

Fighting for the U.S. Cattle Producer!



R-CALF
USA

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March 16, 2010

Marilyn R. Abbott
Secretary
United States International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Re: R-CALF USA Post-Hearing Brief Regarding U.S. Trans-Pacific Partnership Free Trade Agreement: Advice on Probable Economic Effect of Providing Duty-Free Treatment for Imports (Inv. Nos. 131-034; 2104-026)

Dear Ms. Abbott:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit additional views regarding the Commission's investigation on the probable economic effect of providing duty-free treatment for imports, and particularly for agricultural imports, from countries participating in the proposed U.S.-Trans-Pacific Partnership Free Trade Agreement (TPP Agreement). R-CALF USA, a national, non-profit organization, is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners located in 46 states.

As discussed in R-CALF USA's pre-hearing brief in this matter and in testimony provided before the Commission, R-CALF USA believes it is critically important that the U.S.

International Trade Commission (USITC) analyze separately the probable economic effect of the proposed TPP Agreement on the beef commodity industry (i.e., the purveyors of the actual beef commodity including beef packers, processors and retailers), and on the U.S. cattle industry (i.e., the hundreds of thousands of U.S. farmers and ranchers who breed, birth and raise live cattle and who sell their live cattle to beef purveyors within the beef commodity industry). R-CALF USA represents the latter segment of the U.S. beef supply chain, and has documented that not only is the economic prosperity of the two industries unrelated, but often, the economic prosperity in the live cattle industry and the economic prosperity in the beef commodity industry are inversely related.¹

Moreover, the USITC previously determined that due to the present structure of the U.S. cattle industry, lost profits realized by the beef commodity industry as a result of declining beef prices likely will be transferred to the live cattle industry in the form of lower cattle prices, *thus the beef commodity industry remains insulated from any negative price movements associated with increased import volumes*. The USITC stated:

U.S. beef packers operate on the margin between wholesale beef prices and slaughter cattle prices. Market structure suggests that processors can eventually pass most, if not all, of any decrease in the price of wholesale beef on to cattle producers in terms of lower slaughter cattle prices. Therefore, this assumption implies that 100 percent of any price impact on beef at the wholesale level will be passed through to cattle producers.²

¹ See, e.g., Sparks Companies Inc., “Potential Impacts of the Proposed Ban on Packer Ownership and Feeding of Livestock,” A Special Study, (March 18, 2002) at 24 (“Vertical integration [of the live cattle industry and the beef commodity industry] often attracts investors because of the negative correlation between profit margins at the packing stage [beef commodity stage] and the feeding stage [live cattle stage].”).

² U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, U.S. International Trade Commission, Investigation No. TA-2104-11, USITC Publication 3697 (May 2004), at 44, fn 25.

The USITC Commissioners raised a number of important questions at the hearing in this investigation and below we respond to the specific requests by several Commissioners for additional information as well as expand upon some of the answers provided during the March 2, 2010, hearing on this matter. Some of the questions from the Commissioners have been paraphrased or rephrased in accordance with our interpretation.

As a preliminary matter, please note that on Line 20, Page 68, of the hearing transcript, the value “\$70,000” is incorrect and should be changed to “\$21,000.” The example provided involved a \$70 increase per animal in a 300-head herd, resulting in a total expectation of \$21,000.

I. Additional Response to Questions by Commissioner Okun

A. Does the experience with the U.S.-Australian Free Trade Agreement say anything about what to expect in a TPP Agreement and what other factors have contributed to the recent reduction in Australian beef imports?

The USITC predicted that the U.S.-Australian Free Trade Agreement (Australian FTA) would have a minimal impact on total U.S. beef imports during the first eight years of the agreement, but the impact in years 9 through 18 is less certain.³ A review of annual import patterns shows that imports of Australian beef grew rapidly since 1996 and peaked at 392,801 metric tons in 2001.⁴ After 2001, Australian beef imports began to level off at slightly lower

³ See U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, U.S. International Trade Commission, Investigation No. TA-2104-11, USITC Publication 3697 (May 2004), at 43.

