



Analysis of CAFTA

1. Trade Agenda of R-CALFUSA

R-CALF USA has argued that before the United States enters into bilateral or regional FTAs with agricultural producing countries with small internal markets, the major global distortions caused by tariffs, non-tariff barriers and subsidies must be eliminated. If markets are liberalized where the U.S. cattle industry is likely going to fare poorly and the United States is unable to simultaneously open the major consuming markets where the U.S. cattle industry will do reasonably well, then the U.S. cattle industry will be placed in the position to lose market share globally, not because we are uncompetitive, but because we expand market access in the U.S. far ahead of equitable access abroad. R-CALFUSA has long said the place where such matters are properly discussed and resolved is the WTO.

The Administration has adopted a strategy of pursuing FTAs with a large number of countries, in part to help push broader liberalization within the WTO. Since major consuming countries are not the countries being negotiated with for FTAs, the outcome of the recently concluded and ongoing FTA negotiations, at least in the short term, is likely to be expanded market access to the U.S. to significant foreign producing nations with expanded market access to much less important markets for U.S. beef. In addition, the opening up of the U.S. to increased beef imports occurs at a time when significant U.S. beef export markets are indefinitely closed due to BSE.

2. Trade Act of 2002 as Reflected in the CAFTA

In evaluating CAFTA, it is useful to review objectives included in the Trade Act of 2002, including the negotiating objective to have special rules for perishable and cyclical

agricultural products. Producers of perishable, seasonal, and cyclical agricultural products face unique challenges in the market. Recognizing the special characteristics of these products, and realizing that current trade remedies apply imperfectly to them, the Trade Act of 2002 (P.L. 107-210) provides certain principal negotiating objectives for USTR pertaining to perishable, seasonal, and cyclical agricultural products. P.L. 107-210 states that U.S. negotiators shall work to:

[E]liminat[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;¹

[E]nsur[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;²

Further,

Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order 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.³

Under the CAFTA the United States immediately loses the ability to maintain its special agricultural safeguard on beef under current procedures against imports from any CAFTA country:

5. Originating goods imported into the United States shall not be subject to any duties applied pursuant to Article 5 of the WTO Agreement on Agriculture.

Annex 3.3-US Notes-2

¹ P.L. 107-210 at Title XXI, Sec. 2102(b)(10)(A)(ix).

² P.L. 107-210 at Title XXI, Sec. 2102(b)(10)(A)(x).

³ P.L. 107-210 at Title XXI, Sec. 2102(b)(10)(B)(i).

No other product specific safeguard (as was the case in the Australian FTA⁴) is established under the agreement for the U.S. beef industry. It is the case that the U.S. has tabled the question of perishable and cyclical agricultural in the rules negotiations within the WTO Doha negotiations. As trade remedies (other than product specific or agreement safeguard provisions) are typically handled on a multilateral basis, using the WTO process may be a reasonable approach for the Administration but without a product specific safeguard within the CAFTA, perishable agricultural producers are left with few usable remedies should problems arise.

3. Impact of CAFTA on U.S. Cattle Industry

Annex 3.3 of the CAFTA provides the tariff schedule changes for each country under the FTA. U.S. tariff duties on live cattle, other than for breeding or dairy purposes (duties on breeding and dairy cattle are duty free pursuant to the U.S.' WTO bindings) are within staging category "A". Annex 3.3.- US Schedule page 1. Under this category all duties (1¢/kg) on products will be duty free immediately upon entry into force of the Agreement. Annex 3.3, Chapter 3-31.⁵ CAFTA members currently receive duty free treatment on cattle imports on an annual basis under the Caribbean Basin Economic Recovery Act (CBERA) and/or the Generalized System of Preferences (GSP) programs. Between 1999 and 2003 the Customs Service reported however that there were zero live cattle imports from any of the CAFTA countries.

