A Proactive Agenda to Reduce Distortions in Global Cattle and Beef Markets in the Doha Round

I. Introduction

The Ranchers-Cattlemen Action Legal Fund – United Stockgrowers of America (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, the largest segment of American agriculture. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Various main street businesses are associate members of R-CALF USA.

II. The Doha Round

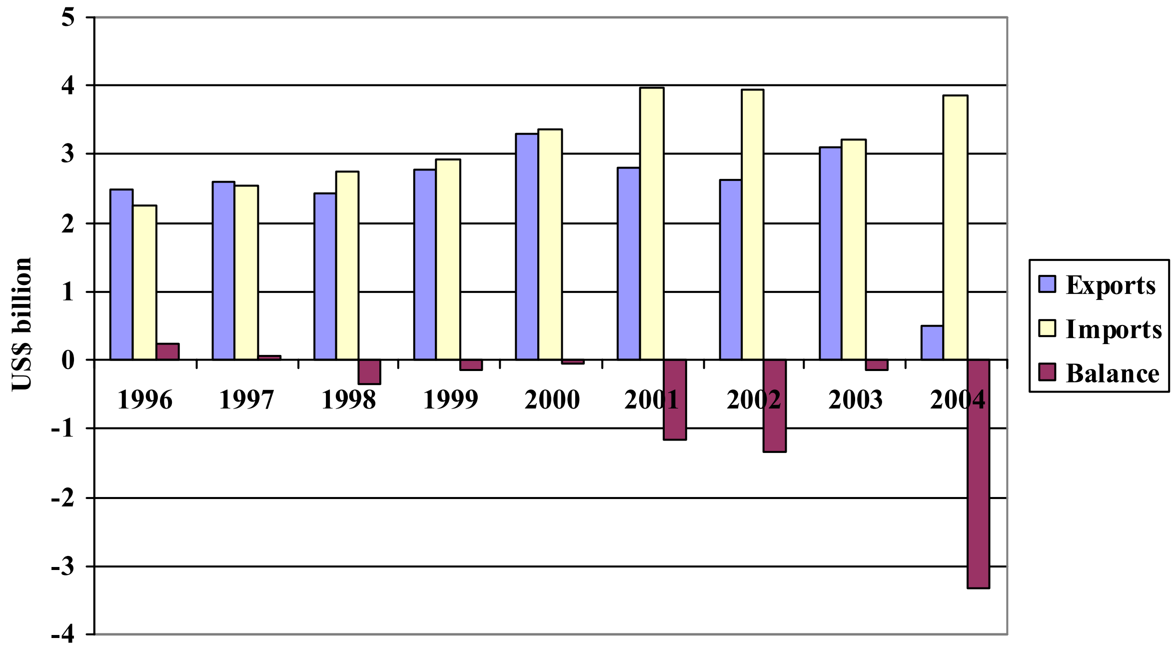
R-CALF USA believes the current round of negotiations at the WTO – the Doha Development Round – provides an important opportunity for the U.S. to address deep imbalances in the global cattle and beef markets. The world market place for cattle and beef is one of the most grossly distorted markets of any sector. Foreign cattle and beef markets are plagued by massive subsidies, including those provided through state trading enterprises; high tariffs and the manipulation of unscientific sanitary and phytosanitary measures to block imports.

These distortions drive down prices for U.S. producers and close markets for U.S. exports. As a result, the American cattle industry suffered catastrophic losses during the 1990s and up until the last two years. While the American cattle and beef market remains one of the most open in the world, markets abroad have slammed their doors shut to American exports. As a result, the U.S. has not enjoyed a trade surplus in cattle and beef trade since 1997, and the deficit in the sector has exploded over the past six years, hitting more than $3.3 billion in 2004.[1] Over the same period, the U.S. has lost its position as a global exporter of beef. While the U.S. was the second-largest exporter of beef in the world in 2000, accounting for 19.5% of global beef exports, in 2005 the U.S. has regressed to the position of the ninth-largest exporter of beef and is projected to

[1] U.S. Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics for HS 0102 (cattle), 0201 (fresh and chilled beef), and 0202 (frozen beef).

account for only 4.1% of world beef exports, falling behind Brazil (the number one exporter), Argentina, Australia, Canada, the EU, India, New Zealand, and Uruguay.[2]

U.S. Trade in Cattle and Beef



Source: Census Bureau Foreign Trade Statistics for HS 0102, 0201, and 0202.