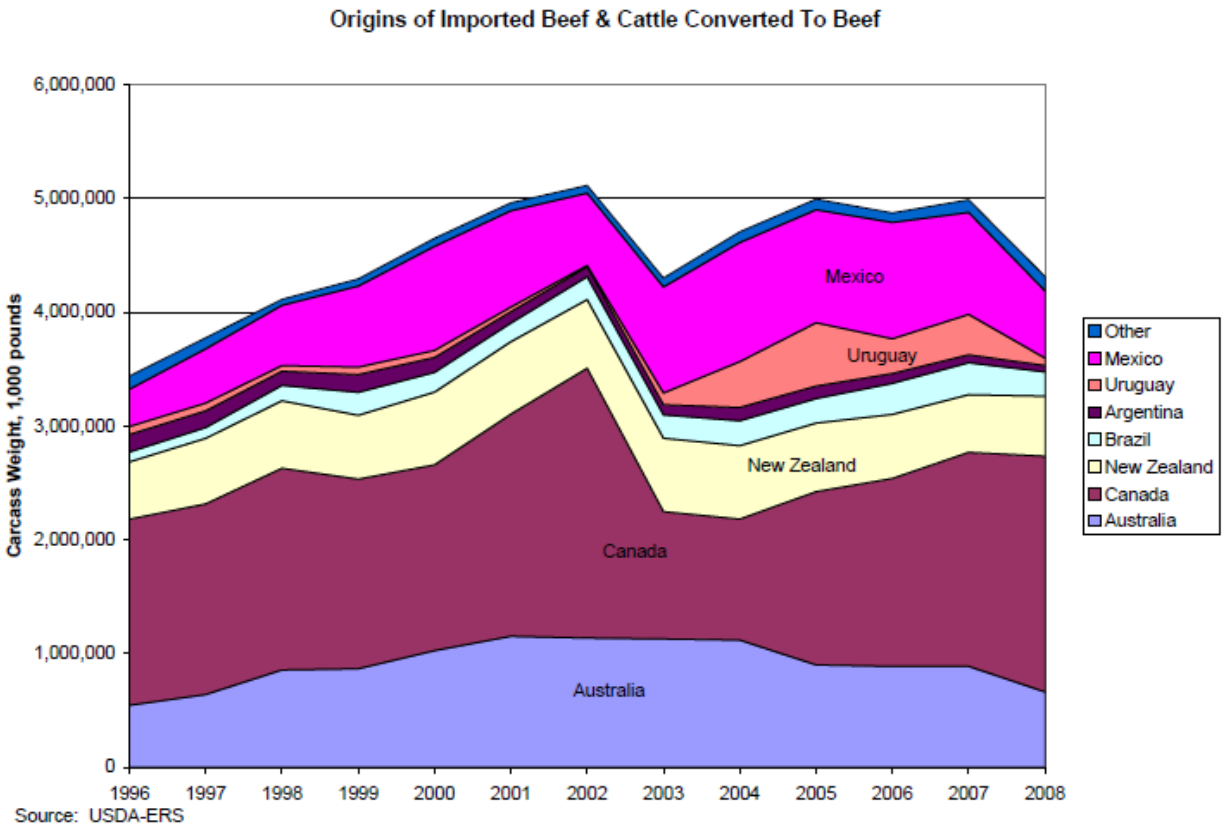
⁴ See Global Agricultural Trade System Online, U.S. Department of Agriculture, Foreign Agricultural Service (based on meat from bovine animals, fresh, chilled, or frozen in HTS headings 0201 and 0202).

levels until after 2004, when they began to decline through 2008.⁵ These data would suggest that something other than the Australian FTA began to affect Australian beef imports in 2002, two years before the implementation of the Australian FTA, which occurred in 2005.

By broadening the scope of analysis to include all beef importing countries, it is revealed that shipments to the U.S. of beef and cattle from another free trade agreement (FTA) country – Canada – began to increase significantly from 1999 through 2002. The magnitude of this increase is not readily discernable when reviewing beef commodity data alone. However, when the beef derived from imported Canadian cattle slaughtered in the U.S. also is considered, the increase is profound. R-CALF USA illustrates this increase below in Chart 1 and it calculated the annual volume of beef derived from cattle imported from both Canada and Mexico by multiplying the number of annual imports by the average annual carcass weights of cattle slaughtered in U.S. packing plants. Upon the recognition that beef enters the U.S. in two distinct forms: as the commodity beef or as beef on the hoof (live cattle transformed to beef after entry into the United States), these data suggest that Canadian imports began to more than displace Australian beef imports after Australian imports peaked in 2001. This phenomenon is even more pronounced in the years following the temporary curtailment of Canadian cattle and beef that occurred subsequent to the 2003 detection of bovine spongiform encephalopathy (BSE) in the Canadian cattle herd.