The herd size in CAFTA is approximately 10,600,000 head (Canada for comparison has 13,454,000 head) as follows:

<i>Cattle Stocks (Head)</i>	Year				
	1999	2000	2001	2002	2003
Costa Rica	1,427,500	1,358,200	1,288,900	1,219,500	1,150,500
El Salvador	1,141,489	1,050,000	1,216,300	1,100,000	1,000,000
Guatemala	2,500,000	2,500,000	2,500,000	2,540,000	2,540,000
Honduras	1,715,386	1,780,000	1,800,000	1,859,737	2,403,000
Nicaragua	2,850,000	3,275,000	3,300,000	3,350,000	3,500,000

Source: UN, FAOSTAT database 2004: Agricultural Production- Live Animals

⁴ Although discretionary, in the Australian FTA there was a special agricultural safeguard for beef. See U.S.-Australia FTA Chapter 3 pages 6-8.

4. Impact on U.S. Beef Imports

Under the agreement, beef entering the United States will receive one of two different tariff treatments:

- A. First, most cuts of beef are within staging category “A” products and will therefore be duty free upon entry into force of the Agreement. Annex 3.3 (“duties on goods provided for in the items in staging category A in a Party’s Schedule shall be eliminated entirely and such goods shall be duty-free”); Annex 3.3 - US Schedule – pages 1-3.

The categories of duty-free beef are:

<u>HTS #</u>	<u>HTS Description</u>	<u>CAFTA Volume in 2003 (MT)</u>
02011005	Bovine carcasses and halves, fresh or chld., descr. in gen. note 15 of the HTS	0
02011010	Bovine carcasses and halves, fresh or chld., descr. in add. US note 3 to Ch. 2	0
02012002	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, fresh or chld., descr in gen. note 15 of the HTS; High Quality cut	0
02012004	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, fresh or chld., descr in gen. note 15 of the HTS; Other	0
02012006	Bovine meat cuts, w/bone in, not processed, fresh or chld., descr in gen. Note 15 of the HTS	0
02012010	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, fresh or chld., descr in add. US note 3 to Ch. 2; High Quality Cut	0
02012030	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, fresh or chld., descr in add. US note 3 to Ch. 2; Other	0
02012050	Bovine meat cuts, w/bone in, not processed, fresh or chld., descr in add. US note 3 to Ch. 2	0

⁵ Note duties on U.S. cattle exports will also be immediately zero.

02013004	Bovine meat cuts (except high-qual. beef cuts), boneless, processed, fresh or chld., descr in gen. note 15 of the HTS	0
02013006	Bovine meat cuts, boneless, not processed, fresh or chld., descr in gen. Note 15 of the HTS	0
02013030	Bovine meat cuts (except high-qual. beef cuts), boneless, processed, fresh or chld., descr in add. US note 3 to Ch. 2	0
02013050	Bovine meat cuts, boneless, not processed, fresh or chld., descr in add. US note 3 to Ch. 2	7,644.30 MT
02021005	Bovine carcasses and halves, FROZEN, descr. in gen. note 15 of the HTS	0
02021010	Bovine carcasses and halves, FROZEN, descr. in add. US note 3 to Ch. 2	0
02022002	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, FROZEN, descr in gen. note 15 of the HTS; High-quality beef cuts	0
02022004	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, FROZEN, descr in gen. note 15 of the HTS; Other	0
02022006	Bovine meat cuts, w/bone in, not processed, FROZEN, descr in gen. note 15 of the HTS	0
02022010	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, FROZEN, descr in add. US note 3 to Ch. 2; High-quality beef cuts	0
02022030	Bovine meat cuts (except high-qual. beef cuts), w/bone in, processed, FROZEN, descr in add. US note 3 to Ch. 2; other	0
02022050	Bovine meat cuts, w/bone in, not processed, FROZEN, descr in add. US note 3 to Ch. 2	94.3 MT
02023002	Bovine meat cuts (except high-qual. beef cuts), boneless, processed, FROZEN, descr in gen. note 15 of the HTS; High-quality beef cuts	0
02023004	Bovine meat cuts (except high-qual. beef cuts), boneless, processed, FROZEN, descr in gen. note 15 of the HTS; Other	0
02023006	Bovine meat cuts, boneless, not processed, FROZEN, descr in gen. note 15 of the HTS	0