Since 1994, more than 122,000 cattle ranches and farms have closed down or otherwise exited the beef cattle business.[3] During the same period, the inventory of cattle and calves in the U.S. dropped from 101 million to just under 95 million.[4] The steep decline of the cattle industry – a vital component of America's rural economy – has devastated ranching families and rural communities across the nation. The underlying problems facing the American cattle industry are caused in part by the massive distortions in the global cattle and beef market. The Doha Development Round at the WTO provides a crucial opportunity for eliminating these distortions.

The United States has one of the most open cattle and beef markets in the world, with very low tariffs and no trade-distorting subsidies. Other countries' trade policies in this sector must be harmonized to achieve parity with U.S. levels of openness. The best way to pursue such harmonization in the Doha Round is through a sectoral approach that addresses the variety of trade barriers facing U.S. cattle and beef exports. While the U.S. has reserved the right to pursue sectoral initiatives in the Doha agriculture negotiations,

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[2] U.S. Department of Agriculture, Foreign Agricultural Service, *Livestock and Poultry: World Markets and Trade*, April 2005.
[3] U.S. Department of Agriculture, National Agricultural Statistics Service Agricultural Statistics Database, *U.S. and All States Data – Cattle and Calves*, 1994 – 2004.
[4] *Id*.

the U.S. has not yet pushed trading partners to adopt a sectoral approach for cattle and beef. The U.S. should propose a sectoral initiative on cattle and beef trade as soon as possible. Given the dramatic disparities between U.S. trade policies in this sector and the policies of our major trading partners, the standard negotiating approaches for market access and subsidies disciplines employed in the current round are unlikely to achieve the necessary level of harmonization. A sectoral approach is also merited in light of the extreme perishability of cattle and beef. All major cattle and beef producing and consuming nations should participate in this sectoral initiative, regardless of their level of development. The goal of the sectoral approach should be to greatly reduce or eliminate trade distortions so that U.S. cattle and beef producers enjoy the same access to global markets that foreign producers currently enjoy to the U.S. market.

Specifically, a sectoral approach in the cattle and beef sector should aim for elimination of trade-distorting subsidies in the sector as quickly as possible and harmonization of cattle and beef tariffs to U.S. levels. In addition, it is essential that the current round of WTO negotiations result in special rules for cattle and beef as perishable products within the meaning of the terms in the Trade Act of 2002. America's ability to effectively enforce its trade remedy laws must also be fully maintained in the Doha Round. Meanwhile, given that the Agreement on Sanitary and Phytosanitary Measures has not been opened to negotiations in the Doha Round, the Administration and Congress need to use other means available to insist that unsound sanitary and phytosanitary barriers to American beef and cattle exports be eliminated and bring trade cases to remove such barriers if necessary. These outstanding issues must receive urgent attention if the current round of negotiations is to level the playing field for America's cattle producers.

III. <u>Eliminate Harmful Subsidies</u>

Major cattle and beef producing nations provide billions of dollars of subsidies to cattle and beef producers through export subsidies and domestic support programs. Australia, Brazil, Canada, China, the EU, Japan, Korea and other producers all subsidize cattle and beef production, while the U.S. provides no subsidies to the cattle and beef industry outside of disaster assistance and drought relief.[5] In addition, countries such as Australia and Canada use state trading enterprises for beef and for cattle feedstuffs such as wheat. Wheat Boards in these countries, for example, are able to guarantee domestic cattle producers artificially low feed prices, further disadvantaging American ranchers. These massive subsidies severely distort the global market for cattle and beef, artificially depressing prices and undercutting American producers.

R-CALF USA believes that these trade-distorting subsidies in this sector need to be eliminated in order to create a truly balanced international cattle and beef market in which the domestic industry can compete and thrive. R-CALF USA welcomes the commitment made in the Doha Development Round to eliminate export subsidies by a

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[5] For a summary of foreign subsidies in the cattle and beef sector, see Office of the U.S. Trade Representative and the U.S. Department of Commerce, *Subsidies Enforcement Annual Report to Congress*, February 2004, at 37 – 43.

date certain because of the overall benefit such elimination would confer on our sector, and believes the U.S. must push aggressively to reach agreement on the earliest termination date possible for these subsidies in the cattle and beef sector. The recent U.S. proposal to eliminate agricultural export subsidies by 2010 is a welcome first step,[6] and a sectoral initiative on cattle and beef could help achieve the earliest possible date for export subsidy elimination in our sector.