⁵ *Ibid.*

Chart 1



The issue of the displacement of the sources of U.S. beef supplies is critical to the USITC’s consideration of the potential impact of the TPP Agreement on the U.S. cattle industry. Chart 1 illustrates that the U.S. supply of beef derived from foreign sources increased dramatically from 1996 through 2002; and, these foreign supplies quickly rebounded after the 2003 BSE incident to remain at near record levels up until the Great Recession effectively reduced imports in 2008. During this entire period when imports were reaching record levels, the U.S. cattle industry was fast liquidating its cattle herd. From 1996 through 2008, the U.S.

liquidated 6.9 to 9 million cattle from its herd.⁶ Concurrently, imports during this period increased from about 3.4 billion pounds in 1996 to about 5 billion pounds in 2002, 2005, 2006 and 2007, representing an increase of approximately 1.6 billion pounds of beef. Using the same conversion factor employed by the USITC, this volume of beef is equivalent to more than 1.4 million head of cattle.⁷ Thus, just the increase in the supply of beef from foreign sources since 1996 has displaced approximately 1.4 million cattle from the U.S. cattle herd. To put this in perspective, presuming that a ranch with a herd size of about 300 cattle is considered an economically viable cattle operation, this displacement of cattle numbers has displaced approximately 4,667 full-time U.S. ranching operations.

The foregoing discussion suggests that increased supplies of imports from foreign sources both contribute to the ongoing contraction of the U.S. cattle industry and can change the volume of imported supplies from any particular foreign source. Because the TPP Agreement includes not only countries unlikely to be significant purchasers of U.S. beef, but also, countries that collectively have generated a value-based beef-trade deficit for the U.S. of over \$1 billion annually for the past 10 years,⁸ the TPP Agreement likely will exact further harm on the U.S. cattle industry.

B. What type of products relevant to the cattle and beef industry is excluded from the beef safeguard included in the U.S.-Australian Free Trade Agreement?

⁶ The lower range of 6.9 million liquidated cattle is based on FAOSTAT data and the higher range of 9 million liquidated cattle is based on January 1 cattle inventories reported by the USDA National Agricultural Statistics Service (Jan. 1, 1996 – Jan. 1, 2009).

⁷ See U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, U.S. International Trade Commission, Investigation No. TA-2104-11, USITC Publication 3697 (May 2004), at 44, fn 25.

⁸ See Chart 25, R-CALF USA's Pre-Hearing Comments to USITC, Feb. 18, 2010, at 46.

There are two beef safeguards included in the U.S.-Australian Free Trade Agreement (Australian FTA). The first is a quantity-based safeguard measure that applies to years nine through 18 of the agreement.⁹ This safeguard is triggered if the aggregate volume of imports exceeds 110 percent of the tariff rate quota (TRQ), and allows for a 75 percent snap back of the difference between the most-favored-nation (MFN) applied rate and the applicable tariff rate at the time.¹⁰ The U.S. has the discretion not to apply this safeguard even when the safeguard is triggered.¹¹

The second safeguard is a price-based safeguard that applies after year 19 of the Australia FTA.¹² This safeguard applies only to beef entered under HTS subheadings 02011050, 02012080, 02013080, 02021050, 02022080, or 02023080.¹³ This safeguard is triggered if the monthly price of the covered beef products falls 6.5 percent below the two-year average price, and it allows for a snap back to 65 percent of the MFN rate.¹⁴ This safeguard applies only to quantities of imports greater than 70,000 metric tons over the TRQ, which amount increases by a compound, annual rate of 0.6 percent starting in year 19 of the agreement; and, like the quantity-based safeguard, the U.S. has the discretion not to apply this price-based safeguard.¹⁵

⁹ See Annex 3-A, Section B, of Article 3.4 of the U.S.-Australia Free Trade Agreement.

¹⁰ See *id.*

¹¹ See *id.*

¹² See Annex 3-A, Section C, of Article 3.4 of the U.S.-Australian Free Trade Agreement.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See Annex 3-A, Section C, of Article 3.4 of the U.S.-Australian Free Trade Agreement.

