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September 30, 2005

Ambassador Robert Portman
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: Comments on the U.S. – Andean Free Trade Agreement

The Ranchers-Cattlemen Action Legal Fund – United Stockgrowers of America (R-CALF USA) appreciates this opportunity to provide specific comments on cattle and beef trade in the United States-Andean Free Trade Agreement (Andean FTA).

R-CALF USA is a non-profit association that represents over 18,000 U.S. cattle producers in 47 states across the nation. R-CALF USA works to sustain the profitability and viability of the U.S. cattle industry, a vital component of American agriculture. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners.

I. Introduction

R-CALF USA believes that negotiating bilateral and regional FTAs with agriculture-producing and exporting countries that possess small internal consumer markets is counterproductive for the American cattle industry. R-CALF USA is concerned that the Andean FTA in particular will do little to promote exports of U.S. beef, while subjecting domestic producers to substantial risks of increased beef imports. In light of the major challenges faced by domestic producers in gaining access to world markets – high tariffs, subsidies, and non-tariff barriers among them – pursuing a favorable outcome for the American cattle industry in the current round of WTO negotiations should take precedence over negotiating FTAs that provide few if any potential benefits to the U.S. industry.

As detailed in R-CALF USA's comments to the International Trade Commission regarding the probable economic effects of the Andean FTA, R-CALF anticipates no major export benefits for U.S. cattle producers in concluding an FTA with Andean countries.[2] Significant increases in U.S. beef exports to the region are unlikely, given the region's sizable domestic herd and relatively low per capita GDP. The vast majority of any potential export market therefore available for U.S. beef exports to the region is for limited quantities of high-quality U.S. beef targeted to premier restaurants and restaurants that service the tourist industry in each of these countries.

While U.S. export opportunities to the region are severely limited, the likelihood of increased imports from the region is substantial. Though the Andean nations do not currently export beef to the U.S., they have a combined herd of nearly 42 million head of cattle and are a potentially significant source of cattle and beef imports for the United States.[3] The Andean nations have a herd three times the size of the herd in Canada, which has been our largest foreign competitor. If the FTA stimulates foreign investment in the Andean region as intended, and if this investment flows to the region's cattle and beef industry to expand herd size, improve genetics, eradicate disease, and upgrade slaughtering capability, exports of Andean beef to the U.S. could increase dramatically. In addition, if the rules of origin in the FTA are lax or easily circumvented, large volumes of cattle and beef could be transshipped through the Andean region to the U.S. from other countries in Latin America. The MERCOSUR nations alone have a combined herd size of more than 250 million head, and Venezuela has another 16 million.

Given these serious concerns, R-CALF USA believes that cattle and beef products should be excluded from the Andean FTA. The U.S. negotiating position should be guided not just by the current market situation and trading relationship in this sector, but also by the potential impacts of liberalization in five, ten, and twenty years after implementation. Beef, and cattle by extension, are "import sensitive agricultural products" according to the terms of the Trade Act of 2002 (P.L. 107-210).[4] Therefore, these products should not be subject to quota increases and/or tariff reductions under the Andean FTA. Such an outcome is permitted under WTO rules, since Article XXIV of the GATT only requires that FTAs remove restrictions on "substantially all" trade in goods originating in the member states of an FTA. Excluding beef from the FTA would advance R-CALF USA's goals of addressing cattle and beef trade in a comprehensive manner through multilateral negotiations at the WTO rather than piecemeal FTA negotiations with countries lacking substantial markets for U.S. exports.

Furthermore, no FTA should be concluded until the Andean nations re-open their markets to U.S. cattle and beef exports. All four Andean countries closed their markets to American beef and cattle after BSE was reported in the U.S. in December of 2003, and maintain broad import bans. These import bans must end before any FTA is signed with the Andean nations.

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[2] Letter from Leo R. McDonnell, Jr., President, R-CALF USA, to the Honorable Marilyn R. Abbott, Secretary, International Trade Commission (Jan. 26, 2004).
[3] FAOSTAT database, *Agricultural Production*, Live Animals – Cattle.
[4] Trade Act of 2002, at Section 2113(10).

