R-CALF USA
Fighting for the U.S. Cattle Producer

R-CALF United Stockgrowers of America
P.O. Box 30715
Billings, MT 59107
Phone: 406-252-2516
Fax: 406-252-3176
E-mail: r-calfusa@r-calfusa.com
Website: www.r-calfusa.com

November 23, 2007

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

Re: R-CALF USA Post-Hearing Brief Regarding *Global Beef Trade: Effects of Animal Health, Sanitary, Food Safety, and Other Measures on U.S. Beef Exports* (Inv. No. 332-488)

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 effects of animal health, sanitary, food safety, and other measures on U.S. beef exports (Inv. No. 332-488). R-CALF USA represents thousands of U.S. cattle producers on domestic and international trade and marketing issues. 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.

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 important to investigate the health, sanitary, and food safety measures imposed not only by other countries but also by the U.S. that have caused U.S. cattle producers to lose significant market share around the world. In addition, government policies such as high import tariffs and barriers, massive subsidies, and other trade distorting policies also create obstacles to U.S. beef exports. Commissioners and Commission Staff raised a number of important questions at the hearing in this investigation regarding: organizations representing the cattle and beef industry, the proper approach to mitigating the risk of BSE posed by imports; the role of testing technologies, country-of-origin labeling, and animal identification in addressing BSE concerns; and the impacts of BSE on the cattle and beef industry. We address these questions from the Commission in turn below.

I. Organizations Representing the Cattle and Beef Industry

Chairman Pearson asked about the differences in views between the three national cattle associations and why there are three national groups.

Prior to the mid-90s the National Cattlemen's Association (NCA) was essentially the only national organization representing the interests of U.S. cattle producers. During this period, the interests of cattle producers were separately represented, as were the interests of the other segments of the beef supply chain, i.e., meatpackers, importers, exporters wholesalers and retailers. However, after the mid-90s the NCA merged with the Beef Industry Council to form the National Cattlemen's Beef Association. At this point independent cattle producers no longer had an exclusive voice to represent their distinct economic interests as the NCA merger with the Beef Industry Council resulted in meatpackers obtaining seats on the governing board of the NCBA.

The void created by this merger was soon filled by R-CALF USA in 1999. R-CALF USA represents only the live cattle segment of the multi-segmented beef supply chain. R-CALF USA has over 12,000 independent cattle-producing members in 46 states and there are over 60 state and local cattle and farm organizations that are affiliates of R-CALF USA. Among its affiliates is the Australian Beef Association, which represents the interests of cattle and livestock producers in Australia.

While independent producers that raise and sell cattle and meatpackers that buy and process cattle are integral partners in the beef supply chain, R-CALF USA recognizes that they are also in competition with one another to maximize their respective profits, minimize their respective risks, and to capture their competitive shares of the domestic and international beef market. Thus, on issues that impact the competitiveness and profitability of cattle producers, such as market concentration, industry structure, international trade, product labeling, and animal disease protection, members of R-CALF USA have a different interest than that of the meatpackers.

For example, R-CALF USA has long supported mandatory country-of-origin labeling so U.S. cattle producers can maintain the separate identity of their U.S. cattle herd and differentiate their domestic production from among their competitors' production. R-CALF USA also supports market competition reforms to ensure that the rules that define how the marketplace functions do not afford dominant market participants, i.e., concentrated meatpackers, with a distinct pricing advantage in the marketplace. Further, R-CALF USA seeks reforms in trade policy to ensure that the supply-sensitive nature of the U.S. cattle industry is adequately addressed in trade agreements and it supports maintaining maximum protections against the introduction of foreign animal diseases, recognizing that even small risks can have catastrophic impacts on the profitability and viability of the U.S. cattle industry.

The mission of R-CALF USA is to represent the U.S. cattle industry in trade and marketing issues to ensure the continued profitability and viability of independent U.S. cattle producers.

II. Import Regulations and BSE Risk

Commissioners asked a number of questions regarding the approach that the United States and other countries have taken to regulating imports in response to the risks posed by bovine spongiform encephalopathy (BSE). Commissoner Williamson asked how U.S. restrictions on cattle imports from Canada was an "overreaction;" Chairman Pearson and Commissioners Pinkert and Williamson asked about the application of the "precautionary principle" to trade in cattle and beef in light of BSE concerns; and Commissioner Pearson asked what basis there was for claims that BSE is being eradicated.

A. U.S. Restrictions on Beef and Cattle Imports from Canada

R-CALF USA does not agree that the U.S. overreacted by restricting imports of beef and cattle from Canada in May 2003 following Canada's announcement of the detection of an indigenous case of BSE. Since 1989, the U.S. has prudently prohibited imports of ruminants and ruminant products from any country known to have BSE.[1] In addition, the U.S. prudently maintains a prohibition against the importation of ruminant and ruminant products from any country that presents an undue risk for BSE due to import policies that are less restrictive than those of the U.S. or because the country conducts inadequate BSE surveillance.[2]

In its 2003 Final Interagency Working Group Report to Congress, USDA and other agencies reported that the U.S. was maintaining its longstanding and successful BSE protection strategy that included, as its primary protective measure, import restrictions against countries where BSE was known to exist. USDA jointly and succinctly described the U.S. BSE strategy to Congress as consisting of three primary goals:

---

[1] *See* 9 CFR § 94.18 (a)(1); 9 CFR § 94.18 (b), (In 2003, Canada became the 24th country to be added to the list of regions prohibited from importing beef or cattle to the U.S. because BSE was known to exist in Canada. The following countries continue to be subject to this ban: Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, the Republic of Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Oman, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Switzerland, and the United Kingdom.)

[2] *See* 9 CFR § 94.18 (a)(2); 9 CFR § 94.18 (b), (The following countries are banned from importing beef or cattle to the U.S. because they present and undue risk for BSE even without any known incidence of BSE in their native cattle herds: Albania, Andorra, Bosnia-Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, Hungary, the Former Yugoslav Republic of Macedonia, Monaco, Norway, Romania, San Marino, and Sweden.)

- Prevent the agent of BSE from entering the United States and infecting U.S. cattle;
- Prevent the amplification of the agent of BSE throughout the U.S. cattle herd if it does penetrate the primary BSE safeguards at the U.S. borders and infect U.S. cattle; and
- Prevent the exposure of Americans to the agent of BSE via food and other products that are fully or partially of bovine derivation.[3]

The relevant question for policy makers today is not whether the U.S. had overreacted by implementing a longstanding and effective policy to protect the U.S. from the introduction of BSE from Canada. Instead, the relevant question is whether the U.S. is justified in abandoning its longstanding protection strategy in favor of a more relaxed policy and what effect this will have on exports.