R-CALF USA believes that, at the very least, this price-based safeguard should apply both during and after any phase-out period for tariffs and be automatically triggered by a decline in either domestic beef prices or domestic cattle prices. Since increased beef imports further drive down cattle prices, the inclusion of a cattle price trigger for the beef safeguard is essential to protect cattle producers from excessive market volatility. If the safeguard is triggered by a price decline in either the cattle or beef market, tariffs on out-of-quota beef imports should snap back automatically to the MFN level that applied before the FTA's implementation. In addition, once quotas phase out at the end of the implementation period, the automatic price-based safeguard should continue to operate, and be levied on imports that exceed the maximum quota allocation that was in effect in the last year of the phase-out.

C. What are the beef consumption estimates for the U.S. over the next three years?

As shown below in Table 1, USDA's long-term agricultural projections predict that per-capita beef consumption will decrease throughout the 2010-2014 period. Total domestic consumption also is predicted to decrease from 2010-2012, but then is expected to recover slightly beginning in year 2013 and continuing through 2014.

Table 1

USDA Beef Consumption Projections (2009-2014)¹						
	2009	2010	2011	2012	2013	2014
Per Capita Beef Consumption, Retail Weight	61.3	60.1	58.3	56.8	56.4	56.2
Total Consumption, Mil. lbs.	26,923	26,612	26,049	25,585	25,621	25,767

II. Additional Response to Questions by Commissioner Williamson

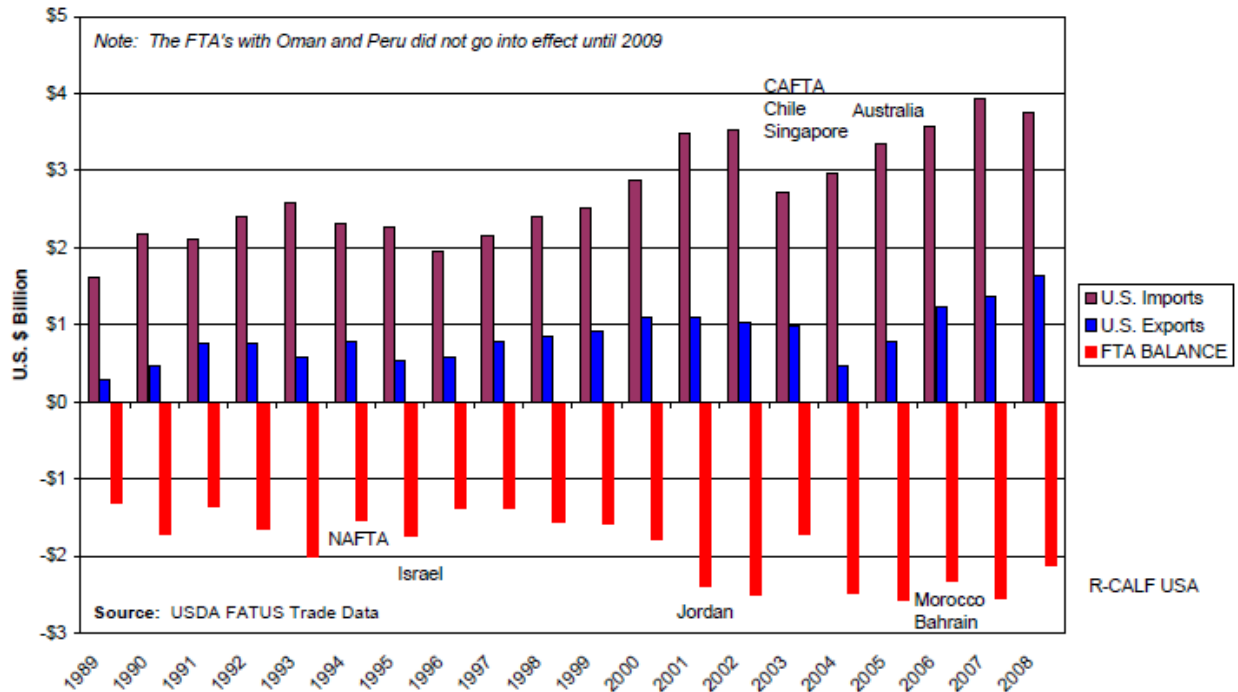
A. What would trade patterns have been with existing United States' free trade agreement partners if bovine spongiform encephalopathy (BSE) had not affected trade?