Finally, the U.S. should examine and eliminate trade-distorting subsidy programs for cattle and beef production in all four Andean countries. Colombia is known to subsidize beef exports through preferential access to credit and other measures available through the FINAGRO program.[5] According to the USDA, FINAGRO provides financial support to re-stock cattle herds, and the percentage of FINAGRO credit devoted to these activities "grew 56 percent in 2003, and represented 94 percent of the total credit given for animal purchases, which amounted to $105 million."[6] For the first eight months of 2005, the Colombian government reports that FINAGRO provided over $346 million in credit for animal purchases.[7] This subsidized credit may be partially responsible for the uncharacteristic growth in Colombia's cattle herd size since 2001, when the credit was instituted.[8] Colombia's herd size has grown by more than 159,000 head per year on average from 2001 to 2004, while it shrank by more than 431,000 head annually on average in the previous four years. The U.S. should seek to eliminate this subsidy and any other subsidies that distort beef and cattle trade in the region before concluding an FTA with the Andean countries.

The comments below address the possibility of an Andean FTA that does include cattle and beef in spite of the grave concerns outlined above. Though R-CALF USA strongly opposes such an outcome, these comments represent a constructive effort to outline the basic steps that must be taken to minimize the damage that an Andean FTA including beef would likely cause for the American cattle industry. The purpose of these comments is to identify four specific areas that must be addressed if beef is included in the Andean FTA: 1) tariff-rate quotas on beef imports; 2) safeguard measures; 3) rules of origin; and 4) anti-circumvention measures.

II. <u>The FTA Should Not Contain New Quota Allocations for Beef</u>

Beef from the Andean region currently receives preferential treatment under the Andean Trade Preference Act (ATPA) (19 U.S.C. § 3201 et seq.). Under the ATPA, Andean beef that enters within the "all others" general quota of 64,805 metric tons enters at a preferential, duty-free rate.[9] Andean beef that enters above quota is subject to the MFN tariff rate of 26.4%.[10] Thus the preferences granted through the ATPA apply only to beef imports within the general quota; no preferences are accorded to imports exceeding this quota level. The treatment accorded to Andean beef imports under the ATPA is identical to the treatment that other developing country FTA partners received regarding beef imports through unilateral trade preference programs such as the Generalized System of Preferences

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[5] U.S. Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers 2005*, at 133.
[6] U.S. Department of Agriculture, Foreign Agricultural Service, *Colombia Dairy and Products Annual 2004*, GAIN Report No. CO4013, at 3.
[7] "Crédito Agropecuario Creció 13.5% en estos 8 Meses," Press Release, website of the Fondo para el Financiamiento del Sector Agropecuario (FINAGRO) of Colombia, at http://www.finagro.com.co. Figure in U.S. dollars converted from 793 billion Colombian Pesos.
[8] U.S. Department of Agriculture, Foreign Agricultural Service, *Colombia Livestock and Products Annual 2001*, GAIN Report No. CO1019, at 2.
[9] U.S. Harmonized Tariff Schedule at Chap. 2, headings 0201 – 0202.
[10] *Id.*

and Caribbean Basin Initiative. These programs all provide, in statute, for duty-free status for agricultural goods subject to tariff-rate quotas only when those goods enter under quota.[11]

In recent bilateral FTAs, the U.S. has generally taken two different approaches to market access for beef imports.

Under the first approach, employed in the U.S. – Jordan FTA and with reference to Guatemala in the U.S. – Central America – Dominican Republic FTA (CAFTA-DR), the U.S. does not alter the quota on beef imports from the FTA partner. Under these FTAs, Jordan and Guatemala continue to export beef to the U.S. under the existing, general "all others" quota of 64,805 metric tons. In-quota imports are granted permanent duty-free access, locking in the preferential access provided under unilateral preference programs. Out-of-quota imports are, however, extended additional preferential treatment through the phase-out of the 26.4% duty rate on out-of-quota beef imports. In the Jordan FTA, the out-of-quota tariff phases out in 10 equal annual reductions, reaching zero in year 10. For Guatemala, the out-of-quota tariff phases out in 15 equal annual reductions. Jordan and Guatemala, like the Andean countries, export no beef to the U.S. and are not certified for importation by USDA.