02023010	Bovine meat cuts (except high-qual. beef cuts), boneless, processed, FROZEN, descr in add. US note 3 to Ch. 2; High-quality beef cuts	0
02023030	Bovine meat cuts (except high-qual. beef cuts), boneless, processed, FROZEN, descr in add. US note 3 to Ch. 2; other	87 MT
02023050	Bovine meat cuts, boneless, not processed, FROZEN, descr in add. US note 3 to Ch. 2	18,566.2 MT

Currently under the existing TRQ system a total of 64,805 MT is available to countries other than Australia, New Zealand, Japan, Argentina and Uruguay, each of which has its own separate allocation. Under the current system all beef that comes in under the TRQ has a 4.4 ¢/kg duty. Currently the CAFTA countries use a portion of this “all others” segment of the TRQ and as shown above CAFTA exported over 26,000 MT in 2003. Note that these TRQ provisions do not apply to imports from Canada or Mexico pursuant to the NAFTA. While CAFTA countries currently are excluded from paying these duties pursuant to GSP, as noted the CAFTA agreement removes any possibility of these countries ever will pay this small duty on beef within the TRQ. Unlike the Australian FTA there is no BSE clause that delays duty free entry levels from beginning until the United States’ beef exports return to pre-BSE levels, or until 3 years have passed from the date of entry into force of the agreement. *Compare* U.S.-Australia FTA Para. 3(a), 2B-US- Notes page 4.

- B. Second, CAFTA removes duties for beef that enters the United States outside the TRQ limits. Currently, if the TRQ quota fills then any beef that enters is subject to the outside the TRQ duty of 26%. CAFTA establishes a new duty free CAFTA specific TRQ if any of their entries would fall outside the WTO TRQ (for all countries except Guatemala, which will have these duties reduced to zero over a period of 15 years). CAFTA countries would be given these special duty free TRQs in addition to any volume they could enter duty free under the normal WTO TRQ. Basically if the WTO beef TRQ for the “all

other countries” category is full (either because others are exporting more⁶ or because CAFTA produces more than currently) then CAFTA countries would be given their own separate TRQ for any beef that would, under current rules, fall outside the TRQ limits. If the CAFTA specific TRQ quota also filled then any CAFTA beef that entered would continue to be subject to the outside the TRQ duty of 26% with that rate being reduced in equal parts over the course of 15 years to zero.

Attached below is the total quantity of beef exported to the United States from CAFTA in 2003. In 2003 no CAFTA beef fell outside the WTO TRQ; no CAFTA beef was charged a 26% duty. In fact, no CAFTA beef has fallen outside the WTO TRQ and been charged a 26% duty since 1995 when the Uruguay Round was implemented.

	<u>Costa Rica</u>	<u>Nicaragua</u>	<u>El Salvador</u>	<u>Honduras</u>	<u>Guatemala</u>
2003 Beef Volume to U.S.	10,092.8 MT	16,239.4 MT	0	75.1 MT	0

Source: Dept of Commerce, Census Bureau, Foreign Trade Statistics (HTS 0201 &0202)

By comparing the 2003 volume with the size of the CAFTA specific TRQs it appears that, for practical purposes, the CAFTA establishes a system in which CAFTA countries would be able to export beef without worrying about any impact from duties, even if there was a spike in beef imports:

TRQ level Yr. after Agreement goes into affect	<u>Costa Rica</u>	<u>Nicaragua</u>	<u>El Salvador</u>	<u>Honduras</u>
1	10,536 MT	10,500	105	525
2	11,038 MT	11,000	110	550
3	11,540 MT	11,500	115	572

⁶ For example if Brazil begins selling into the U.S. again and takes a large portion of the “all others” quota then the WTO quota might fill. Although currently suspended, 15 states of Brazil’s 26 states and 84 percent of the cattle herd are currently free of FMD with Brazilian officials “expect[ing] that by the end of 2005 the entire country will be free of FMD as a result of the vaccination program...”. USDA, FAS, *Brazil, Livestock Annual, GAIN Report #BR4619* (8/24/2004) p.5.