As shown below in Chart 2, beef and cattle imports from the 17 countries that have FTA's with the United States far outpaced U.S. beef and cattle exports in the years leading up to the 2003 detection of BSE in a Canadian-born cow slaughtered in Mabton, Washington, resulting in a mounting U.S. beef and cattle trade deficit that grew rapidly from 1996 through 2002. There simply is no discernable evidence to indicate that the mounting trade deficit with these FTA countries would have been abated but for the BSE event.

Chart 2

U.S. Trade in Cattle and Beef With 17 FTA Countries

20-Year Cumulative U.S. Trade Balance = Negative \$37.6 Billion



On a global scale, and when all beef trade is considered (i.e., live cattle, beef, beef variety meat and processed beef), the United States value-based trade balance was much more favorable in the years leading up to the 2003 BSE incident (Chart 3). After the BSE incident, however, the U.S. suffered substantial deficit-related losses. The effects on the U.S. cattle industry from this BSE-caused change in trade patterns are both remarkable and counterintuitive. As revealed below in Chart 4, U.S. cattle producers received substantially depressed prices during the protracted, nine-year period when U.S. beef and cattle exports were reaching all-time record highs and when the U.S. trade balance appeared most favorable (1994-2002). However, in 2003 when BSE caused U.S. beef and cattle exports to fall to a 19-year low, and during the ensuing six years when the U.S. beef and cattle trade deficit was the worst in twenty years, U.S. cattle prices

paid to U.S. farmers and ranchers were sustained at the highest nominal levels in the industry's history.