On the issue of domestic support, R-CALF USA believes that an overall sectoral initiative for cattle and beef would provide the best framework for elimination of trade-distorting domestic subsidies in the cattle and beef sector. Given the larger difficulties in reducing and rationalizing domestic support across all of agriculture, a sectoral approach on this matter provides significant advantages to American producers in a sector where the U.S. already provides no trade-distorting support and foreign support regimes severely disadvantage domestic producers. If a sectoral approach is not employed, it may be possible for foreign producers to maintain unacceptably high subsidization rates for cattle and beef under the subsidy reduction formulas and timetables currently being discussed in the Doha round. The goal of a sectoral approach should be to eliminate all domestic support measures for cattle and beef that do not fit the criteria of the so-called permissible "green box" subsidies. Internal support mechanisms for cattle and beef permitted under the so-called "blue box" category should be as narrow and limited as possible, and "amber box" subsidies for cattle and beef should be eliminated entirely. Finally, the U.S. should work in the Doha negotiations to eliminate state trading enterprises (such as wheat boards) that undermine American cattle and beef producers.

IV. <u>Expand Market Access</u>

U.S. tariffs on cattle and beef imports are among the lowest in the world. The U.S. has only minimal tariffs, and no quotas, on cattle imports.[7] In-quota tariffs on beef imports range from 4 to 10 cents per kilogram,[8] and calculated duties for all beef imports in 2004 equaled less than 2.6 percent of the value of those imports.[9] In addition, dozens of countries receive duty-free access to the U.S. market for in-quota beef imports, either through bilateral free trade agreements or unilateral trade preference programs.[10] Major U.S. trading partners, on the other hand, apply tariffs rates four to ten times higher than the effective U.S. rate. The European Union, for example, imposes tariffs of at least 12.8

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[6] See, "U.S. Proposal for WTO Agriculture Negotiations," USTR website at http://www.ustr.gov/Trade_Sectors/Agriculture/US_Proposal_for_WTO_Agriculture_Negotiations.html , downloaded Oct. 11, 2005.
[7] U.S. Harmonized Tariff Schedule at Chap. 1, heading 0102 (live cattle) (supp. 2005).
[8] U.S. Harmonized Tariff Schedule at Chap. 2, headings 0201 (fresh and chilled beef) and 0202 (frozen beef)(supp. 2005).
[9] Calculation based on data from the U.S. International Trade Commission's Interactive Tariff and Trade DataWeb for HS 0201 and 0202
[10] U.S. Harmonized Tariff Schedule at Chap. 2, headings 0201 – 0202 (supp. 2005).

percent on beef imports.[11] Japan applies a tariff of 38 percent on beef imports, and Korea's tariffs on beef imports are 40 percent or higher.[12]

In the face of such disproportionately high tariffs in prime export markets, and in light of the already extremely low tariffs imposed on imports into the U.S., a sectoral approach to market access in the cattle and beef sector is needed. Sectoral negotiations on cattle and beef trade will allow the U.S. to seek parity in tariff and quota rates by pushing for harmonization of world rates to the U.S. level.

A formula approach to tariff reductions in the cattle and beef sector would make it much more difficult to achieve parity and thus poses significant risks to U.S. producers. If a formula approach is to be employed, it must be designed to ensure that major cattle and beef producing and consuming countries with the highest tariffs are obligated to make the steepest cuts so that parity with U.S. tariff levels can be achieved. It is not clear that even the most ambitious tariff-reduction formulas proposed to date, such as that of the U.S., could accomplish this critical result. Therefore a sectoral approach to cattle and beef trade in the Doha Round presents much greater opportunities and fewer risks for domestic producers who seek to harmonize world tariff levels to U.S. levels.

In order to succeed, a sectoral approach to tariff reductions must bring the tariffs on beef and cattle imposed by all major producing and consuming nations into parity with U.S. levels, regardless of the country's level of development. In addition, the U.S. must seek to limit as much as possible any major producing or consuming nation's ability to avoid or delay tariff cuts in cattle and beef by designating them as sensitive products. Trading partners must not be allowed to manipulate the sensitive product designation in order to avoid achieving parity in cattle and beef tariffs.