Under the second approach, employed in the U.S. – Australia FTA, the U.S. – Chile FTA, the U.S – Morocco FTA, the U.S. – Singapore FTA, and for most of the countries in the CAFTA-DR, the U.S. creates a dedicated quota for the FTA trading partner above and beyond the existing general "all others" quota or, in the case of Australia, above and beyond the country's existing dedicated quota. The dedicated quota created in the FTA increases gradually over a four-, ten-, fifteen-, or eighteen-year period before expiring to allow unlimited imports. Beef imported within the existing general "all others" quota and the additional, dedicated FTA quota receives duty-free tariff treatment upon FTA implementation, while beef imported out-of-quota is subject to a preferential tariff similar to the one described in the first approach, above. The preferential tariff phases out over the same time period in which the quota increases. In the final year, the quota is eliminated and the tariff reaches zero. In recognition of Australia's large export capacity, the Australia FTA includes a back-loaded quota increase and tariff phase-out that last for 18 years. In general, the dedicated FTA quotas appear to reflect the general volume of current imports from the relevant trading partner. In these FTAs, some trading partners that currently export no beef to the U.S. received initial FTA quotas of 15 metric tons.

In the Andean FTA, R-CALF believes that the U.S. should employ the first approach. The Andean nations, which do not currently export beef to the U.S., should not receive a dedicated beef quota above and beyond the access already granted them under the general "all others" quota. The general quota has not come close to being filled in recent years, and it provides substantial access to the U.S. market. Because the Andean region's duty-free access within quota would be locked in under such an arrangement (in contrast to the current preferential access that can be revoked unilaterally and is slated to expire at the end of 2006

[11] *See* 19 U.S.C. §§ 2463(b)(3), 2703(d), and 3203(g).

under the ATPA), it already provides concessional access to Andean producers. Such an arrangement also reflects the fact that the Andean countries currently export no beef to the U.S. market, and thus have no legitimate expectation of a dedicated quota. In addition, with no export base to serve as a reference point, it would be extremely difficult to arrive at a dedicated quota that is reasonable and balanced. Furthermore, maintaining the current quota structure will avoid inadvertently providing additional access to third-country competitors through implementation of the Andean FTA. If Andean producers were able to take advantage of a dedicated FTA quota, it would free up more of the general "all others" quota for use by third countries without any reciprocal concessions on their part.

The Andean region is unique in that, like Guatemala and Jordan, it currently exports no beef to the U.S., yet, like Australia, it has a very large herd. In fact, the combined herd in the Andean region is nearly 60% larger than the herd size of Australia. Therefore it is essential that the FTA not only maintain current quota size but also back-load any tariff phase-out for out-of-quota imports as was done in the Australia FTA. The phase-out should last for eighteen years to account for the potential of large and disruptive volumes of imports from the region. An extended, back-loaded tariff phase-out reflects the import sensitivity of beef, and complies with instructions in the Trade Act of 2002 to provide for "reasonable adjustment periods" for U.S. import-sensitive products.[12] Any concessions the U.S. does grant in terms of tariff phase-outs must be fully balanced by reciprocal concessions granted to U.S. exporters by the Andean nations.

Furthermore, the Andean FTA should contain conditions on market opening similar to those in the Australia FTA. Specifically, the Australia FTA provides that additional market access for Australian beef exports will only come into effect when U.S. beef exports equal or exceed the level of U.S. beef exports in 2003. While the Australia FTA only maintains this condition for three years after implementation, the Andean FTA should maintain this condition without an arbitrary time-limit. Any additional preferential access should only come into effect once U.S. exports have resumed their 2003 volume. This condition is essential to guaranteeing access for U.S. beef abroad after many markets have been closed following the reported first BSE case in the U.S. at the end of 2003 (which involved a Canadian animal) and have been maintained or reinstated after the second case this year. The U.S. already has one of the most liberalized markets for beef imports in the world, and its exporters are faced with dozens of closed markets that have caused grave injury to American cattle producers. Any additional opening of the U.S. market must be conditional pending the resumption of U.S. exports at the levels preceding market closing by foreign nations at the end of 2003.

III. <u>The FTA Must Include Safeguard Measures for Beef</u>

Because of the Andean region's large herd size and potential for large and rising volumes of exports, it is essential that the Andean FTA contain a safeguard for beef similar to the one provided in the Australia FTA. Inclusion of such a safeguard would also give

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[12] *Id.* at Section 2102(b)(10)(A)(i)(II).

effect to principal negotiating objectives for trade agreements regarding perishable and cyclical agricultural products that Congress articulated in the Trade Act of 2002.[13] The safeguard should be triggered automatically, with no need for U.S. industry to petition for its application.