Chart 3

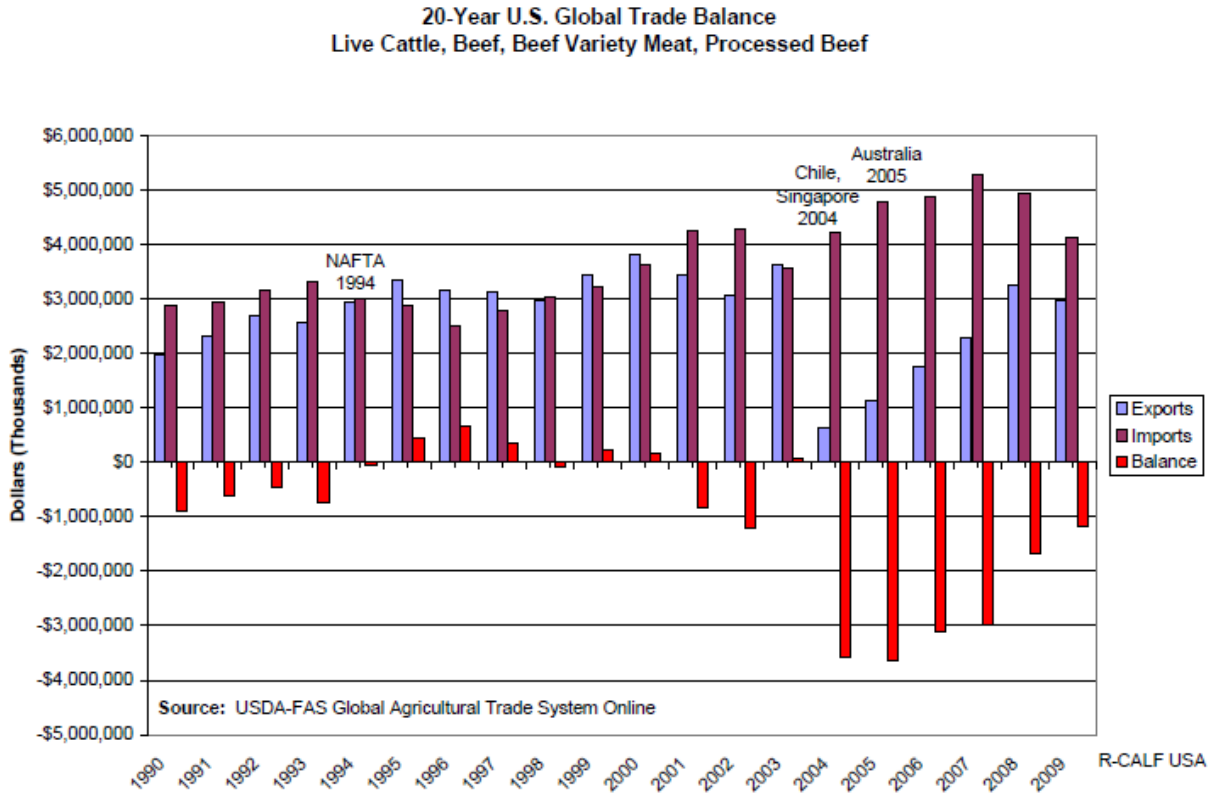
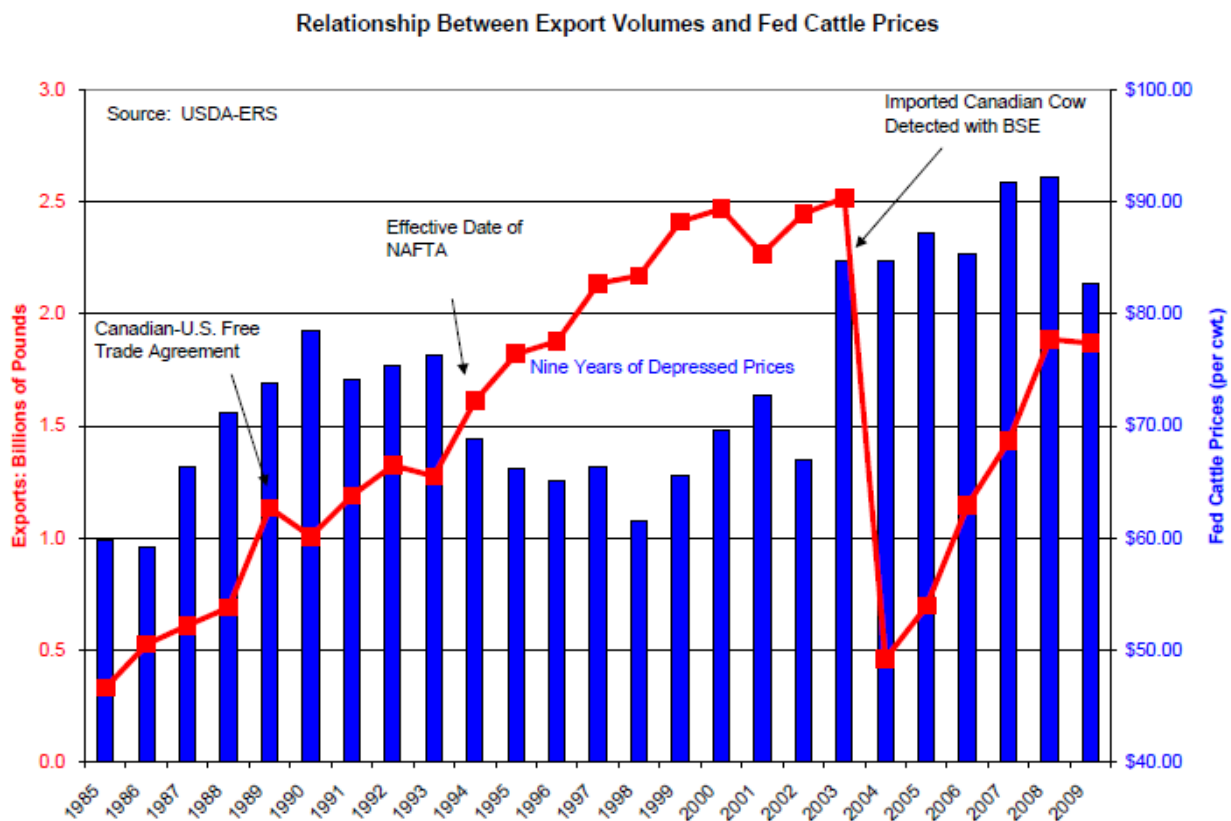


Chart 4



This remarkable and counterintuitive outcome is not without explanation: First, and as already recognized by the USITC, the current structure of the beef commodity industry enables it to defy competitive market forces and pass losses resulting from lower wholesale beef prices directly to the U.S. cattle industry in the form of lower cattle prices.¹⁶ Second, the logical extension of this finding is that the beef commodity industry likewise can defy competitive market forces and capture increased profits resulting from higher wholesale beef prices, without passing any such price increases to the U.S. cattle industry. This phenomenon explains why

¹⁶ See *supra*, at 2.

cattle prices remained depressed prior to the BSE incident when U.S. beef and cattle exports were reaching record highs and the U.S. trade balance was more favorable.

