Economic Challenges and Opportunities Facing American Agricultural Producers Today

Testimony

of the

Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA)

Before the

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Good morning Chairman Harkin, Ranking Member Chambliss, and Members of the Committee. I appreciate the opportunity to testify about including livestock and competition issues in the 2007 Farm Bill. I am Eric Nelson and along with my wife, Carol, and our five children, we own and operate a beef feedlot and a cow/calf and farming operation near Moville, Iowa, in Woodbury County. I am also a Board of Director of R-CALF USA.
R-CALF USA is a non-profit cattle-producer association that represents thousands of U.S.

cattle producers in 47 states, along with over 60 state and local affiliates. R-CALF USA's mission is to ensure the continued profitability and viability of independent U.S. cattle producers. The demographics of R-CALF USA's membership are reflective of the demographics of the entire U.S. cattle industry, with membership ranging from the largest of U.S. cattle producers to the smallest. 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. 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

Ensuring a market framework that provides participants in the U.S. live cattle industry with the opportunity to remain profitable should be a central focus of the 2007 Farm Bill. A profitable and vibrant U.S. cattle industry is vitally important to the health of our citizens and the overall welfare of Rural America. Today's production agriculture, which, in addition to its principal role of producing an abundance of safe, wholesome, and high-quality food, now includes the development of bio fuels and a heightened emphasis on international trade. This makes for a highly complex and dynamic industry that has created many overlapping and interconnected relationships.

To effectively address the new complexities that were brought about by changes in national policy, we must adhere to sound market principles. For example, R-CALF USA believes that each segment of U.S. agriculture should have the opportunity to prosper at the same time, without pitting one against another. This belief is based on our knowledge that competitive markets have long assimilated increased production costs without rendering entire industry segments unprofitable. When applying this principle to the nation's current policy of achieving more energy independence through alternative energy promotion, R-CALF USA does not join critics who claim the government's ethanol incentives are inappropriate. Instead, R-CALF USA believes the proper response by the U.S. cattle industry to this national energy policy is to work aggressively to remove the barriers that currently prevent the U.S. cattle market from assimilating necessary increases in productions costs. If appropriate reforms are made to enable U.S. cattle producers to begin receiving their competitive share of the consumers' beef dollar and their competitive share of the consumer beef market, then they will be able to recover increased production costs from the competitive marketplace.

The removal of current market-competition barriers from the U.S. cattle market would generate another benefit for the U.S. cattle industry, besides that of accommodating the nation's desire to achieve energy independence. Production agriculture is a capital intensive endeavor, making it very difficult for young people to gain entrance. For generations, livestock production has served as the means by which young entrepreneurs have gained entry into agriculture.

In 1930, my grandfather and great grandfather built a barn that still stands on our home farm. It took a lot of faith to build a barn in 1930, right after the stock market crash of 1929. But they were livestock producers, and less than 10 years before building their barn the Packers and Stockyards Act had reestablished a competitive livestock market, which provided hard working entrepreneurs with a genuine opportunity to prosper in the livestock industry. The 2007 Farm Bill could, again, reestablish competitive livestock markets that would afford that same opportunity to a whole new generation of livestock producers.

The core problem facing the cattle industry today that the 2007 Farm Bill can help to correct is

that the overall framework that defines how our cattle industry operates is no longer adequate to ensure a balanced and properly functioning competitive marketplace. The present industry framework comprised of the statutes, regulations, and policies that govern contracts and market competition, consumer information and information disclosure, heath and safety, and trade have evolved under the considerable influence of the nation's largest meatpackers; and without sufficient counterbalance from producers. As a result, the balance of power within the present industry framework is tilted in favor of the meatpackers, resulting in a pricing advantage for them and an erosion of competition for livestock producers.
Independent livestock producers cannot match the economic or political power held by the nation's largest meatpackers - we cannot expect to level the playing field by correcting the deficiencies within our industry's framework through negotiations with the meatpacking sector. Ironically, we are in an intense competition to win back competition. Therefore, our success in winning back our competitiveness will depend on you, the Congress. I would like to take this time to identify the specific areas in which congressional reforms are needed to properly rebalance the framework that defines the operation of the U.S. cattle industry.