Current policy is, indeed, an abandonment of the longstanding BSE protection strategy. No longer is USDA working to prevent the introduction of the disease. Indeed, the USDA's base-case risk assessment for allowing older Canadian cattle into the U.S. predicts that the U.S. will import 19 BSE-infected cattle from Canada resulting in the subsequent infection of 2 U.S. cattle.[4] The USDA's simulation model predicts at the 95th percentile value that 105 infected cattle would be imported from Canada leading to the subsequent infection of 75 U.S. cattle.[5]

The USDA claims that this risk is acceptable on the basis that it is not dissimilar to the risk already inherent in the U.S. cattle herd and points to the fact that the World Organization for Animal Health (OIE) has determined that both Canada and the U.S. bear the same risk designation – that of a country with a "Controlled BSE Risk." However, this label only tells part of the story with regard to the risks posed by imports of Canadian cattle and beef.

United States' export customers know what the United States Centers for Disease Control and Prevention (CDC) knows – that the BSE risk in Canada is substantially greater than in the U.S., that Canadian cattle are 26 times more likely to test positive for BSE than U.S. cattle, and that the U.S. has not detected any BSE-infected cattle with the same strain of BSE that was responsible for the BSE outbreaks in Europe or Canada. The CDC states:

---

[3] Federal Inter-agency Working Group, Final Report, Animal Disease Risk Assessment, Prevention, and Control Act of 2001, Title X, Subtitle E of PL 107-171, January 2003, at 40, 41, (The Interagency Working Group introduced these three primary goals by stating, "To date, there is no evidence of BSE in the United States, and the U.S. Government has worked proactively to keep BSE out of this country.").

[4] *See* Federal Register, Vol. 72, at 1109.

[5] See Federal Register, Vol. 72, at 53,347.

> The proportion of Canadian-born BSE cases identified by Canadian authorities through the testing of animals in Canada, 2003-April 2007 (10 cases among approximately 160,000 animals tested) is presently statistically significantly higher (26 fold higher) than the proportion of U.S.-born BSE cases identified by U.S. authorities through the testing of animals in the U.S. during the comparable period (2 cases among more than 875,000 animals tested).
>
> The BSE strain that is responsible for most of the BSE cases in Canada is the same strain linked to the outbreak in the United Kingdom. This strain has not yet been identified in any U.S.-born bovine. Both of the U.S.-born BSE cases and one Canadian-born BSE case were 10 years of age or older and all three of these older cases were linked to an atypical BSE strain known as the H-strain.[6]

Moreover, United States' export customers know that the OIE considers the United States' feed ban to be only a partial feed ban that is inadequate to prevent the spread of BSE through cross-contamination – a leading cause of BSE amplification in Canada. Thus, United States' export customers know that the U.S. does not yet have sufficient measures in place to address the increased risk associated with commingling Canadian beef and cattle with U.S. beef and cattle. The OIE has specifically recommended that the U.S. strengthen its feed ban in order to address its *current* risk of BSE, i.e., before assuming the increased risk associated with older Canadian cattle. The OIE stated in regard to the risk of BSE spread in the United States:

> [T]he partial implemented feed ban since 1997, and the absence of a prohibition on the use of specified risk material for animal feed allow the risk of recycling and amplification of the BSE agent within the country.[7]

It is clear that the U.S. has neither accepted nor acknowledged the scientific findings of the CDC or the scientific recommendations of the OIE prior to exposing the U.S. to a greater risk of BSE introduction and spread from BSE-affected Canada. As a result, the U.S. continues to experience minimal success in its efforts to restore lost export markets. The U.S. was not justified in relaxing its BSE protections vis-à-vis Canada, a fact that has been resoundingly reflected by world market reactions.

---

[6] BSE (Bovine Spongiform Encephalopathy, or Mad Cow Disease), Centers for Disease Control and Prevention, available at http://www.cdc.gov/ncidod/dvrd/bse/index.htm, downloaded November 21, 2007.

[7] Report of the Meeting of the OIE Scientific Commission for Animal Diseases, OIE, Paris, 26-28, February 2007, at 21, available at http://www.oie.int/downld/SC/2007/A_SCAD_fev2007.pdf, downloaded on November 21, 2007.

B. The Precautionary Principle and BSE Risks in Cattle and Beef Trade

The "precautionary principle" refers to the proposition that a country may take protective action against imports even in the absence of complete scientific proof regarding the risks posed by those imports to plant, animal, or human life and health. The precautionary principle represents one approach to balancing the benefits of more open trade in a product with the risks posed by that product when scientific knowledge regarding the scope and seriousness of those risks is still emerging.

While R-CALF USA supports careful regulation of cattle and beef imports that fully takes into account the scientific evidence regarding the risks of BSE, R-CALF USA does not believe that countries should have to resort to the precautionary principle to justify such an approach. As reviewed below, international trade rules limit the circumstances under which countries may adopt provisional import measures in light of scientific uncertainty. While the science on BSE is still developing, R-CALF USA believes that sufficient scientific basis exists to support a prudent approach to cattle and beef imports that is fully consistent with international trade rules.

The World Trade Organization ("WTO") has had several occasions to examine whether application of the precautionary principle to imports is consistent with WTO rules. In the *Beef Hormones* dispute, the European Communities invoked the precautionary principle as a general tenet of customary international law to defend its ban on imports of beef treated with hormones, but the EC did not specifically invoke the provisions of Article 5.7 of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"). Article 5.7 of the SPS Agreement provides:

> In cases where relevant scientific evidence is insufficient, a member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary and phytosanitary measure accordingly within a reasonable period of time.

