R-CALF USA Comments on the 2007 Farm Bill
December 30, 2005

The Ranchers-Cattlemen Action Legal Fund – United Stockgrowers of America (R-CALF USA) appreciates this opportunity to provide comments on the 2007 Farm Bill. These comments are submitted in response to a request for input from the U.S. Department of Agriculture (USDA). *See* 70 Fed. Reg. 35221 (June 17, 2005).

R-CALF USA is a non-profit association that represents over 18,000 U.S. cattle producers in 47 states across the nation, along with 60 state and local affiliates. 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. R-CALF USA works to sustain the profitability and viability of the U.S. cattle industry, a vital component of U.S. agriculture. The 2007 Farm Bill presents an important opportunity to strengthen the cattle sector and create a competitive playing field at home and abroad for United States cattle producers.

I. Introduction

The cattle industry is the largest single sector of U.S. agriculture, and the continued health of the sector is essential to creating strong, thriving rural communities all across the United States. In the past decade, U.S. cattlemen and women have faced significant obstacles in domestic and international markets. Since 1994, more than 122,000 cattle ranches and farms have closed down or otherwise exited the beef cattle business.[1] During the same period, the inventory of cattle and calves in the U.S. dropped from 101 million to just under 95 million.[2] The 2007 Farm Bill provides an important opportunity to reform U.S. agriculture policies to create a competitive playing field at home and abroad for U.S. cattle producers. Without independent and profitable cattle producers, an increasingly vertically-integrated cattle and beef industry in the U.S. could dictate increased dependence on foreign beef supplies (which are not uniformly subject to our high health standards), thus raising beef supply and quality issues for U.S. consumers.

The USDA has outlined a number of issues relevant to the 2007 Farm Bill upon which it seeks comment, including: the competitiveness of U.S. agriculture in global and domestic markets; the challenges facing new farmers and ranchers as they enter agriculture; the appropriateness and effectiveness of the distribution of farm program benefits; the achievement of conservation and environmental goals; the enhancement of rural economic growth; and opportunities to expand agricultural products, markets, and research. Since the U.S. cattle industry's primary concerns regarding the Farm Bill cut across the issue categories identified by USDA, these comments present each of the areas of concern to cattle producers in turn, rather than dividing them among the issue categories identified by USDA.

The 2007 Farm Bill should help producers compete in honest and open markets and maintain their central role as the backbone of U.S. agriculture. In order to do so, the Farm Bill

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[1] U.S. Department of Agriculture, National Agricultural Statistics Service Agricultural Statistics Database, *U.S. and All States Data – Cattle and Calves*, 1994 – 2004.
[2] *Id.*

should make progress in five key areas: 1) honest competition in the domestic livestock market; 2) animal health and safety; 3) consumer information; 4) international trade; and 5) the development of initiatives to sustain a more prosperous and competitive cattle and beef sector. In recognition of the importance of our sector and the challenges it faces, the 2007 Farm Bill should contain a separate cattle and beef chapter encompassing each of these issues to ensure that they receive the urgent attention they deserve and are addressed comprehensively.

II. Ensure Genuine Competition in the Domestic Cattle Market

Consolidation in the meatpacking industry has grown at an alarming rate over the past few decades, as have abusive contracting practices. Market concentration and packer-dominated contracting practices have systematically undercut cattle producers and denied them an honest price in a competitive market. Concentration among meatpackers has more than tripled since the late 1970s, and today just four beef packing companies control more than 83 percent of the industry.[3] This level of concentration far exceeds other industries, and the rate of growth in concentration is unmatched among other industries for which the Census Bureau collects such data.[4] Such a high level of concentration is indicative of a severe lack of competitiveness in the industry, given that most economists believe competitive conditions begin to deteriorate once the four-firm concentration level exceeds 40 percent.[5]

At the same time that the meatpacking industry has been consolidating dramatically, packers have increasingly used non-traditional contracting and marketing methods that further erode the selling power of cattle producers. Thus, while the meatpacking industry has become more integrated horizontally (through consolidation), it has also been increasing its vertical coordination through its contracting practices. Such methods include purchasing cattle more than 14 days before slaughter (packer-fed cattle), forward contracts, and exclusive marketing and purchasing agreements. Together, the four largest packing companies employed such forms of "captive supply" contracting methods for a full 44.4 percent of all cattle they slaughtered in 2002.[6] And use of these captive supply methods has been increasing rapidly, rising 37 percent from 1999 to 2002.[7]

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[3] J. McDonald et al., "Consolidation in U.S, Meatpacking," Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, Agricultural Economic Report No. 785, February 2000 at 7 and M. Hendrickson and W. Heffernan, "Concentration of Agricultural Markets," University of Missouri Department of Rural Sociology, February 2005, available on-line at http://www.foodcircles.missouri.edu/CRJanuary05.pdf. (Hereinafter McDonald).