4	12,042 MT	12,000	120	600
5	12,544 MT	12,500	125	625
6	13,046 MT	13,000	130	650
7	13,548 MT	13,500	135	675
8	14,050 MT	14,000	140	700
9	14,522 MT	14,500	145	725
10	15,054 MT	15,000	150	750
11	15,556 MT	15,500	155	775
12	16,058 MT	16,000	160	800
13	16,560 MT	16,500	165	825
14	17,062 MT	17,000	170	850
15	Unlimited	Unlimited	Unlimited	Unlimited

Source: Annex 3.3-US Notes-3-4

5. Impact on U.S. Beef Exports

Under the CAFTA U.S. prime and choice cut beef exports into Central America will immediately be duty free upon entry into force of the Agreement. Exports of all other beef will not be duty free and may face both TRQs (El Salvador and Guatemala) and special agricultural safeguards (Costa Rica and Nicaragua).⁷

For context it is important to note the current U.S. export situation for beef to CAFTA countries:

<u>HTS #</u>	<u>HTS Description</u>	<u>Volume (MT) 2002</u> <u>(pre-BSE)</u>
02011090	CARCASSES AND HALF-CARCASSES OF BOVINE ANIMALS, NESOI, FRESH OR CHILLED	22.4
020120355	MEAT OF BOVINE ANIMALS, FRESH OR CHILLED, OTHER CUTS WITH BONE IN, PROCESSED	25.6
02012060	MEAT OF BOVINE ANIMALS, CUTS WITH BONE IN, EXCEPT PROCESSED, FRESH OR CHILLED	22
020130355	MEAT OF BOVINE ANIMALS, FRESH OR CHILLED, BONELESS, PROCESSED	55.6

⁷ Note this countermines the Trade Act of 2002 objective “to obtain reciprocal tariff and nontariff barrier elimination agreements”. Trade Act of 2002, §2102(b)(1)(B) (2002).

02013060	MEAT OF BOVINE ANIMALS, BONELESS, EXCEPT PROCESSED, FRESH OR CHILLED	36.2
02021001	CARCASSES AND HALF-CARCASSES OF BOVINE ANIMALS, Frozen	1
020220355	MEAT OF BOVINE ANIMALS, Frozen, OTHER CUTS WITH BONE IN, PROCESSED	546.3
02022060	MEAT OF BOVINE ANIMALS, CUTS WITH BONE IN, EXCEPT PROCESSED, Frozen	9.7
020230355	MEAT OF BOVINE ANIMALS, Frozen, BONELESS, PROCESSED	724.1
02023060	MEAT OF BOVINE ANIMALS, BONELESS, EXCEPT PROCESSED, Frozen	275.8

- Duty Reductions

- A. Honduras maintains a tariff on incoming beef except prime and choice cuts that will enter duty free immediately. The tariff base rate is 15% and will be reduced over a period of 12 years to zero.
- B. El Salvador will have a three tiered system under CAFTA. First, El Salvador establishes a TRQ on beef (described below). Second, U.S. prime and choice cuts which will enter duty free immediately. Third, the current 15% duty on beef carcasses and half-carcasses, either frozen or fresh/chilled, is maintained with tariffs reduced over a period of 15 years to zero.
- C. Guatemala will also has a three tiered system. First Guatemala establishes a TRQ on beef (described below). Second, U.S. prime and choice cuts will enter duty free immediately. Third, the current 15% duty on beef carcasses and half-carcasses, either frozen or fresh/chilled, is maintained with tariffs reduced over a period of 10 years to zero.
- D. Costa Rica maintains tariffs on beef, except prime and choice cuts which will enter duty free immediately, and it is given the right to resort to a special agricultural safeguard (described below). Beef has a base duty rate of 15% and tariffs on carcasses and half-carcasses, either frozen or fresh/chilled, are reduced over a period of 15 years to zero, all other cuts reduced to zero over 15 years beginning in year five after the Agreement enters into force.
- E. Nicaragua maintains tariffs on beef, except prime and choice cuts which will enter duty free immediately, and it is given the right to resort to a special agricultural