The Appellate Body found that the precautionary principle was also reflected in other provisions of the SPS Agreement, including Article 3.3 and the sixth paragraph of the Preamble.[8] Paragraph six of the SPS Agreement's Preamble states that Members enter into the SPS Agreement desiring to increase the use of harmonized health and safety measures on the basis of international standards, "without requiring Members to

[8] *European Communities – Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1998) (*adopted* Feb. 13, 1998), para. 124 (hereinafter "*EC – Hormones*").

change their appropriate level of protection of human, animal or plant life or health." Article 3.3 permits members to maintain measures that result in a higher level of protection than that afforded by the relevant international standards, but only if there is a scientific justification for this higher level of protection. Nevertheless, measures based on this Article may not override any of the other provisions in the SPS Agreement, including the provisions in Article 5 requiring that protective measures be based on risk assessments and scientific evidence. The Appellate Body also noted that Members' sanitary and phytosanitary measures should be reviewed while bearing in mind that governments "commonly act from perspectives of prudence and precaution where risks of irreversible, e.g., life-terminating, damage to human health are concerned."[9]

After reviewing the provisions of the SPS Agreement and interpretative norms regarding the precautionary principle, the Appellate Body concluded that the precautionary principle does not override the binding provisions of Articles 5.1 and 5.2 of the SPS Agreement, which required Members to base their sanitary and phytosanitary measures on risk assessments that take into account scientific evidence and assessment techniques developed by international organizations.[10]

The Appellate Body provided a more detailed interpretation of the precautionary principle under Article 5.7 of the SPS Agreement in two cases against Japan. In the *Variety Testing* case, Japan sought to defend its testing requirements for agricultural products on the basis of Article 5.7. The Appellate Body found that Japan's measure was not justified, because Japan had failed to seek the additional information necessary for a more objective risk assessment within a reasonable period of time, as required by the second sentence of Article 5.7.[11] In upholding the Panel's determination regarding Japan's failure to seek additional information, the Appellate Body found that the "reasonable period of time" within which additional information must be sought was a question to be determined on a case-by-case basis.[12]

In the *Apples* case, Japan again sought to defend import measures on the basis of Article 5.7. The Appellate Body again found the measure to be inconsistent with Article 5.7, this time because the measure was not imposed in a situation where the relevant scientific evidence was insufficient.[13] In light of the a large body of scientific evidence regarding the general subject matter of Japan's disputed measure, Japan argued that the precautionary principle can be applied under Article 5.7 not only where there is little or

---

[9] *EC – Hormones*, para. 124.

[10] *EC – Hormones*, para. 125.

[11] *Japan – Measures Affecting Agricultural Products*, WT/DS76/AB/R (Feb. 22, 1999) (*adopted* Mar. 19, 1999), para. 92 (hereinafter "*Japan – Variety Testing*").

[12] *Japan – Variety Testing*, para. 93.

[13] *Japan – Measures Affecting the Importation of Apples*, WT/DS245/AB/R (Nov. 26, 2003) (*adopted* Dec. 10, 2003), para. 188 (hereinafter "*Japan – Apples*").

no reliable evidence on the issue, causing new uncertainty as to risk, but also where there is unresolved uncertainty as to the risk in spite of a large body of scientific evidence.[14] The Appellate Body disagreed, concluding that the application of Article 5.7 can only be triggered by the insufficiency of scientific evidence, not by the existence of scientific uncertainty.[15] The Appellate Body thus upheld the Panel's finding that Article 5.7 was intended to address situations where "little, or no, reliable evidence was available on the subject matter at issue," but noted that under this formulation Article 5.7 could also apply where a body of scientific evidence was available that did not yield reliable or conclusive results.[16]

Given the scope of the precautionary principle under WTO rules, a country seeking to invoke that principle to justify import measures related to cattle and beef that are inconsistent with international standards may face a difficult test if those measures were challenged at the WTO. While the science on BSE continues to develop, the international community has sought to reach a consensus on the risks posed to animals and humans by the disease through the development of best practices in import standards at the World Animal Health Organization ("OIE"). The OIE is explicitly recognized as a relevant international standard-setting body in the preamble to the SPS Agreement. Even where relevant scientific evidence may be insufficient, Article 5.7 still requires Members adopting provisional measures to do so on the basis of "available pertinent information, including that from the relevant international organizations." Furthermore, though Members may adopt higher levels of protection under Article 3.3., such measures still must be based on international standards under Article 5. Thus, even if a Member argued successfully that the degree of scientific uncertainty that still exists with regard to the risks posed by BSE justifies provisional measures and/or higher levels of protection, it would likely be quite difficult for that Member to justify any such measures that are not based on the international BSE standards of the OIE.

For these reasons, R-CALF USA has consistently sought for the United States to take measures consistent with OIE standards that will lower the risks of BSE within the U.S. and remove other countries' justifications for restricting imports of cattle and beef from the U.S. Furthermore, R-CALF USA believes the U.S. approach to BSE must be an integrated approach that seeks upward harmonization of health and safety standards at the OIE based on sound scientific evidence together with uniform application of those standards to trade among countries consistent with the SPS Agreement. R-CALF USA is concerned that the current approach, under which the U.S. adopts lower import standards than those of its trading partners and then seeks in vain to have other countries adopt a reciprocal standard, unnecessarily puts the U.S. cattle herd at risk while allowing trading partners to maintain significant barriers to imports of U.S. product.

---

[14] *Japan – Apples*, para. 183.

[15] *Japan – Apples*, para. 184.

[16] *Japan – Apples*, para. 185.

C. Eradication of BSE

Unfortunately, there is no basis for claiming that BSE is being eradicated. While the incidence of BSE has been substantially reduced in the United Kingdom (UK) and in Europe following the peak of those countries' epidemic in 1992 and 1993, BSE has since spread to many new countries where the evolution of the disease is not yet known.

Presently, there are 24 countries, including the UK, that have detected BSE. All but 4 of these countries have continued to detect positive cases since 2004. During the 1992-1993 peak of the epidemic, during which 37,316 and 35,139 cases were detected, respectively, BSE was confined to the UK, Switzerland, and only 3 countries in the EU. By 2000, BSE was known to have spread to 7 additional EU countries, Canada, and Liechtenstein. By 2003, BSE had spread to 17 countries in the EU, Israel, Japan, and the United States.[17]

Several countries that detected their first case of BSE since 2000 have experienced increased detections through 2006. These countries include Canada, Japan, Czech Republic, and Poland. In 2006, 341 cases of BSE were detected worldwide.[18]

Importantly, the incidence of the human form of BSE, variant Creutzfeldt-Jakob Disease (vCJD), continues to increase, both numerically and geographically. Since the initial diagnosis of this disease in 1996, when the disease was confined to Europe, there have been over 200 confirmed deaths from vCJD detected in 11 countries, including the UK.[19]

According to the BSE risk study completed by Harvard University in 2003, the risk mitigation measures implemented by the U.S. would be expected to eliminate BSE from the U.S. within 20 years after its introduction.[20] The Canadian government, however, was less optimistic regarding how long the disease would persist in Canada.

---

[17] *See* Table B4: Evolution of positive cases world-wide since BSE was recognized, Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy (TSE) in the EU in 2005, at 15, available at http://ec.europa.eu/food/food/biosafety/bse/annual_report_tse2005_en.pdf, downloaded on November 21, 2007.