[4] McDonald at 7.

[5] "Economic Concentration and Structural Change in the Food and Agriculture Sector: Trends, Consequences and Policy Options," Report Prepared by the Democratic Staff of the Committee on Agriculture, Nutrition, and Forestry, United States Senate, Oct. 29, 2004 at 4 – 5.

[6] RTI International, "Spot and Alternative Marketing Arrangements in the Livestock and Meat Industries: Interim Report," Report Prepared for the Grain Inspection, Packers, and Stockyard Administration, U.S. Department of Agriculture, July 2005 at 3-15.

[7] *Id.* at 3-17.

Captive supply practices push risks of price instability on to cattle producers and hold down cattle prices.[8] As prices for cattle are artificially depressed and become more volatile, it is cattle producers who pay the price, even when broader demand and supply trends should be increasing returns to producers. The impact of packer concentration and abusive contracting practices is evident in the declining share of each beef retail dollar that actually reaches cattle ranchers. The rancher's share of each retail dollar earned on beef was 45 cents in 2004, down from 56 cents in 1993.[9]

In the 2007 Farm Bill, steps must be taken to guard aggressively against anticompetitive practices and protect producers from the abuse of market power. There are two key components to this strategy: 1) strengthening tools to combat excessive concentration in the meatpacking industry; and 2) improving regulation to prohibit unfair contracting practices that deny market transparency and reduce producer bargaining power in open markets.

On the issue of consolidation, the Farm Bill should provide additional funding for antitrust enforcement and ensure that the various government agencies entrusted with enforcement better coordinate their work to make the most of limited resources. Numerous studies have criticized the failure of the USDA's Grain Inspection, Packers, and Stockyards Administration, the Department of Justice, and Fair Trade Commission to work together more aggressively to scrutinize mergers and acquisitions in the industry and to pursue a proactive strategy for preempting and remedying anticompetitive practices.[10] Steps to consider include additional dedicated funding for the agencies to enforce antitrust rules in the meatpacking industry; regular reporting to Congress on cases referred, pursued, and prosecuted; and the establishment of market consolidation thresholds that trigger enforcement action.

On the issue of market coordination and unfair contracting practices, the Farm Bill should strengthen the law in order to prohibit packer ownership, end captive supply, and guarantee a minimum open market volume. In addition, the law should require processors to bargain in good faith and prohibit other unfair contract practices by:

- Requiring a fixed base price in formula contracts and ban "tournament" or "ranking system" payments;
- Ensuring cattle purchase contracts include a clear disclosure of producer risks and duration, termination, renewal, and payment factors;
- Requiring contracts to be traded in open, public markets and prohibiting confidentiality clauses; and
- Improving termination and arbitration provisions to ensure cattle producers can retain and enforce their rights.

In addition, the Farm Bill should help promote transparency in the market by extending and

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[8] *Id.* at 3-18 – 3-22 and John M. Connor, "The Changing Structure of Global Food markets: Dimensions, Effects, and Policy Implications," Paper Presented to The Conference on Changing Dimensions of the Food Economy: Exploring the Policy Issues, The Hague, Netherlands, Feb. 6 - 7, 2003 at 8.

[9] USDA Economic Research Service, "Beef Values and Price Spreads," available on-line at http://www.ers.usda.gov/briefing/foodpricespreads/meatpricespreads/.

[10] *See, e.g.*, General Accounting Office, *Packers and Stockyards Programs: Actions Needed to Improve Investigations of Competitive Practices*, GAO/RCED-00-242, Sept. 2000 and General Accounting Office, *Justice's Antitrust Division: Better Management Information Is Needed on Agriculture-Related Matters*, GAO-01-188, April 2001.

strengthening Livestock Mandatory Price Reporting. Recently the GAO recommended a number of ways in which the current price reporting program could be improved to ensure that more accurate and complete data are available, and the Farm Bill should adopt and build upon these recommendations.[11]