safeguard (described below). Nicaragua’s base duty rate will drop to 13% immediately and then be reduced over a period of 15 years to zero.

- TRQs and Special Safeguards

A. CAFTA creates a TRQ for El Salvador on U.S. beef except for prime and choice cuts (duty free immediately) and carcasses (subject to a tariff to be reduced to zero over 15 years). In quota duties are zero for U.S. beef exports, while out of quota duties are reduced over a period of 15 years to zero, starting from a base rate of 15%, beginning in year 4 after entry into force of the agreement:

Year	Volume (MT)	Year	Volume (MT)
1	105	9	145
2	110	10	150
3	115	11	155
4	120	12	160
5	125	13	165
6	130	14	170
7	135	15	Unlimited
8	140		

B. CAFTA creates a Guatemalan TRQ on U.S. beef except for prime and choice cuts (duty free immediately) and carcasses (subject to a tariff to be reduced to zero as described above). In quota duties are zero for U.S. beef exports, while out of quota duties are reduced over a period of 10 years to zero, starting from a base rate of 15%:

Year	Volume (MT)	Year	Volume (MT)
1	1060	6	1360
2	1120	7	1420
3	1180	8	1480
4	1240	9	1540
5	1300	10	Unlimited

C. CAFTA allows Costa Rica to resort to a special agricultural safeguard on U.S. exports, for 15 years when the safeguard terminates:

Good	Tariff Classification	Trigger Level	Annual Increase to Trigger Level
Beef	02011000, 02012000, 02013000, 02021000, 02022000, 02023000	150 MT	10%

If triggered an additional tariff will be charged on U.S. beef, other than prime and choice beef, as follows:

- (i) in years one through eight, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; (Article 3.15 of the CAFTA states that the base rate referenced above will be the prevailing MFN rate on date of entry in Costa Rica- currently that is 15%)
- (ii) in years nine through 11, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and
- (iii) in years 12 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3.

D. CAFTA allows Nicaragua to resort to a special agricultural safeguard on U.S. exports, for 15 years when the safeguard terminates:

Good	Tariff Classification	Trigger Level	Annual Increase to Trigger Level
Beef	02011000, 02012000, 02013000, 02021000, 02022000, 02023000	300 MT	10%

If triggered an additional tariff will be charged on U.S. beef, other than prime and choice beef, as follows:

- (i) in years one through eight, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3; (Article 3.15 of the CAFTA states that the base rate referenced above will be the prevailing MFN rate on date of entry in Nicaragua- currently that is 15%)

- (ii) in years nine through 11, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3; and
- (iii) in years 12 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3.

6. Rules of Origin

CAFTA establishes the “country of slaughter” rule with regard to beef for determining entitlement to CAFTA benefits. Annex 4.1-2. This is the same rule the U.S. has accepted/negotiated in each of its other FTAs. *E.g.* U.S.-Chile FTA Annex 4.1-2; U.S.-Australia FTA 5A-Annex-2; NAFTA Annex 401 Section B. R-CALFUSA has long advocated use of a born and raised standard for determining country of origin for many purposes including origin for preferential access. Such a rule would ensure large producing nations that do not have a FTA with the U.S. (e.g., Brazil and Argentina) do not obtain the benefit of preferential access negotiated by others. Interestingly, before the Dominican Republic was removed from the Agreement, the Rules of Origin between the Dominican Republic and the other Central American countries were different than the rules of origin between the U.S. and Central America. Under those (now eliminated) rules of origin, beef had to be from cattle “born and raised” in order to qualify for duty free treatment for exports between the Dominican Republic and the Central American countries. *See* Appendix 3.3.6 U.S.-Central America and Dominican Republic FTA.