[18] *See* Table B4: Evolution of positive cases world-wide since BSE was recognized, Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy (TSE) in the EU in 2006, at 16, available at http://ec.europa.eu/food/food/biosafety/bse/annual_report_tse2006_en.pdf, downloaded on November 21, 2007.

[19] Variant Creutzfeldt-Jakob Disease Current Data (November 2007), The National Creutzfeldt-Jakob Disease Surveillance Unit, the University of Edinburgh, available at http://www.cjd.ed.ac.uk/index.htm, downloaded on November 21, 2007.

[20] Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States, Harvard Center for Risk Analysis, Harvard School of Public Health, Revised October 2003, at vii.

The Canadian Food Inspection Agency (CFIA) stated: "Based on risk analysis, BSE eradication, which is estimated to have taken *several decades* with the current feed ban, should now be achieved in approximately ten years."[21] (Emphasis added.) Thus, the CFIA expected its BSE problem to persist for several decades without its recent feed ban improvement (an improvement the U.S. has not adopted in its own feed ban), and it still expects its BSE problem to persist until around year 2017, under the best of circumstances.

II. BSE Testing, Country-of-Origin Labeling, and Animal Identification

Commissioner Pinkert asked whether scientific technology has been applied to restore U.S. beef exports, and Commissioner Okun requested information on the costs of BSE testing. Chairman Pearson, Vice-Chariman Aranoff, and Commissioners Okun and Williamson asked about the use of country-of-origin labeling in other countries and traceability and animal identification in general; Commission staff asked what problems might occur if the U.S. moved towards identifying 100 percent of its animal herd.

A. BSE Testing

While technology exists that permits meatpackers and others to test cattle for BSE, currently less than one percent of the cattle slaughtered in the U.S. and Canada are tested for the disease. Current USDA policy is to oppose meatpackers' voluntary efforts to test their own products for BSE. For example, Creekstone Farms Premium planned to test cattle for BSE in meat shipments destined for Japan, and was prevented from doing so by USDA. Creekstone's proposal to test its product for BSE was consistent with the voluntary testing allowed for other animal diseases and voluntary labeling for other animal production methods in the United States. Creekstone's proposal would also have allowed a U.S. beef producer to practice the same type of voluntary BSE testing that is already prevalent in other countries (including key consuming markets for the U.S., such as Japan).

The Department refused to provide Creekstone with BSE test kits, arguing that the testing would mislead consumers regarding the safety of the beef they purchase. In addition, there were concerns from other beef packers in the industry that Creekstone's adoption of testing would eventually create enough consumer demand to force Creekstone's competitors to also test their product for BSE. Creekstone sued the Department of Agriculture, and, in March of 2007, a U.S. District Court ruled that the USDA had no authority to prohibit such testing.[22] Despite the ruling, voluntary testing for BSE is still on hold while the case is on appeal.

---

[21] Feed Ban Enhancement Questions and Answers, Canadian Food Inspection Agency, available at http://www.inspection.gc.ca/english/anima/feebet/rumin/enhqueste.shtml.

[22] *Creekstone Farms v. USDA*, No. 06-CV-0544-JR, Order (March 29, 2007).

B. Country-of-Origin Labeling

As noted in R-CALF USA's pre-hearing brief, producers' inability to ensure that beef from cattle born, raised, and slaughtered exclusively in the U.S. is clearly distinguished from imported beef and beef from imported cattle when it reaches the consumer presents another obstacle to U.S. beef exports. Meat from Canadian animals slaughtered in the U.S. and Canadian meat that is further processed in the U.S. are not identified as such to consumers either in the U.S. or abroad. These beef products bear the USDA inspection sticker and, in some instances, the USDA quality grade stamp, both of which may lead unsuspecting consumers to believe the product is of wholly U.S. origin. Because consumers and export customers cannot distinguish meat exclusively of U.S. origin from meat derived from Canadian animals or commingled with imported meat, many of the health and safety problems experienced in Canada have effectively become obstacles to the marketing of U.S. beef. As noted in the pre-hearing brief, a number of countries have made resumption of imports of U.S. beef contingent on the separation and identification of meat derived from U.S. and Canadian cattle.

The failure of the U.S. to label beef as to its origin stands in contrast to the practices of other countries. In a 2003 study, the Government Accountability Office ("GAO") found that most U.S. trading partners maintain some form of country-of-origin labeling at the retail level for beef and other products.[23] Of the 57 countries surveyed by the GAO, 41 required country-of-origin labeling for imported meat, and 36 countries required country-of-origin labeling for domestic meat products.[24] While the labeling requirements varied from country to country, it is notable that a number of prime trading partners require such labeling, including Japan, which requires country-of-origin labeling for all meat products included in the GAO survey, both imported and domestic.[25] Among other countries in Asia surveyed by the GAO, Korea, the Philippines, and Singapore also all require country-of-origin labeling for domestic and imported meat carcasses, meat cuts, frozen meat, and ground meat.[26] China, Korea, Malaysia, and Singapore also require country-of-origin labeling for processed meat, while Taiwan requires labeling of frozen and processed meat.[27]

---

[23] GAO, *Country-of-Origin Labeling: Opportunities for USDA and Industry to Implement Challenging Aspects of the New Law* (GAO-03-780) (Aug. 2003).

[24] *Id*. at 24. Of these 41 countries regulating labeling of imported meat, all required origin labeling for frozen meat, 35 required it for fresh cuts of meat, and 34 required labels for ground. Of the 36 countries that required labeling for domestic meat, all countries required origin labeling for frozen meat, 33 for cuts of meat, and 31 for ground meat.

[25] *Id*. at 27.

[26] *See* GAO, *Country-of-Origin Labeling for Certain Foods— Survey Results* (GAO-03-781SP), available on-line at http://www.gao.gov/cgi-bin/getrpt?gao-03-781SP . Last visited on November 21, 2007.

[27] *Id*.

C. Animal Identification

Based on data provided to the Commission by Kris Ringwall, Ph.D., North Dakota State University, regarding the per animal cost of an animal identification system suitable for age and source verification, the potential increase in export opportunities that an animal identification system might assist does not justify the cost of such a system for the entire U.S. cattle industry. Dr. Ringwall estimated the cost of such a system to be $20 per animal, with an additional cost (represented by lost income) of $10 to $20 resulting from the shrinkage in weight that occurs each time the animal is physically handled to accommodate identification processes.