V. Remove Unjustifiable Sanitary and Phytosanitary Barriers

In addition to tariffs, trading partners' abuse of sanitary and phytosanitary standards (SPS) presents a nearly insurmountable obstacle to exports of American cattle and beef. Scores of foreign countries shut their markets to American cattle and beef following the reported first bovine spongiform encephalopathy (BSE) case in the U.S. at the end of 2003, which involved a Canadian animal. Export markets have largely remained closed after the second reported BSE case in the U.S. this year. Currently, 54 countries prohibit some or all imports of U.S. beef, citing concerns about BSE.[13] The United States has repeatedly expressed concerns that many of these import bans are unjustified because they have been imposed with no science-based risk assessment, with

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[11] European Union Tariff Schedule at 0201 – 0202 (2004).

[12] U.S. Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers 2005*, at 317 and 359.

[13] U.S. Department of Agriculture, Animal and Plant Health Inspection Service, *BSE Trade Ban Status as of 09/21/05* at http://www.aphis.usda.gov/lpa/issues/bse/trade/bse_trade_ban_status.html .

an inadequate scientific basis, and/or on the basis of SPS standards that are inconsistent with international standards.[14]

The unscientific BSE bans instituted by U.S. trading partners have drastically curtailed U.S. exports of cattle and beef. The value of U.S. exports of cattle and beef plummeted by more than 83 percent from 2003 to 2004, representing a loss of nearly $2.6 billion in export revenue for the industry in just one year.[15] These losses come on the heels of other unjustifiable SPS barriers to U.S. beef exports, such as the European Union's ban on imports of hormone-treated beef dating back to 1988. While the SPS Agreement is not open for negotiations in the Doha Round, there are many steps the U.S. can take to push for an end to these bans on U.S. cattle and beef exports, including through bilateral negotiations, trade enforcement, and improvements in the U.S.'s own controls on cattle imports from countries known to have BSE risks. Ultimately, the U.S. must do everything it can to re-open these essential markets for American cattle and beef as quickly as possible.

VI. Create Special Rules for Perishable and Cyclical Agricultural Products

In recognition of the unique challenges that producers of perishable, seasonal, and cyclical agricultural products face in international markets, Congress has directed U.S. trade 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;[16]
>
> 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;[17]

and

> [seek to] develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.[18]

While the U.S. has made an initial proposal to clarify and improve rules on anti-dumping and countervailing duty investigations of perishable, seasonal, and cyclical

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[14] See, e.g., U.S. Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers 2005*, sections on Argentina, Brazil, Chile, China, Hong Kong, Japan, Korea, and Taiwan at 11, 32, 65, 91, 257, 320, 364, and 596, respectively.
[15] U.S. Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics for HS 0102 (cattle), 0201 (fresh and chilled beef), and 0202 (frozen beef).
[16] 19 U.S.C. § 3802(b)(10)(A)(ix).
[17] 19 U.S.C. § 3802(b)(10)(A)(x).
[18] 19 U.S.C. § 3802(b)(10)(B)(i).

products in the context of the Rules negotiations at the WTO,[19] the U.S. has also proposed eliminating the special safeguard for agriculture in negotiations on the Agreement on Agriculture.[20] The U.S. has suggested that some kind of special safeguard for agriculture could be available for a limited time for less developed countries.[21]

A markedly different approach to special rules is needed in the cattle and beef sector given the highly perishable nature of these products. R-CALF USA believes that the special agriculture safeguard in Article V of the WTO Agreement on Agriculture should be maintained for beef and cattle. If the special safeguard has to be eliminated, it must be compensated for by significant liberalization of trading partners' import restrictions on cattle and beef, as described above, and by the establishment of an effective import relief mechanism for cattle and beef. The Doha Round should establish meaningful special rules for cattle and beef in recognition of their status as perishable products. These rules must include an automatic trigger for import relief and be capable of addressing both volume surges and price collapses. As the U.S. Congress has recognized, such market disruptions are of particular concern in perishable and cyclical product sectors such as cattle and beef, and thus merit the creation of a special relief mechanism.

The U.S. successfully included a quantity-based and price-based beef safeguard in the U.S. – Australia Free Trade Agreement, and this is a model that could be built upon in the Doha Round of negotiations. But where the Australia safeguard was discretionary, any safeguard mechanism for cattle and beef established in the Doha Round should incorporate an automatic trigger. Such a trigger is needed because a petition mechanism would be unworkable in a highly fragmented industry such as cattle and beef. An automatic trigger will also ensure that import relief is not delayed by an onerous petition process, but instead is available as soon as possible to the producers of perishable products who need immediate relief. In addition, the safeguard should be designed to protect domestic producers from sudden spurts in volumes of imports and from excessive price volatility, both of which pose a particularly severe risk for producers of perishable products like cattle and beef. Finally, the Doha Round should establish a safeguard that recognizes cattle and beef as like products, so that declining prices or rising imports in either product automatically triggers the safeguard for both products.