III. <u>Safeguard Health and Safety</u>

Following the discovery of a Canadian cow with bovine spongiform encephalopathy (BSE) in Washington State in 2003, more than 50 countries banned U.S. cattle and beef imports, costing the U.S. industry billions of dollars. Though some key export markets, such as Japan, have begun to loosen their import bans on U.S. beef, it is unlikely that this partial market opening will allow for the full resumption of previous export volumes. While the U.S. has struggled to negotiate even limited access for U.S. cattle and beef exports to foreign markets, the domestic market has been thrown open to a much broader range of imports from abroad. As a result, cattle and beef imports into the U.S. face lower standards than U.S. exports must meet overseas, giving foreign countries an excuse to keep their markets closed due to the potential risks posed by the lower health and safety standards the U.S. applies to its imports.

In the case of Japan, for example, USDA agreed to allow imports of Japanese beef with no age limits while securing access to Japan only for U.S. beef from animals aged 20 months or younger. The broad opening to Japanese beef makes the U.S. the only major beef-consuming country in the world to accept beef from a BSE-infected cattle herd – regardless of the scope of the disease problem in that country and without requiring the more stringent BSE risk mitigation measures recommended by the OIE (World Organization for Animal Health). This lack of a coherent BSE protection policy presents a major obstacle to United States cattle producers who seek to protect their herds from disease and market their high-quality product around the world.

The Farm Bill should lay out an aggressive, comprehensive global strategy for protecting the integrity of the United States cattle and beef supply. Ultimately, global markets for U.S. products will not re-open fully if U.S. health and safety standards, particularly import standards, are perceived as inadequate. The Farm Bill should direct USDA to engage with other countries to upwardly harmonize global import standards for beef. These standards must provide the highest level of protection for animal health and food safety and rely on sound science. The Farm Bill can ensure that USDA makes health and safety a top priority as it works to restore global export markets for U.S. beef by:

- Closing loopholes in the U.S. feed ban that were identified by an international scientific panel convened by USDA more than 18 months ago;
- Instructing USDA to adopt the most stringent BSE risk mitigation measures recommended for both imports and exports by the OIE pending an international agreement on BSE standards;
- Employing more FSIS meat inspectors to work the lines in the large processing plants rather than using HACCP inspection so that Specified Risk Materials (SRMs) and other prohibited cow parts are not entering the food system;
- Allowing voluntary BSE testing by U.S. packers; and

[11] Government Accountability Office, *Livestock Market Reporting: USDA Has Taken Some Steps to Ensure Quality, but Additional Efforts Are Needed*, GAO-06-202, Dec. 2005.

- Directing USDA to take the lead in bringing countries together to upwardly harmonize BSE standards that would allow trade of safe cattle and beef products to resume and prevent any further global spread of the disease.

A coherent, global approach to health and safety in the cattle and beef sector will protect livestock health, ensure that products coming into the U.S. face standards as high as U.S. exports face overseas, provide producers with certainty and predictability, and confirm for consumers at home and abroad that U.S. cattle and beef is among the safest, highest-quality product in the world.

Finally, while R-CALF USA agrees that animal identification can play an important role in controlling and tracking disease, it is absolutely essential that any mandatory animal identification system be fully funded by the government and implemented through federal, state and tribal cooperation. The Farm Bill should ensure that any animal ID system maintains current programs and leaves jurisdiction over such programs to the respective states. A federalized or nationalized animal ID system that ignores the role of states and tribal authorities will impose undue burdens on producers while providing limited protection to animal health and consumer safety. Any producer-related liability associated with animal ID must cease when the animal changes ownership as long as proper animal husbandry practices have been followed.

IV. <u>Provide Information to Beef Consumers</u>

Congress passed mandatory Country of Origin Labeling (COOL) for beef and other perishable agricultural products in 2002. The American people in poll after poll support knowing what country their food comes from, and domestic producers believe that labeling provides an excellent opportunity for promoting high-quality U.S agriculture products. [12] Due to historical anomalies in country-of-origin marking rules and the marking practices of the Bureau of Customs and Border Patrol, beef and other perishable products are some of the few items consumers purchase in the U.S. that lack country of origin information.[13] The vast majority of other developed countries have already implemented country-of-origin labeling programs for such products, including beef.[14] The positive track record with seafood country of origin labeling proves that such labeling can be implemented to the benefit of both consumers and industry in the U.S. Unfortunately, despite broad public support and the proven success of similar programs, COOL implementation was recently delayed until 2008 due to widespread misunderstandings about the costs and benefits of COOL.