Assuming the total cost of identification per animal is only $20 per head (ignoring the cost of weight shrinkage), the cost to the U.S. cattle industry if only the cattle slaughtered annually were subject to an animal identification system would be $680 million (based on approximately 34 million cattle slaughtered in 2006). Based on the pre-BSE record export year of 2003, when the value of beef exports was approximately $4 billion (See R-CALF USA's pre-hearing brief in this matter), the cost of identifying only the 34 million cattle slaughtered each year (as opposed to the 97 million cattle in the entire U.S. herd) would represent 17 percent of the total value of beef exports in 2003.

The record volume of U.S. beef exports in 2003 was approximately 2.6 billion pounds (about 2.5 billion pounds of beef and about 0.1 billion in the beef equivalent of live cattle). This amount of beef corresponds to approximately 3.3 million live cattle. Thus, in 2003, if the exported beef was derived from cattle subject to an animal identification system, the cost of such a system for animals destined for export would be approximately $66 million. It would not be cost effective for the entire industry to incur $680 million in costs when only $66 million of those costs would be applicable to exports.

This demonstrates that animal identification should not be imposed on 100 percent of the industry in order to facilitate exports that represent only about 10 percent of production. This would be an example of the tail wagging the dog. If export markets demand age and source verification through an animal identification system, then participation in such a system should be encouraged by marketplace forces. If the marketplace provided financial rewards for producers who chose to incur the additional cost of producing for the export market, then the marketplace would likewise be expected to generate sufficient numbers of participants to meet the export demand.

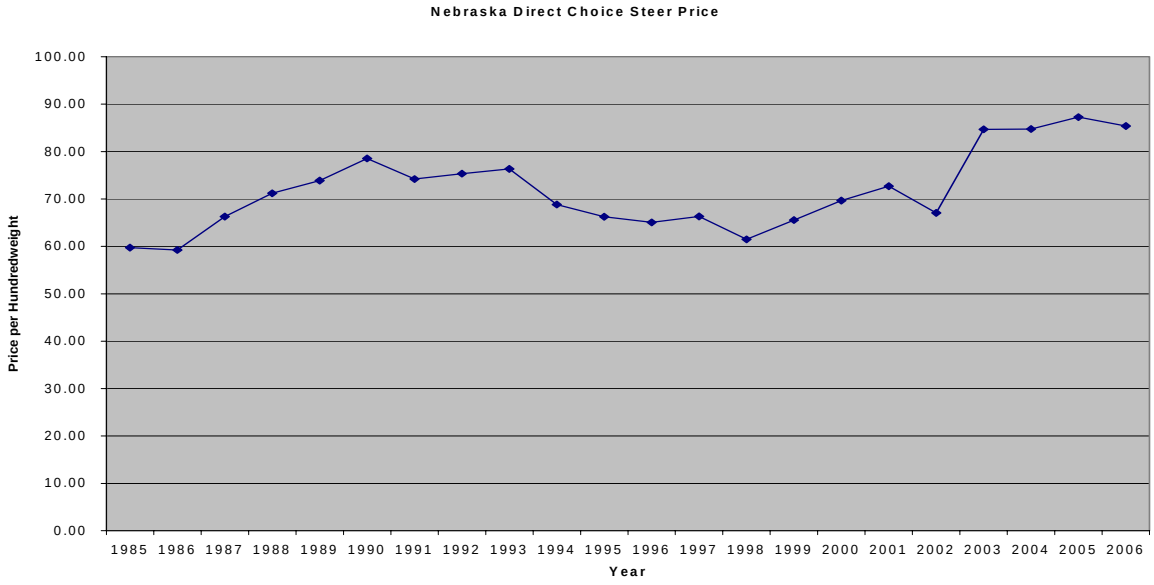
III. Impacts on the U.S. Cattle Industry

The Commission asked several questions regarding cattle prices and what factors contribute to the number of cattle available for slaughter in the U.S. Commission staff also asked for information on the oversupply of cattle and the elasticity of substitution of beef.

A. Trends in Cattle Prices

As discussed in further detail in the responses to Commission staff below, the U.S. cattle industry has been in a state of decline since at least the early 90s. In 1993, there were nearly 900,000 beef operations in the United States. By 2003, this number declined to 792,100, a decline of approximately 12 percent.[28] During the period from 1992-2001, the average returns to U.S. cow/calf producers fell to a *negative* $30.40 per bred cow per year.[29] As a result of this price-precipitated industry contraction, the U.S. calf crop in 2003 was predicted to be the smallest since the mid-1950s.[30] And it was, though it fell even further in 2004.

Figure 1 below shows the price depression that occurred in the domestic fed cattle market throughout the 1990s:

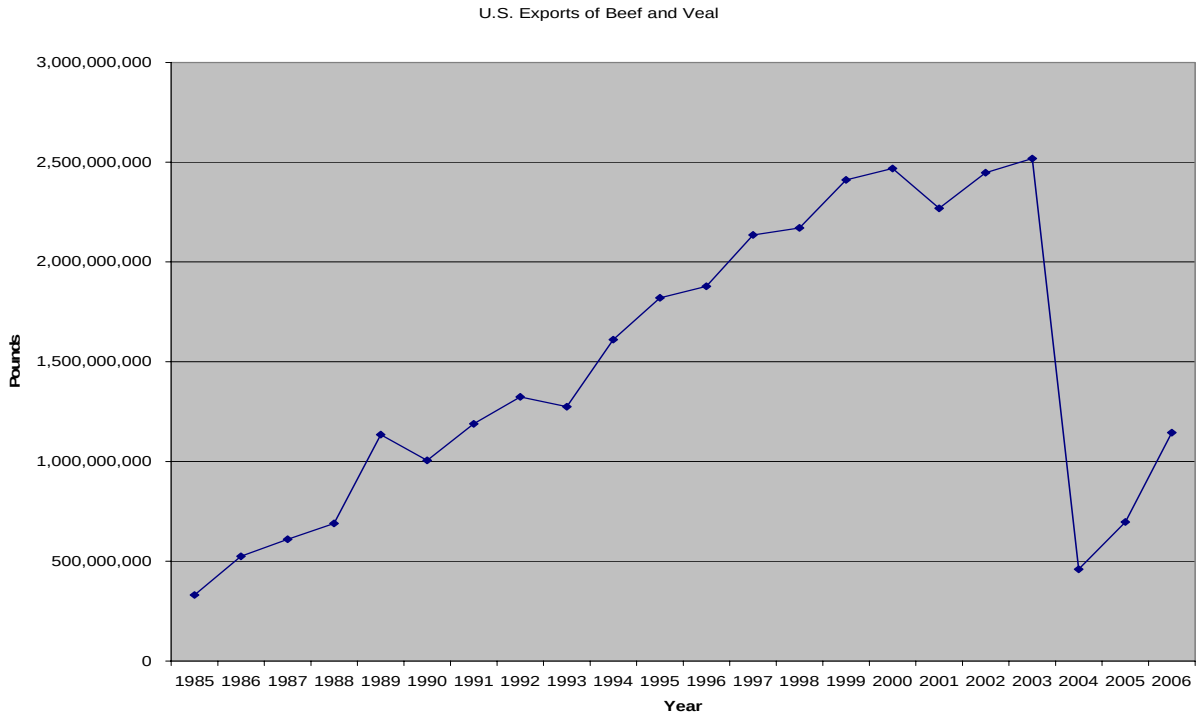


[28] USDA - National Agricultural Statistics Service, Number of All and Beef Cow Operations, 1988-2003 found at http://www.usda.gov/nass/aggraphs/acbc_ops.htm.

[29] U.S. Cow-Calf Production Cash Costs and Returns, 1990-95; 1996-99; 2000-2001, Economic Research Service/USDA, available at http://www.ers.usda.gov/data/farmincome/CAR/DATA/Appendix/Cowcalf/US9095.xls; http://www.ers.usda.gov/data/farmincome/CAR/DATA/History/CowCalf/US9699.xls; and http://www.ers.usda.gov/data/CostsAndReturns/data/current/C-Cowc.xls, retrieved from the internet on October 18, 2002.

[30] U.S. Department of Agriculture, *Meat Production in 2003 Essentially Unchanged*, Agricultural Outlook, June-July 2002, at 3.

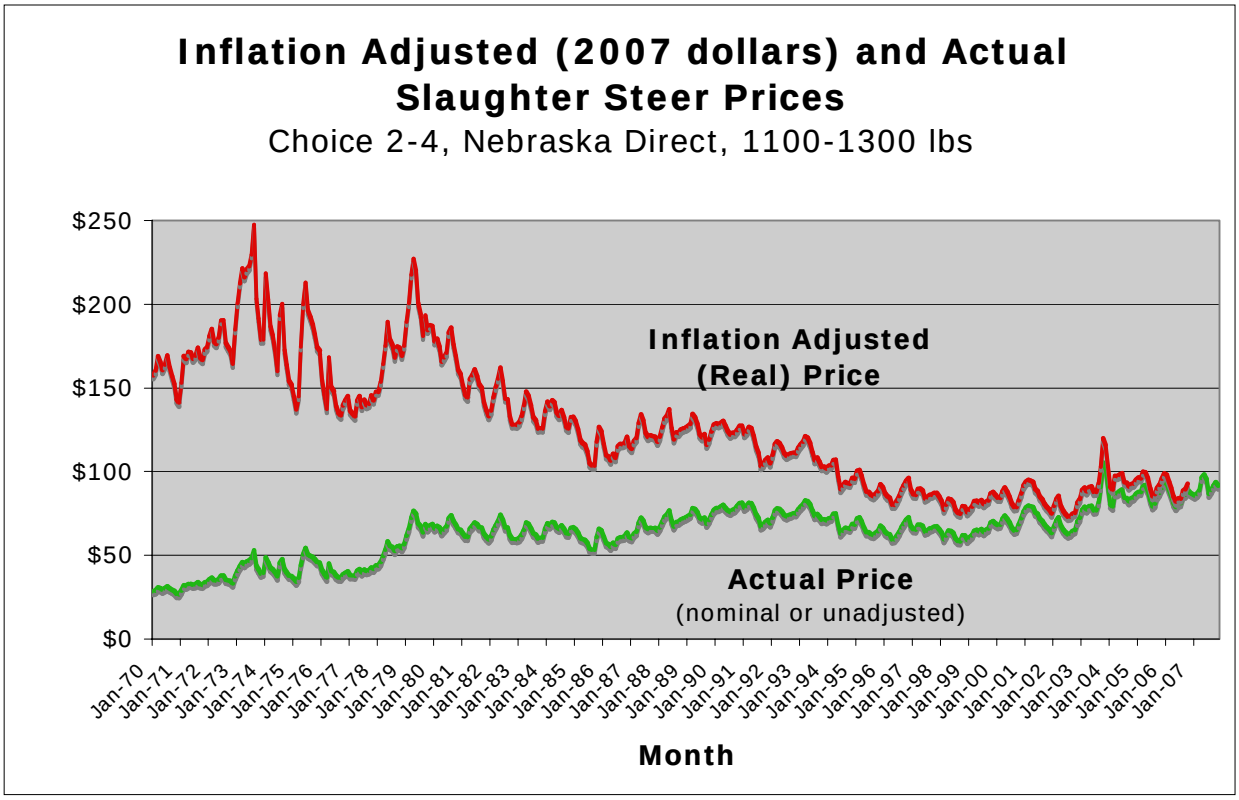
Figure 2 below shows U.S. beef exports for the same period reflected in Figure 1:



These two charts reveal a general, negative correlation between export volumes and domestic cattle prices beginning in 1990 and continuing through the present. At the very least, these charts debunk beef industry claims that increased profits received by meatpackers from increased exports are passed down to U.S. cattle producers through higher cattle prices.

R-CALF USA respectfully requests that the USITC's investigation include a review to determine which segments of the multi-segmented U.S. beef industry have benefited from U.S. beef exports since 1990, particularly a review of whether the foundation of the U.S. beef industry, i.e., the cattle producing segment consisting of approximately 800,000 independent cattle producers, have received their competitive share of the value of U.S. exports since 1990.

Figure 3 below helps to put current and past fed cattle prices in the proper perspective as it is adjusted for inflation:



Source: C. Robert Taylor, Alfa Eminent Scholar (Distinguished University Professor) of Agriculture Economics and Public Policy, College of Agriculture, Auburn University.

B Elasticity of Substitution of Beef in the U.S.

To aid in the determination of appropriate elasticities for beef, R-CALF USA would direct the Commission to the USDA's economic analysis completed for the agency's final rule to allow older Canadian cattle and beef from older Canadian cattle into the United States.[31]: Elasticities for beef are discussed at pages xv and xvi, and pages 17 – 19 of the analysis. In addition, the USDA summarized elasticities estimates and included tables of the demand and supply elasticities used in published research in its final rule.[32]

---

[31] See *Regulatory Impact Analysis and Final Regulatory Flexibility Analysis Final Rule Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines (Docket No. APHIS 2006-0041)*, available on-line at http://www.aphis.usda.gov/newsroom/hot_issues/bse/downloads/economic_analysis9-2007%20.pdf.