VII. Preserve and Strengthen U.S. Trade Laws

In addition to negotiations regarding the Agreement on Agriculture, negotiations on the anti-dumping, countervailing duty, and safeguard rules are also a core concern of R-CALF USA members. While establishment of a sector-specific safeguard that recognizes the unique challenges the cattle and beef industry faces is essential, as

[19] *Identification of Certain Major Issues under the Anti-Dumping and Subsidies Agreements*, Submission by the United States to the Negotiating Group on Rules, WTO, TN/RL/W/72, March 19, 2003.
[20] *Proposal for Comprehensive Long-Term Agricultural Trade Reform*, Submission from the United States to the Committee on Agriculture Special Session, WTO, G/AG/NG/W/15, June 23, 2000.
[21] See, "U.S. Proposal for WTO Agriculture Negotiations," USTR website at http://www.ustr.gov/Trade_Sectors/Agriculture/US_Proposal_for_WTO_Agriculture_Negotiations.html , downloaded Oct. 11, 2005.

discussed above, the U.S. must also work to ensure that the overall effectiveness of our trade laws, upon which the industry continues to rely, is preserved and strengthened. Of particular concern are on-going Rules negotiations in the Doha Round. Some countries have seized upon the Rules negotiations to try to weaken U.S. trade remedy laws. The U.S. needs to resist these threats and instead use the negotiations to clarify and improve WTO rules so U.S. trade laws can be preserved and strengthened. Congress has expressed its support for such a position through one of its principal negotiating objectives for trade agreements, which is to:

> preserve the ability of the United States to enforce rigorously its trade laws … and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions.[22]

Unfortunately, to date the Rules negotiations appear to be headed in exactly the wrong direction – the very direction that Congress foresaw and directed U.S. negotiators to avoid. Since the Uruguay Round was concluded in 1994, WTO dispute panels and the Appellate Body have made numerous adverse and overreaching decisions regarding U.S. trade laws. Some of these decisions have created new obligations beyond those agreed to by the parties in negotiations, and some panels have reached adverse conclusions by applying a more onerous standard of review than that provided for in WTO agreements. To redress these wrongs, the U.S. should work to clarify and improve the agreements so that adverse dispute settlement decisions can be resolved favorably, U.S. trade laws are protected from further challenge, and the U.S. retains the ability to strengthen its trade laws in the future. The U.S. should also take advantage of the current negotiations to ensure that future WTO panels cannot overreach their authority. While U.S. negotiators have made some positive proposals in the current round of negotiations, much more needs to be done if the problems that have arisen over the last decade are to be resolved.

In addition, an aggressive reaction is needed to stave off harmful proposals that have been made by foreign countries in the Rules negotiations. Of the more than 180 formal submissions made in the negotiations so far, the vast majority are designed to weaken trade remedy laws and limit the ability to effectively enforce those trade laws. These proposals must be rejected if the U.S. is to preserve its ability to counteract unfair trade practices that undermine American producers.

VIII. Conclusion

R-CALF USA believes that the current round of negotiations at the WTO can benefit America's ranchers if the negotiators work to eliminate gross distortions of the global cattle and beef market. In order to achieve an appropriate balance in rights and obligations, and in recognition of the severe imbalance between very low U.S. barriers to

[22] 19 U.S.C. § 3802(b)(14)(A).

cattle and beef trade and very high barriers in other major trading partners' markets, a sectoral approach to negotiations in the cattle and beef sector is required. The U.S. should pursue an aggressive agenda in the cattle and beef sector in the Doha Round to: eliminate subsidies; harmonize market access; preserve the special safeguard for agriculture; establish special rules for perishable, seasonal and cyclical products; and preserve and strengthen U.S. trade laws. This agenda must be accompanied by vigorous efforts to end unjustifiable sanitary and phytosanitary barriers to U.S. cattle and beef exports. America's cattle and beef producers are faced with unfair trade practices, a sharp deterioration in our trade balance, and threats to U.S. trade laws. The industry has lost tens of thousands of farms and ranches in the past decade and stands to lose many more. This decline can be reversed if the Doha Round results in trade that is open, fair, and balanced.