II. CONTRACTS AND COMPETITION

The ongoing erosion of competition within the domestic livestock market is a threat to present and future generations of U.S. livestock producers. This Committee has heard convincing arguments over the past several years in support of the conclusion that competition has been significantly reduced in the domestic cattle market. These arguments have highlighted the radical changes that occurred to the structure of the U.S. cattle market over the past few decades. These unfavorable structural changes include:

A. UNFAVORABLE STRUCTURAL CHANGES

1. Unprecedented Consolidation of the U.S. Meatpacking Industry

Concentration in the meatpacking industry has tripled since the late 70s, and today just four meatpackers control over 83 percent of nation's steer and heifer slaughter. By the mid-90s, a single packer - Tyson (then IBP) - purchased about 35 percent of slaughter cattle. The General Accountability Office (GAO) reported in 2002 that "no other manufacturing industry showed as large an increase in concentration since the U.S. Bureau of the Census began regularly publishing concentration data in 1947. . ." 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.

2. Introduction and Increased Use of Non-traditional Contracting and Marketing Methods that Further Erode the Selling Power of Cattle Producers

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. And use of these captive supply methods has been increasing rapidly, rising 37 percent from 1999 to 2002. Captive supply practices push risks of price instability on to cattle producers and hold down cattle prices. 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.

B. NEGATIVE EFFECTS OF PACKER CONCENTRATION AND ABUSIVE CONTRACTING PRACTICES ON PRODUCERS AND CONSUMERS

1. Producers' Share of the Consumers' Beef Dollar has Shrunk and the Spread Between Farm to Retail has Widened.

The impact of packer concentration and abusive contracting practices is evident in the declining share of each beef retail dollar that actually reaches cattle producers. The producers' share of each retail dollar earned on beef was 47 cents in 2006, down from 60 cents in 1990. Looking the opposite direction along the food chain reveals that consumers have likewise not benefited from packer concentration and abusive contracting practices. The price spread between what the cattle producer receives per pound of beef sold and what consumers pay per pound of beef purchased has widened dramatically, with the spread nearly doubling from $1.13 per pound in 1990 to $2.10 per pound in 2006. In fact, the retail carcass value paid by consumers in 2006 was $580 more than they paid in 1990, while cattle producers received only $89 more for their live cattle in 2006 than they did in 1990.

As clearly revealed in Figure 1 below, the spread between the farm gate price of beef and the retail price of beef widened dramatically beginning in the early 90s. It is important to note that this chart depicts the value of carcasses based on fresh cuts of beef sold at the meat case, which are relatively low value-added cuts. The U.S. Department of Agriculture, Economic Research Service warns, "Analysts who cite increasing value-added as a factor in pork and beef price spreads misunderstand how these are calculated." The enlarged gap between the farm-gate price and retail price suggests that the meatpacking and retailing sectors have become less efficient at processing and/or selling beef, or they have acquired sufficient buying power to leverage down the price of live cattle, or both.

As a full-time cattle producer who feeds cattle to finish, I find it hard to imagine how a competitive market would dictate that consumers would pay nearly twice the value for beef derived from the finished cattle I sell. I spent 16 months caring for and feeding each of the 1,200 pound steers that I sold in 2006 for approximately $1,033. After I sold the steers to a meatpacker, and within a matter of days or a few weeks, the fresh cuts of beef from each of my steers was sold to consumers for approximately $1,985, a mark-up of approximately $950. But in 1990, my 1,200 pound steer sold for $944 after I cared for and fed it for 16 months. The consumer at that time paid $1,405 for the beef from my steer after the meatpacker and retailer handled the beef for days or a few weeks, a mark-up of $461. If the meatpackers' claims are true - that consumers benefit from increased efficiency attributed to horizontal consolidation and vertical integration - it is certainly not revealed by the more than two-fold mark-up on beef that occurred since 1990 after the live cattle producer sells his or her cattle. A competitive market would not have predicted this result and these facts reveal that the current market structure, from the early 90s on, is breeding inefficiency and windfalls for intermediaries at the expense of both producers and consumers.