[32] *Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived From Bovines; Final Rule*, 72 Fed. Reg. 53,353, 53,354 (U.S. Dep't Ag., Sept. 18, 2007).

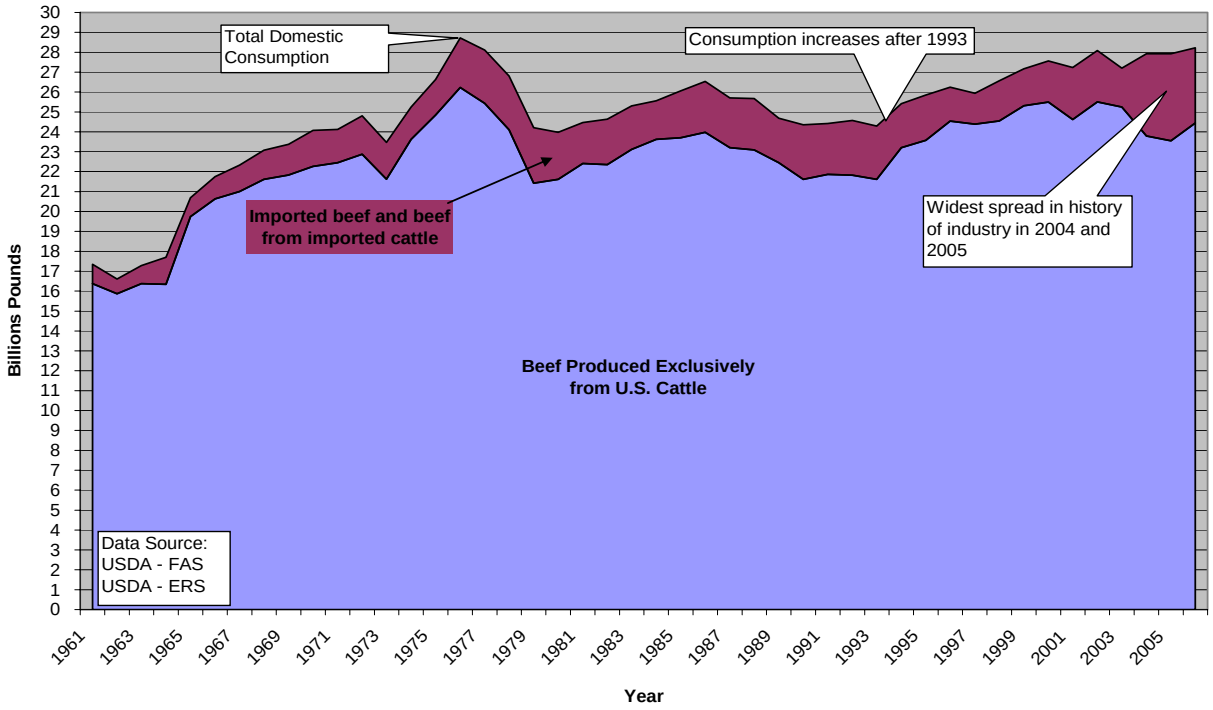
C. The Supply of Beef Cattle in the U.S.

As depicted in Figure 4, the U.S. cattle industry has not produced sufficient supplies of beef to satisfy domestic consumption for at least 45 years. The shortfall between domestic production and domestic consumption was greater in 2004 and 2005 than at any time in the 45-year history of our industry. In 2006, the shortfall began to lessen, but it was still greater than at any time since 1979.

The blue area of the chart represents beef produced exclusively from domestic cattle. The maroon area represents imported beef produced both from beef imports and beef derived from imported cattle. During the past three years, the U.S. under-produced for the domestic market by an average of over 4 billion pounds per year, the beef equivalent of over 5 million cattle per year. The deficit between domestic production and domestic consumption is satisfied with imports – both imported beef and beef derived from imported cattle. To aid in evaluating Figure 4, the quantities depicted for 2006 are as follows:

Beef produced exclusively from domestic cattle:	24.4 billion pounds
Imported beef and beef from imported cattle:	+ 3.8 billion pounds
Total Supply :	28.2 billion pounds
Total Domestic Consumption:	28.2 billion pounds

FIGURE 4: Domestic Consumption in Excess of Domestic Production



While the entire domestic production of beef plus 3.8 billion pounds of imported beef was needed to meet domestic consumption in 2006, the total volume of imported beef exceeded the amount needed to meet domestic consumption by 1.1 billion pounds. This is the amount of beef that the U.S. exported in 2006.

The foregoing discussion reveals that the negative impact lost export markets have had on the U.S. cattle industry cannot be explained in terms of domestic beef production alone. Because domestic beef production is insufficient to meet even domestic consumption, let alone any additional export demand, the determining factor in the supply/demand relationship that has the greatest bearing on cattle prices is the volume of imported cattle and beef.

Thus, domestic cattle prices are sensitive to export volumes to the extent that imports exceed the capacity for export. The USITC, in its previous evaluation of the U.S.- Australian Free Trade Agreement found that cattle prices were extremely sensitive to changes in supply, finding that a 1 percent increase in supply decreased cattle prices by 1 to 2 percent.[33]

Domestic meatpackers are well aware of the negative impact that increased volumes of both imported cattle and beef have on domestic cattle prices. This helps to explain why meatpackers are so aggressive in their actions to promote additional cattle and beef imports while paying only minimal heed to the need to expand export markets. This approach is exemplified by their strong support of importing higher-risk cattle and beef from BSE-affected Canada while simultaneously opposing even voluntary BSE testing for exports, which consumer surveys show would likely help to restore lost export markets.[34] The approach is also evident in meat packers' insistence that importing countries provide complete market access without restriction rather than agree to honor product restrictions (such as age restrictions).[35]

In fact, increased beef exports without a corresponding increase in beef imports are detrimental to the financial interests of meatpackers. This is because when import volumes remain unchanged and export demand increases, the demand for all domestic

---

[33] 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 26.

[34] *See BSE in Japan: Consumers' Perceptions and Willingness to Pay for Tested Beef*, Jill McCluskey et al., Department of Agricultural and Resource Economics, Washington State University, TWP-2004-111.