The Farm Bill should restore COOL by moving its implementation date as close as possible to the original date passed by Congress. In addition, the Farm Bill should outline an implementation approach that ensures COOL is administrated in the most simple and cost-effective manner for producers while providing the full scope of information to consumers contemplated in the original COOL law. The GAO and independent analysts have expressed concern that initial plans for COOL implementation outlined by USDA are unnecessarily

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[12] *See, e.g.,* John VanSickle et al., "Country of Origin Labeling: A Legal and Economic Analysis," University of Florida Institute of Food and Agricultural Science, May 2003. (Hereinafter VanSickle).
[13] *See, e.g.,* General Accounting Office, *Country-of-Origin Labeling: Opportunities for USDA and Industry to Implement Challenging Aspects of New Law*, GAO-03-780, Aug. 2000. (Hereinafter GAO-03-780).
[14] *Id.*

burdensome and expensive, and could be simplified significantly.[15] Packers should be capable of identifying those animals exclusively born and raised in the U.S., whose meat qualifies for a "U.S." label of origin under COOL, without passing along undue additional costs and legal liabilities to producers. Current marking and sealed conveyance requirements for cattle imported from Canada and Mexico due to health and safety concerns, together with any necessary modifications to marking law and regulations which exempt imported cattle from regular import marking requirements, should be sufficient to ensure that packers have all of the information they need to comply with COOL without imposing additional burdens on cattle producers. Finally, the Farm Bill should establish technology grants for COOL-related or other meat traceability programs to facilitate their implementation.

V. Address Global Distortions in Cattle and Beef Trade

While the Farm Bill does not typically address U.S. trade policy, these policies have significant impacts on U.S. cattle producers, and it is therefore important that the Farm Bill examine whether U.S. trade policies are consistent with broader policy goals for the cattle and beef sector. The U.S. has not enjoyed a trade surplus in cattle and beef trade since 1997 in dollar terms, and the deficit in the sector has exploded over the past six years, hitting more than $3.3 billion in 2004. Given the supply-sensitive nature of the market for U.S. cattle, the growing trade deficit in both cattle and beef has a profound impact on the U.S. cattle industry. The lack of harmonization of health and safety standards outlined in Section III, above, plays a large role in the loss of U.S. export markets. United States' competitiveness is also undermined by large subsidies and high tariffs on cattle and beef in other countries, while the U.S. market is one of the most open in the world and U.S. cattle producers receive no trade-distorting subsidies. It will also be important that USDA become more engaged in researching how exchange rates play into agricultural trade flows and monitoring the manipulation of exchange rates.

Congress outlined a number of steps that should be taken to eliminate the gross distortions plaguing global cattle and beef trade in the Trade Act of 2002.[16] There have been varying degrees of progress in meeting these objectives in ongoing negotiations at the World Trade Organization (WTO). In the Trade Act of 2002, Congress called for reduction of foreign tariff levels to meet U.S. levels,[17] which would require substantial reductions in beef tariffs by trading partners such as Japan and Korea. It is too early to tell whether this goal will be met in the Doha Round because of on-going discussions around the scope of carve-outs for sensitive products and the extent of tariff reductions, though negotiators have agreed in principle to a formula that would cut higher tariffs more steeply than low tariffs. Congress also called for the elimination of "subsidies that decrease market opportunities for U.S. exports or unfairly distort agriculture markets" in the Trade Act of 2002.[18] Significant progress has been made on this objective, as WTO negotiators have agreed in principle to eliminate export subsidies in agriculture by 2013 and called for substantial reductions in trade-distorting domestic support.

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[15] *See, e.g.,* GAO-03-780 and VanSickle.
[16] 19 U.S.C. § 3802.
[17] 19 U.S.C. § 3802(b)(10)(A)(ii).
[18] 19 U.S.C. § 3802(b)(10)(A)(iii).

Finally, because of the limited time periods in which perishable products can be marketed, Congress also called for the creation of special rules on perishable and cyclical agricultural products such as cattle and beef and timely access for growers of such products to import relief mechanisms.[19] R-CALF USA is troubled by the possibility that the special safeguard for agriculture that currently exists for beef could be given up by the U.S. at the WTO without the establishment of special rules for perishable and cyclical agriculture as directed by Congress. Preserving the right of developing countries to employ the special safeguard for agriculture while eliminating the right to do so for developed countries such as the U.S. could result in a mismatch of market opportunities that puts U.S. cattle producers at a competitive disadvantage. While the U.S. has tabled an initial paper flagging the need to discuss the creation of special rules for perishable and cyclical agriculture within the Doha Rules negotiations, it does not appear that this issue has been developed any further within the negotiating group.