The Andean FTA should contain a price-based safeguard similar to the one included in the Australia FTA, but the safeguard should apply both during and after any phase-out period for tariffs.[14] Similar to the Australia FTA, this safeguard should be automatically triggered by a decline in domestic beef prices of more than 6.5%. A decline in domestic cattle prices should also be sufficient to trigger a beef safeguard in the Andean FTA. 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. Also like the Australia FTA safeguard, once quotas phase out at the end of the implementation period, the 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.

It is important to note that this safeguard would not affect the duty-free status of imports entering in-quota. This is consistent with the model created in the Australia FTA. Non-application of safeguard duties to in-quota imports under the FTA also avoids reducing market access benefits that Andean countries currently enjoy under the ATPA. In-quota imports are currently duty-free under the ATPA, and would continue to be duty-free in the FTA and under the safeguard. Only out-of-quota imports, which currently enter at the MFN rate under the ATPA, would be subject to tariff snap-back under the safeguard.

IV. The FTA Must Employ a Born, Raised, and Slaughtered Rule of Origin

It is essential that the Andean FTA employ a "born, raised and slaughtered" (BRS) rule of origin for beef. Currently, the U.S. only requires beef to be slaughtered in a country in order to be considered an originating good from that country, and the U.S. continues to apply this inadequate rule of origin in its FTAs. The U.S. should impose a stricter rule of origin on beef entering under the FTA.

A BRS rule of origin has significant advantages for the American cattle industry. Without a BRS rule of origin, the FTA will create a large incentive for third-country beef

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[13] The Act directs U.S. negotiators to, "eliminat[e] practices that adversely affect trade in perishable or cyclical products, while improving import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture," and "ensur[e] that import relief mechanisms for perishable and cyclical agriculture are as accessible and timely to growers in the United States as those mechanisms that are used by other countries." P.L. 107-210 at Title XXI, Sec. 2102(b)(10)(A)(ix) and (x), respectively.

[14] While the price-based safeguard in the Australia FTA only applies after tariff phase-out, a quantity-based safeguard does apply to Australian imports during the tariff phase-out. Since a quantity-based safeguard may be unworkable in the Andean FTA considering that there is no current level of imports to serve as a benchmark, the safeguard in operation during any tariff phase-out period should be a price-based safeguard.

exporters to send their cattle to the Andean region for slaughter, thus raising U.S. imports and undermining the domestic cattle industry. Designation of their product as an Andean originating good will enable third-country exporters to take advantage of higher and eventually unlimited quota levels, as well as duty-free treatment within that quota. And these third countries need not provide any reciprocal access to U.S. producers in order to benefit from the Andean region's preferential access – in fact, they can keep their markets completely closed to U.S. beef and export freely through manipulation of a weak rule of origin. These concerns are particularly serious in the Latin American context, with more than 250 million head of cattle in the MERCOSUR countries alone and another 16 million in Venezuela. These nations have resisted opening their markets to U.S. producers, and a rule of origin that would allow them to benefit from an FTA negotiated with Andean countries is unacceptable. Inclusion of a BRS rule of origin will avoid these outcomes and ensure that the benefits of the agreement accrue to its participants.

V. Effective Anti-Circumvention Measures Are Needed

For a BRS rule of origin to function in the Andean FTA, it must be accompanied by strong anti-circumvention measures. Such measures should be established through a side-letter or other arrangement in the FTA, and can be accompanied by a cooperation program, and perhaps some technical assistance and other capacity-building assistance for the relevant Andean government agencies if needed. Such measures are absolutely necessary given the experience with transshipment under past FTAs. Under the North American Free Trade Agreement, for example, cattle originating in South America have been allowed to enter through Mexico, denying the advantages of the agreement to its intended beneficiaries – cattle producers in North America.[15]

Import certification that allows for source verification is the core anti-circumvention measure that must be included in the Andean FTA. USDA already requires exporters of beef to the U.S. to be certified establishment by establishment. The Andean FTA should include verification of compliance with the BRS rule of origin as part of this establishment certification process. Only those establishments that receive such certification will be eligible to export beef qualifying for preferential treatment under the FTA. Establishments that receive a regular USDA import certification, but do not comply with the BRS rule of origin standard, can continue to export beef to the U.S. under current rules, but will not be eligible for the preferential treatment accorded by the FTA.