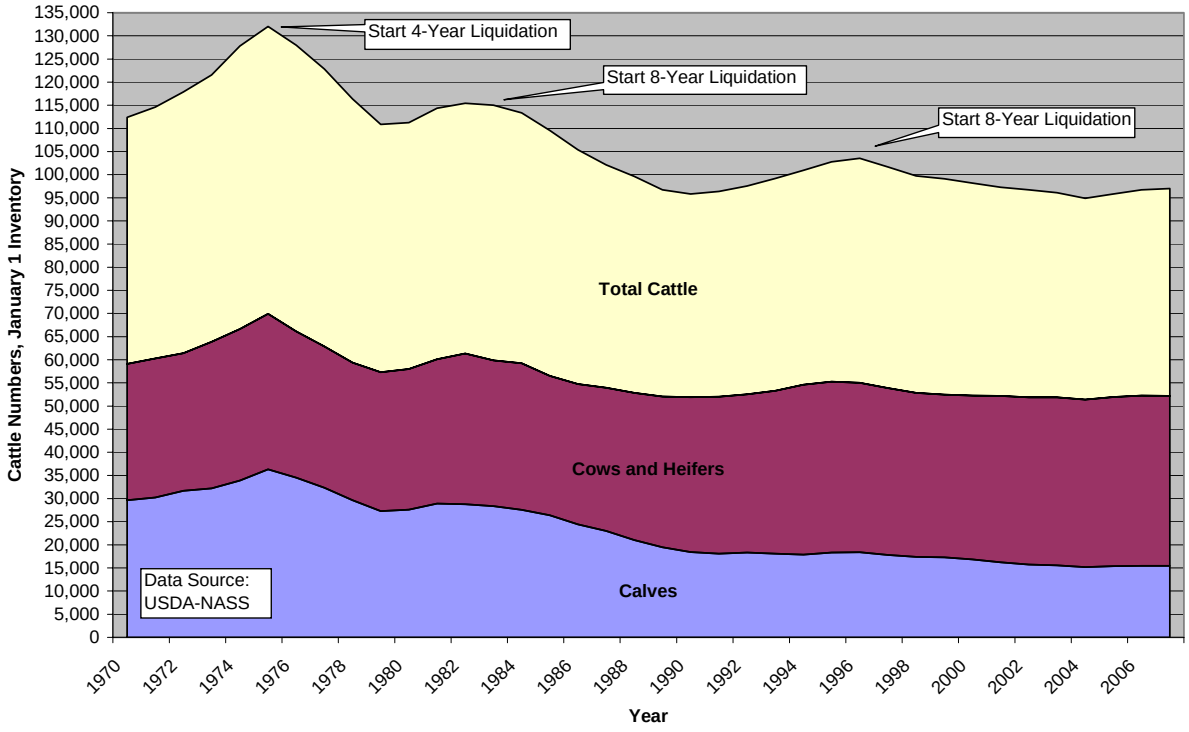
[35] *See For U.S. Beef, Boards Backing Vital Global Body Could Help Markets Reopen in the Face of Mad-Cow Concerns*, Bill Tomson, Wall Street Journal, Dec. 26, 2006, Page C-4, ("It was in late June that China unilaterally announced a trade deal to allow U.S. beef imports. The USDA, appalled at what it called unscientific restrictions, rejected the deal.").

cattle increases (and thus their price) to satisfy this added export demand. Based on the large numbers of domestically slaughtered cattle (33.7 million in 2006) compared to the relatively small number of cattle needed to satisfy current export demand (approximately 1.5 million in 2006), a relatively small increase in domestic cattle prices, when applied to nearly 34 million cattle, has a far greater impact on meatpacker profitability than a relatively large increase in export value that would be applied to incremental increases in export volumes.

R-CALF USA urges the Commission to carefully evaluate the unique position of the U.S. cattle industry within the global beef market. While concerns about beef exports may be legitimate, such exports represent only a small fraction of domestic production. Thus, it is inappropriate for national and international policies formulated only on the basis of export goals to override concerns about the rest of the cattle and beef market and undermine the profitability and viability of the entire domestic cattle industry.

Unfortunately, past national and international policies have not adequately addressed the unique, supply sensitive nature of the U.S. cattle industry. As a result, the U.S. cattle industry has been an industry in decline for the past 30 years. As Figure 5 reveals, the numbers of all classes of cattle in the U.S. have trended downward since the mid-70s.

FIGURE 5: U.S. Cattle Herd Size



The meatpacking industry would likely disagree that the shrinking U.S. herd size is a symptom of industry decline. Instead, the meatpacking industry would likely argue that improved genetics have enabled the industry to produce more beef from fewer cattle. While it is certainly true that the U.S. cattle industry has made substantial progress in producing more beef from fewer cattle, as is clearly revealed in Figure 4 above, these genetic improvements have not been sufficient to enable the U.S. cattle herd to satisfy the steady increase in beef consumption that has occurred since 1993. Instead, it is imported beef and beef from imported cattle that has increasingly captured the growth in market share created by increased domestic consumption.

IV. Conclusion

U.S. cattle producers can compete and prosper if they are ensured a level playing field where import standards are upwardly harmonized and high-quality U.S. product can be differentiated by consumers at home and abroad. Steps that would help eliminate these barriers and revitalize the U.S. cattle industry would include:

1) An indefinite delay of USDA's proposal to allow imports of cattle, and beef from cattle, over 30 months of age from Canada.
2) A reversal of the USDA policy to grant access to the U.S. cattle and beef market before the U.S. gains access in foreign countries.
3) The adoption and enforcement by the U.S. of the more stringent BSE import standards that are applied and practiced by nearly all BSE-affected countries and which continue to apply to U.S. cattle and beef exports.
4) Immediate steps to differentiate beef produced from imported cattle and beef produced exclusively from U.S. cattle, through the expeditious implementation of mandatory country-of-origin labeling for beef.

In addition, the U.S. should work with its trading partners to upwardly harmonize import safety standards regarding cattle and beef, to bring tariff and quota barriers in other countries more into line with U.S. levels, to eliminate trade-distorting subsidies in the cattle and beef sector, and to redress currency manipulation. As the U.S. works towards bilateral and multilateral agreement on these issues, it should also seek vigorous enforcement of domestic trade remedy laws, and consistent and effective enforcement of U.S. rights under international trade agreements, to achieve these goals.

Together, these steps can help restore the U.S. cattle industry and ensure it remains a strong and vital pillar of America's rural economy. Thank you for this opportunity to present our views in this important investigation.

Sincerely,

R. M. Thornsberry, D.V.M.
President, R-CALF USA Board of Directors