There is no doubt that further trade liberalization without special safeguards will erode the market for the U.S. cattle industry. This could happen even in the absence of unfair trade practices. The U.S. Trade Deficit Review Commission noted, "Easy availability of imports can limit price increases either by expanding available supply or reducing the ability of businesses to raise prices in order to pass on increases in their costs."[20] This dynamic is particularly apparent in the cattle and beef industry, where, as former U.S. International Trade Commission Chairwoman Lynn Bragg observed, "The concentration of packers increases the packers' leverage relative to cattle producers, thus providing packers the ability to use imports to reduce domestic live cattle prices and/or prevent price increases."[21]

Additional progress is needed on Congressional negotiating objectives relating to cattle and beef trade in order to reduce major obstacles to U.S. competitiveness. Since it is likely that the Doha Round of negotiations at the WTO will conclude before the 2007 Farm Bill is enacted, it is important that the committees of jurisdiction developing the Farm Bill monitor progress in the negotiations and take the results of such negotiations into account when determining what additional elements may be needed in the Farm Bill to support the competitiveness of U.S. cattle producers.

In addition, the Farm Bill should create a global marketing information program – building upon existing data sources such as the FAO – to provide regularly updated information by country on commodity prices, supply and consumption trends, exchange rate impacts, and the dominant market shares of trading companies in order to help U.S. producers better target potential export markets. This need for better trade information was highlighted in the report of the bipartisan U.S. Trade Deficit Review Commission, which noted, "The growing importance of trade in our economy and the needs of government and businesses for information to be able to make good decisions make it essential that data on international trade in goods and services be relevant, accurate, and timely."[22]

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[19] 19 U.S.C. § 3802(b)(10)(A)(ix) – (x) and (B)(i).
[20] "The U.S. Trade Deficit: Causes, Consequences and Recommendations for Action," Final Report of the U.S. Trade Deficit Review Commission, Nov. 14, 2000 at 26.
[21] *Live Cattle from Canada*, Inv. No. 731-TA-812 (Final), USITC Pub. 3255, Nov. 1999 at 50.
[22] "The U.S. Trade Deficit: Causes, Consequences and Recommendations for Action," Final Report of the U.S. Trade Deficit Review Commission, Nov. 14, 2000 at ch. 7.

VI. Support a Stronger, More Competitive Cattle and Beef Sector

The 2007 Farm Bill should sustain the cattle industry's health and competitiveness by removing impediments to growth and investing in strategic development initiatives. A number of new or expanded initiatives to strengthen and support the domestic cattle and beef sector should be considered in the Farm Bill, such as:

- An increase in direct purchases of beef in the school lunch program and stronger rules of origin for beef benefiting from the program;
- Federally-funded pilot projects on mini-packing facilities;
- Grants, loans and loan guarantees for renewable energy and energy efficiency improvements, as well as financial assistance to cope with spikes in energy costs;
- Conservation programs that sustain wildlife and habitat as well as the rancher, and reward agricultural producers for taking measures to improve their land in a sustainable manner;
- Incentives and assistance programs for producer cooperatives and grower-owned value-added enterprises, research and development projects, and rural banking and economic development initiatives; and
- Initiatives to develop renewable energy sources, such as ethanol, soy diesel, juniper trees, wind, and poultry litter and rendered specified risk material.[23] Increased availability and use of these fuels can help grow and improve the livestock industry in the U.S. and create jobs in the U.S.

To increase the competitiveness and marketability of the U.S. cattle and beef, current law should also be reformed to allow for the interstate shipment of state-inspected meat. In addition, producers should have the right to vote on the beef check-off periodically in order to make sure it is being used to adequately promote their product and represent their needs, along with maintaining accountability to those who fund it.

VII. Conclusion

The 2007 Farm Bill presents an important opportunity to reform U.S. agriculture policy to level the playing field for U.S. cattle producers. A dedicated cattle and beef chapter in the Farm Bill should guarantee a competitive domestic market for cattle and beef, strengthen safeguards for health and safety, improve consumer information, address global distortions in cattle and beef markets, and establish new and expanded programs to support the continued vitality of the largest sector of United States agriculture.

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[23] *See, e.g.,* 70 Fed. Reg. 58576, 58595 (Oct. 6, 2005).