7. Sanitary And PhytoSanitary Measures

CAFTA and the U.S. have committed to create a Committee on Sanitary and Phytosanitary Matters to consult on SPS measures.

8. Investor-State Disputes

CAFTA Chapter 10 establishes the right of private parties to file for arbitration or judicial relief in disputes arising under CAFTA. These provisions are similar to the rights created under Chapter 11 of NAFTA and are standard parts of FTAs negotiated by this and prior Administrations. Just as in NAFTA, the existence of investor-state dispute provisions can be used by producers in a country who believe the other government is taking actions

which violate the provisions of the treaty/agreement. This creates the possibility that a lawsuit similar to the one filed by Canadian cattlemen under NAFTA regarding the closure of the border due to BSE could be filed against the U.S. government by CAFTA producers if the U.S. takes action to limit access to the U.S. market for SPS-related reasons.

9. Comparison of CAFTA with R-CALFUSA's requests

RCALFUSA has submitted comments to the Administration with regard to CAFTA negotiations. Attached below is a chart summarizing the RCALFUSA position and compares that position with the actual FTA result.

<u>RCALFUSA's comments to USTR</u>	<u>CAFTA provisions</u>
May 2003- maintain TRQ	Limited TRQ maintained for a subset of products that is phased out over 15 years
May 2003- establish a perishable safeguard	Does not establish a perishable safeguard
May 2003- maintain current special agricultural safeguard on beef	Chapter 3 Annex removes ability to use a safeguard on beef

10. Future Impact of CAFTA

One of the possible outcomes of CAFTA would be to see increased investment in the region. If applied to the cattle and beef sector, this could lead to an expansion of the herd size, improving genetics and modernization/expansion of slaughtering facilities.⁸ An examination of carcass weight and yield shows that several CAFTA countries could modernize their production significantly in order to boost yield:

<i>Beef and Veal Carcass Wt/Yield (Hg/An)</i>	Year				
	1999	2000	2001	2002	2003

⁸ Guatemala currently only has four slaughterhouses that are USDA eligible for exportation to the U.S. USDA, FAS, *Guatemala, Livestock Annual, GAIN Report #GT2017 (7/24/2002)* p. 3 (“Since 1997, the four plants certified to export to the United States, requested a voluntary temporary withdrawal from the eligibility list, and turned to the local market to keep their operations viable.”).

Costa Rica	2,191	2,182	2,310	2,334	2,364
El Salvador	1,674	1,674	1,685	1,594	1,667
Guatemala	1,740	1,771	1,771	1,775	1,775
Honduras	1,638	1,627	1,636	1,636	1,652
Nicaragua	1,444	1,487	1,493	1,547	1,548

UN, FAOSTAT database 2004:Agricultural Production- Livestock Primary Product (The USA's carcass weight and yield for comparison was 3,245 in 2003. In 2003, grass-fed producers like Australia had a yield of 2,246 and Brazil was at 2,120)

Currently, a high percentage of CAFTA beef exports head to the United States. In 2003, 87% of Costa Rica's frozen beef and 82% of its fresh beef exports went to the United States. Similarly in 2003, 77% of Nicaragua's frozen beef and 20% of its fresh beef exports were shipped to the United States.⁹ Thus, expanded exports from at least some of the countries in the region would depend on either expanded production or shifting shipments from domestic consumption to the export arena.

⁹ UN ComTrade 2004, HTS 0201 and 0202. Comparing each country's World Exports vs. U.S. Exports. Data for other CAFTA countries was unavailable.