Figure 1

2. Packers Have Gained a Significant Pricing Advantage in the Cattle Market

Since the early 90s, the largest meatpackers have perfected their exercise of buying power attained through consolidation and abusive contracting practices. The meatpackers' exposure to the cash market is now so limited that the current bidding practice involves an offer by the meatpacker once per week, and within only about a fifteen minute timeframe. If the meatpackers are short bought, this fifteen minute window may occur on a Thursday, or perhaps even on a Wednesday. However, if the meatpacker is long-bought, the fifteen minute marketing opportunity may not occur until late Friday afternoon, after the close of the future markets. This extremely narrow window of opportunity to market cattle places cattle feeders at a distinct disadvantage as there is insufficient time to make calls to other meatpackers after an offer is made - it is essentially a take-it or leave-it offer that, if refused, means you must continue feeding for another week, even if the cattle are finished, in hopes of a more realistic offer the next week. This limited and infrequent bid window affords the meatpackers with market power that gives them a distinct pricing advantage in the market.

It is notable as well that a single meatpacker will consistently offer a bid for my cattle that is slighter higher than the one or two other packers that may also offer a bid; and I mean consistently for an entire year. As a result, a single packer buys all of my cattle for about a one-year period. But this has rotated over the years. The next year a different packer will consistently offer the slightly higher bid, and the one or two other packers will consistently offer a low bid.

The meatpacker's use of captive supply cattle is akin to insider trading. With captive supply cattle, the packers know how much of their slaughter capacity is filled each week and at what price before they enter the cash market; they also know how many captive supply cattle are available at a known price to fill their slaughter needs in the event the cash market is not low enough to achieve their pricing objectives. This information is not reported to the public, and certainly not to the cattle feeder. It is time for the cattle market to follow the long-established principle of transparency that facilitates competitive Wall Street-like trading.

The fact that meatpackers are using their buying power and abusive contracting practices to gain a distinct pricing advantage in the market is revealed by a combination of industry acknowledgments, academic studies, and empirical evidence.

i. Industry Acknowledgements

The concentrated meatpacking industry has acknowledged the profound impact their contracting practices have on the domestic live cattle market. Such acknowledgments began in 1988 when Bob Peterson, then Chairman of IBP (now Tyson) was quoted as saying:

Procurement practices are changing and this concerns me. There is a quiet trend towards packer feeding and it is much, much bigger than you think it is. We cannot stand by if the competitive playing field is unlevel. Our competitors are promoting contracts and seeking more. These forward contracts coupled with packer feeding could represent a significant percent of fed cattle at certain times of the year. Do you think this has any impact on the price of the cash market? You bet! We believe a significant impact.

...we believe that some of those who are feeding cattle and using forward contracting are

creating aberrations within the market place by coming in and out of the market; that is not reflecting the true value of the cash market.
But with the packers in the feeding business and forward contracting, there's going to be a major, major shift against the leverage system.
In my opinion the feeder can't win against the packer in the real fair play if we go into the feeding and the hedging program.
In written testimony before the July 16, 2002, United States Senate Agriculture Committee hearing on packer ownership of livestock, the meatpacking industry's trade association, the American Meat Institute (AMI), testified: "Demand for consistent quality product has led many firms to exert greater control over the supply chain." While AMI did not specifically state that firms were exerting control over livestock prices, a study commissioned by the National Cattlemen's Beef Association (NCBA) provides insightful documentation regarding the true nature of this industry control.
In its written testimony before the same July 16, 2002, Senate hearing, the NCBA attached the executive summery of the Sparks Study to its testimony. Specifically, the NCBA commissioned Sparks Study states the following:
Packers use ownership of livestock to help control unit costs in a variety of ways. If this management tool is restricted, unit costs can be expected to increase (without increasing the value of the final product).
Based on this Sparks Study finding, it is readily apparent that the "control" mentioned by AMI included control over the packers' unit costs. While the cost of live cattle is the single largest unit cost incurred by packers, this finding lacks specificity as to the exact nature of the "unit costs" that are being controlled by the packers. The Sparks Study, however, provides even greater clarity as to exactly what "unit costs" were being controlled by packers. The Sparks Study asserts that direct ownership of livestock limits the packers' market risk, arguing that the futures market is insufficient for this purpose. Therefore, according to the Sparks Study, one of the few tools available to packers to offset the smaller margins associated with higher livestock prices is through direct ownership of raw production materials, i.e., livestock, which enables them to reduce their margin risk. The Sparks Study states, "The pressure to reduce costs force the search for low-cost livestock supplies (often at the expense of producer returns)."
Thus, it is readily apparent that the unit costs the Sparks Study finding referenced as among the unit costs controlled by packers through packer ownership of livestock is the cost of livestock itself. The Sparks Study adds additional insight into the packing industry's rational for supporting packer ownership of livestock as well as other means that contribute to vertical integration of their industry. The Sparks Study acknowledges:
For many meat packers, integration between the packing and feeding stages of livestock production is seen as an effective vehicle to reduce market risk exposure and loss of such a valuable tool increases their costs . . . and,
Vertical integration often attracts investors because of the negative correlation between profit margins at the packing stage and the feeding stage.
It is clear that the current market structure affords meatpackers with a distinct pricing advantage over the U.S. cattle market, and this pricing advantage is disrupting the competitiveness of the U.S. cattle industry. Also obvious is the inherent disadvantage faced by domestic cattle feeders that must first compete against the same meatpackers when purchasing feeder cattle that they must later sell to when their cattle are finished.
ii. Academic Studies