The disruption caused by the 2003 BSE incident involved not only exports, but imports as well. The market power manifest in the USITC finding that the beef commodity industry can unilaterally pass losses directly to the cattle industry, and by extension, capture the profits a competitive market would predictably allocate to the cattle industry, could not be exercised without some device or method with which to facilitate that market power. When, in 2003, Canadian live cattle imports were curtailed for longer than two years and Canadian beef imports also were curtailed, but for a shorter period, the device and method employed by the beef commodity industry to facilitate its manifest market power became obvious. The beef commodity industry was using Canadian cattle imports and beef imports to facilitate its manifest market power. It was exploiting the intrinsic, supply-sensitive nature of the U.S. cattle industry by strategically maintaining imported supplies at sufficient volumes to depress U.S. cattle prices.¹⁷ When this market-power facilitating device and method was removed from the beef commodity industry's arsenal, the leverage enjoyed by the beef commodity industry over domestic cattle prices evaporated almost instantaneously, enabling U.S. cattle prices to break free from their restraints. Within just five months of the curtailment of Canadian imports, U.S. cattle prices increased a remarkable \$26 per hundredweight, rising to levels never before seen in the industry's history.¹⁸

¹⁷ See R-CALF USA's Pre-Hearing Comments to USITC, Feb. 18, 2010, at 28, 29.

¹⁸ See *id.*, at 29, 30.

During the past seven years, live cattle imports from Canada were incrementally reintroduced into the U.S. market, beginning with the reintroduction of cattle under 30 months of age in the second half of 2005, and the subsequent reintroduction of cattle over 30 months of age beginning in November 2007. Also in 2007, total imports of cattle and beef from Canada were restored to levels that approximate their pre-BSE levels. By 2009, as indicated above in charts 3 and 4, exports have risen to almost two billion pounds, the trade deficit has been reduced to the lowest level in six years, and cattle prices have fallen by approximately \$10 per hundredweight since 2008. It now is apparent that the device and method employed by the beef commodity industry to exert its manifest market power upon the U.S. cattle industry has been restored.

The conclusion to be drawn from the foregoing discussion is that under the current structure of the U.S. cattle market, import volumes function independently to depress domestic cattle prices paid to participants in the U.S. cattle industry, regardless of the level of exports. The TPP Agreement, because it would grant the U.S. beef commodity industry duty-free access to additional import supplies, likely would strengthen the beef commodity industry's leverage over the U.S. cattle market, resulting in the acceleration of the ongoing contraction of the U.S. cattle industry

III. Additional Response to Questions by Vice Chairman Pearson

- A. Have there been significant changes in the concentration of the U.S. beef packing industry since the 1970s and have beef packers reached an optimal level of economy of scale?**

According to data reported by USDA Grain Inspection Packers and Stockyards Act (GIPSA), the number of U.S. beef packing plants required to report to GIPSA (i.e., firms purchasing at least \$500,000 of livestock) fell from 808 in 1978 to only 168 in 2006;¹⁹ those that specialize in slaughtering steers and heifers fell from 507 in 1980 to only 76 by 2006;²⁰ and, those that specialize in slaughtering cows and bulls fell from 538 in 1980 to only 86 by 2006.²¹ In addition, the four-firm concentration level of the top four U.S. beef packers more than doubled during this period, increasing from 35.7 percent in 1980 to over 79 percent in 2006.²² In the 2008 antitrust enforcement action that blocked the proposed merger between the United States' third largest beef packer (JBS SA) and the United States' fourth largest beef packer (National Beef Packing Company), the U.S. Department of Justice estimated that the concentration level of the nation's largest four beef packers in 2008 was over 85 percent.²³

Clearly, the concentration level in the U.S. beef packing industry – hence also in the U.S. cattle market – is demonstrably greater today than it was in the 1970s. This unprecedented market concentration puts in the hands of the beef commodity industry tremendous market power with which to exert leverage in the U.S. cattle market to drive cattle prices lower. This assertion is consistent with the USITC's finding that the current structure of the U.S. beef

¹⁹ See Packers and Stockyards Statistical Report, 2006 Reporting Year, U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, GIPSA SR-08-1, May 2008, at 15.

²⁰ See *id.*, at 11.

²¹ *Ibid.*

²² See *id.*, at 44.