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[15] *See, e.g.*, *Subsidies Enforcement Annual Report to the Congress, Joint Report of the Office of the United States Trade Representative and the U.S. Department of Commerce*, February 2001, Attachment 3, available at http://ia.ita.doc.gov/esel/reports/seo2001/report2001.html#Att3, reporting exports of live cattle from Uruguay to Mexico. *See also* "Cattle Industry Asks Officials to Act on Potential Trade Violations," Press Release of the National Cattlemen's Beef Association, Aug. 22, 2000, available at http://www.beefusa.org/NEWSCATTLEINDUSTRYASKSOFFICIALSTOACTONPOTENTIALTRADEVIOLATIONS4222.aspx ("Several unconfirmed but alarming reports have indicated that a large shipment of feeder cattle from Uruguay is planned to arrive in Mexico and ultimately be transported to the United States.").

Though source verification is not currently part of any USDA import certification process, it should be relatively straightforward to set up and administer. One precedent that could be built upon is Uruguay's Certified Natural Meat Program, instituted in 2003 and approved as a USDA Process Verified Program (PVP) in 2004. The program includes a requirement that meat certified by the program only come from cattle that is "born, raised, fattened and slaughtered in Uruguay." The program allows all participating cattle to be source verified and fully traced from birth to packaging by requiring farm and feedlot operators to maintain identifying documentation for all cattle, and requiring slaughterhouses and packers to trace individual identity as well. Uruguay created the program to improve its profile in overseas markets after a Foot and Mouth Disease outbreak in 2001, and its verification procedures are sufficiently rigorous to meet the USDA's standards for a Process Verified Program. Uruguay's program is the only foreign certification program that has been approved as a USDA PVP, which certifies both domestic and foreign suppliers' programs. To operate an approved USDA PVP, suppliers have to submit documented quality management systems to the Audit Review and Compliance (ARC) Branch of USDA and pass an audit according to ARC Procedures. Uruguay's program was audited and approved by USDA in 2004. Uruguay's approval from USDA enables them to export meat to the U.S. with the "Uruguay Certified Natural Meat" label as well as a "USDA Process Verified" label.[16]

Another model meriting consideration is the Non-hormone Treated Cattle (NHTC) program. Though the program is not designed to meet a BRS rule, it does mandate traceability of cattle back to birth in order to verify that no hormones have been administered, and thus could provide the kind of source verification needed to administer a BRS rule of origin. The program was instituted in 1989 to certify that U.S. exports of beef to the EU are hormone-free. The program ensures, among other things, that meat exported to the EU only comes from cattle grown in approved farms and feedlots and delivered to slaughter with an affidavit from the grower attesting to the cattle's non-hormone treated condition since birth. Each animal must be identified with a unique identifier and the identification system must include the names and addresses of the places where cattle originated. Appropriate records for each lot of animals presented to EU-approved slaughterhouses must be maintained by the operators and made available to both internal and external auditors upon request. Producers seeking to export to the EU must have their control systems approved in advance. The system is audited by an independent, third party accredited by the USDA. This program could be adapted to focus solely on source verification, and be converted from an export certification system to an import certification system for inclusion in the Andean FTA.[17]

[16] For more information, see the website of Uruguay's Certified Natural Meat Program at http://www.uruguaymeat.gub.uy, and the website of the USDA's Process Verified Program at http://processverified.usda.gov.

[17] More information on the NHTC program is available on the USDA website at http://www.fsis.usda.gov/ofo/export/nhtcprog.htm.

VI. Conclusion

R-CALF USA appreciates this opportunity to provide input on four specific aspects of the Andean FTA negotiations. While we remain concerned about the overall balance of benefits and risks in this agreement, we believe that the steps outlined above can go a long way towards alleviating these concerns and reaching a fair conclusion. The Andean FTA must incorporate a careful tariff-rate quota structure for beef that back-loads full duty-free access; meaningful safeguard provisions; a born, raised, and slaughtered rules of origin; and effective anti-circumvention measures. With each of these elements in place, potential harm to the domestic cattle industry can be minimized, while potential benefits of the accord will be limited to those Andean FTA partners who participate in negotiations and provide reciprocal benefits to the U.S. This will avoid the perverse result of increasing access for third-country producers who provide no meaningful access to the American cattle industry. These steps will also help build support in the American cattle industry for fair and balanced trade, and help safeguard the livelihoods of tens of thousands of American men and women who make their living in the cattle industry.

I look forward to a continued dialogue on these important issues.

Sincerely,

Leo R. McDonnell, Jr.
President, R-CALF USA