesale value of the beef derived from those steers before sending the beef into the retail beef supply channels, and this caused the economic cost-price squeeze affecting U.S. cattle farmers and ranchers to worsen considerably.

This now worsened economic cost-price squeeze also is exacerbating the struggles for America's cow/calf farmers and ranchers whose returns per bred cow based on total costs, again according to USDA data, increased from a loss of $598 during 2007-2014 to a loss of $683 from 2015-2020, though

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[4] Calculations based on data reported in USDA-ERS' U.S. cow-calf production costs and returns per bred cow (1996-2020).
[5] Calculation based on data reported in USDA-National Agricultural Statistics Service's (NASS') Farms, Land in Farms and Livestock Operations and the 2017 Census of Agriculture.
[6] Calculation based on data reported in USDA-NASS' Various Cattle on Feed Reports.
[7] According to data contained in various USDA-NASS Cattle reports, the number of beef cows in the U.S. cattle herd shrank 5.9 million head between 1980-2020, with 3.4 million head of them vanishing since entering NAFTA in 1994.
[8] A Review of Causes for and Consequences of Economic Concentration in the U.S. Meatpacking Industry, Clement E. Ward, Current Agriculture Food and Resource Issues, 2001, at 1.
[9] *See supra*, fn. 2.
[10] *See supra*, fn. 3.

when only their operating costs are calculated, they did realize an increase in returns from $67 during 2007-2014 to $119 from 2015-2020.[11]

The foregoing reveals the U.S. cattle industry suffers from systemic market failure, which though chronic for decades, has worsened considerably during the past seven years. And, yet, Congress has not enacted, and does not appear inclined to immediately enact, any meaningful structural reforms.

If Congress does not yet have a comprehensive plan of action with which to decisively address the dysfunctional cattle market, then an emergency stopgap measure will be needed to prevent the ongoing dismantling of the cattle industry's critical competitive infrastructure, *i.e.*, its participants, its feedlots, and its cow herd. If in 2021, for example, the concentrated beef packers were still only able to purchase cattle from America's cattle farmers for 64% of the average weekly wholesale beef value, as they did on average prior to acquiring their enhanced market power post 2015, then the average price of fed steers in 2021 would have been $173 per cwt, rather than the actual average price of only $123 per cwt. This additional $50 per cwt would put an additional $650 per head in the producers' pocket for each 1,300 lb. steer sold by America's cattle farmers and ranchers. This would help mitigate the severe and persistent economic cost-price squeeze until Congress sees fit to enact comprehensive market structure reforms.

Tying cattle prices to a wholesale beef value index will not restore the competitive market forces that has been purged from the market due to severe structural deficiencies, but it would temporarily prevent the ongoing loss of equity that America's cattle farmers and ranchers are experiencing each day the market remains dysfunctional. It would also temporarily remove the beef packers' incentive to lower the price of cattle in the industry's price discovery market – its negotiated cash market. Congress' prolonged inaction in enacting meaningful structural reforms now necessitates an emergency stopgap measure such as this if America's food security interest is to be preserved.

To date, the only comprehensive market-structure reform proposals introduced in Congress on behalf of the U.S. cattle industry is contained in S.3285, the "Protecting America's Meatpacking Workers Act of 2021" (the Act) introduced by Senators Cory Booker, Kirsten Gillibrand, Richard Blumenthal, Bernard Sanders, and Elizabeth Warren; and its House companion, H.R.6250, introduced by Representatives Ro Khanna, Earl Blumenauer, Eleanor Holmes Norton, and Jahana Hayes.

The structural reforms included therein decisively address the means by which the concentrated beef packers are able to render an otherwise competitive market non-competitive. To address the dominant beef packers inherent market power arising from their collective share of 85% of the fed cattle market, which empowers them to act as gatekeepers by deciding who does and who does not have timely access to the market, the Act affords cattle producers at least a 50% share of the daily market in which to sell their cattle. It does this by forcing the beef packers to once again (as they did in mid-2000) compete for at least 50% of their daily cattle needs in the negotiate cash market – the industry's most important price discovery market – and requiring them to harvest those cattle within seven days. By ensuring that all the large beef packers must compete daily to secure enough cattle to run their plants, the provisions ensure that cattle prices cannot be depressed simply by the beef packers choosing to step out of the cash cattle market for a number of weeks at a time.

[11] *See supra*, fn. 4.

To address the beef packers exercise of their inherent market power arising from their practice of securing large volumes of unpriced cattle for future delivery, a practice that incentivizes beef packers to lower the price of cattle in the negotiated cash market to which their unpriced forward contracts are tied, the Act prohibits the practice of forward contracting cattle without establishing a base price that can be equated to a fixed dollar amount on the day of the transaction. This will ensure that all such forward contracts contribute to price discovery and removes the current incentive for meat packers to push down cash cattle prices in order to reduce the cost of cattle procured on forward-type contracts that incorporate the reported cash price closer to delivery. While opponents of such an important structural reform decry any limits on the beef packers' ability to forward contract for cattle, none have articulated why such forward contracts must remain unpriced.

To address the beef packers' ability to unilaterally choose when to control cattle inventories through contracts or through direct packer ownership and control, the Act prohibits packers from owning or feeding cattle for more than seven days before slaughter, thus ensuring that the dominant packers remain incentivized to purchase fed cattle from cattle sellers rather than to strategically utilize their own cattle inventories to minimize their exposure to the competitive marketplace.

And, to empower consumers to choose from where they want their food produced, the Act would reinstate mandatory country of origin labeling (MCOOL) for beef and pork and would add dairy products. The reinstatement of MCOOL for beef is also included in the bipartisan "American Beef Labeling Act of 2021," S.2716, introduced by Senators John Thune and Jon Tester and cosponsored by eight other bipartisan supporters. Whether enacted alone or in the Act, MCOOL for beef is essential for counteracting the negative impacts of the globalization of the beef supply chain, which has undercut American cattle farmers and ranchers by empowering beef packers to source cheaper, undifferentiated beef from around the world, and cattle from Canada and Mexico, as direct substitutes for domestic production.

While the Act contains other important reforms, the four mentioned above constitute meaningful market structure reforms that will reinstate competitive market forces at the grocery store for beef and in the cattle market for cattle.

Until and unless Congress enacts such meaningful structural reforms as those contained in the Act to effectively curb the beef packers' exercise of their inherent market power, America's food security interest will remain in jeopardy and the largest segment of American agriculture – the U.S. live cattle industry, will continue to shrink at an accelerated pace, depriving America's rural economy of the economic strength and vitality that only a widely disaggregated and robustly competitive cattle industry can provide.

Sincerely,

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