²³ See United States of America, et al. v JBS S.A. et al., Complaint, U.S. District Court, Northern District of Illinois Eastern Division, Civil Action No. 08-CV-5992 (The U.S. Dept. of Justice alleged that the top four meatpackers purchased “over 85% - nearly 24 million” of the 27 million fed cattle purchased in 2007.).

processing industry enables it to transfer decreases in wholesale beef prices to the U.S. cattle industry in the form of lower cattle prices.²⁴

IV. Additional Response to Questions by Commissioner Pinkert

A. What is happening with the grass fed segment of the U.S. market and what is the competitiveness of U.S. producers in the grass fed segment of the market?

The voluntary standards established by the U.S. Department of Agriculture (USDA) to verify a marketing claim of grass-fed beef did not take effect until November 15, 2007.²⁵ As a result of this rather recent establishment of grass-fed beef standards, there appears to be a lack of data to accurately ascertain the market share of grass-fed beef. Prior to the USDA's establishment of grass-fed beef standards, a 2006 news article by McClatchy News Service reported an interview with then president of the American Grassfed Association, Patricia Whisnant, who purportedly estimated the grass-fed market share at that time at three percent.²⁶ However, in a telephone conversation with an American Grassfed Association member and grass-fed producer, Will Harris from Bluffton, Georgia, Mr. Harris estimated that following the establishment of U.S. grass-fed standards, the current market share held by the grass-fed industry in the U.S. likely is less than one percent (presumably, some of the beef previously considered grass-fed did not meet the new standards). Mr. Harris indicated that the requisite USDA audits of producers who desire to make a grass-fed marketing claim are currently underway and it likely

²⁴ See *supra*, at 2.

²⁵ See 72 Fed. Reg., 58631-637 (Oct. 16, 2007).

²⁶ See Grass-Fed Beef Worth the Wait for Many, Jane Snow, McClatchy News Service (Aug. 16, 2006), available at <http://www.americangrassfed.org/wp-content/uploads/2009/02/Grass-fed%20beef%20worth%20the%20wait%20for%20many.pdf>

will be a year or two before sufficient data is generated to determine the U.S. producers' share of the domestic grass-fed market.

A 2007 research article published in *Choices* reveals that it is a mistake to presume that beef exports from countries such as Uruguay, which are known to raise predominantly grass-fed beef, are exporting predominantly high-quality grass-fed beef to compete in the U.S. grass-fed market. Instead, researchers explained that most of Uruguay's organic and natural beef (which would include certified grass-fed beef) is exported as chilled beef, and chilled beef comprises only a small fraction of Uruguayan beef exports.²⁷ The researchers state, "For example, in 2004, only 7,562 metric tons of high-quality chilled beef were shipped to the United States, and the remainder of the quota was filled with lower-quality frozen beef."²⁸ Based on the total volume of Uruguayan beef shipped to the U.S. in 2004 (134,518 metric tones), the volume of high-quality Uruguayan beef represented less than 6 percent of Uruguay's total shipments to the U.S. that year.²⁹

Literature and anecdotal evidence suggest that the U.S. grass-fed market is nascent, and the limited availability of data makes it difficult to quantify the precise size of that market or the competitiveness of the U.S. grass-fed industry in that market. However, as pointed out by the researchers published in *Choices*, it should not be presumed that large quantities of high-quality

²⁷ See Grass-Fed Certification: The Case of the Uruguayan Beef Industry, Michael A. Boland, et al., *Choices*, 1st Quarter 2007, available at <http://www.choicesmagazine.org/2007-1/foodchains/2007-1-03.htm>.

²⁸ *Ibid.*

²⁹ See Global Agricultural Trade System Online, U.S. Department of Agriculture, Foreign Agricultural Service (2004 volume of Uruguay imports based on six-digit HS subheadings: 010210, 010290, 020110, 020120, 020130, 020210, 020220, 020230, 020610, 020621, 020622, 020629, 021020, and 160250).

grass-fed beef are currently being shipped to the U.S. by exporting countries generally considered to predominantly produce grass-fed beef.

V. Conclusion

For the reasons set forth above and in its pre-filed hearing brief and testimony, R-CALF USA encourages the USITC to recommend to the President of the United States that the TPP Agreement be rejected on the basis that it likely would accelerate the ongoing contraction of the U.S. cattle industry. R-CALF USA appreciates this opportunity to submit these post-hearing comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is stylized with a large, sweeping initial "B" and a long, horizontal flourish at the end.

Bill Bullard
CEO