In a report completed in 2002, the Grain Inspection Packers and Stockyards Administration (GIPSA) cited numerous studies indicating a correlation between captive supply volumes, including packer-owned cattle, and cash cattle prices. The report indicated that economists Schroeder, Mintert, Barkley, and Jones found a negative statistical relationship between fed cattle prices and captive supplies in 1992; that same year economist Elam found a negative statistical relationship between captive supplies and monthly average fed cattle prices; GIPSA's 1992 study found that packers use captive supplies, including packer owned cattle, strategically; economists Parcell, Schroeder, and Dhuyvetter found that a one percent increase in captive supply shipments was associated with a reduction in basis in Colorado and Texas in 1997; and GIPSA, in cooperation with economists Schroeter and Azzam, found a negative statistical relationship between weekly captive supply and the weekly average spot market price in 1999.

These studies, beginning in 1992, are uncontested with respect to showing a negative statistical relationship between levels of captive supply and spot market prices, though GIPSA has not taken any enforcement action to reduce captive supply use. It is important to note that a March 2002 report completed by the General Accountability Office (GAO) had revealed that the USDA was without the analytical tools needed to accurately evaluate the effects of captive supplies during the time that GIPSA completed its 2002 captive supply report. The GAO report reminded us that over 10 years ago, in 1996, the Packers and Stockyards Administration could not conclude that the U.S. cattle industry was competitive. The 2002 GAO report further reveals that USDA has not properly maintained and updated the economic models used by it for evaluating the U.S. live cattle industry. The GAO stated that the USDA has not properly re-estimated, documented, or validated its models, and much of the data used in the original estimation was from the 1960s and 1970s.

Even in the preliminary stages of study, the authors of GIPSA's $4.5 million interim captive supply report found that meatpackers were accruing the benefits of vertical integration, though they found the impacts on the cash market to be "elusive." The report states: "While the empirical research, on balance, suggests an inverse relationship between captive supplies and cash market prices, establishing a causal link has been elusive."

iii. Empirical Evidence

Unlike the meatpacking industry, the live cattle industry was in a serious state of decline and suffered through a dozen years of depressed prices from 1991 through 2002, beginning first with the decline in fed cattle prices and followed by the decline in feeder cattle prices. During the 12-year period from 1991 to 2002, the U.S. live cattle industry suffered staggering losses measured in the billions of dollars, with the value of cattle and calf production falling from $30.1 billion in 1990 to $26.9 billion in 2002. U.S. cattle feeders lost approximately $3 billion just during the period from March 2001 through May 2002. For the period from 1992 to 2001, the average return to U.S. cow/calf producers was a negative $30.40 per bred cow per year for each of those 10 years. Consequently, the U.S. cattle industry has lost over 127,000 beef cattle operations since 1994. This includes the estimated loss of over 8,500 U.S. feedlots just since 1995. As revealed by Figure 2, the production capacity of the U.S. cattle industry has been shrinking since the late 70s.

Figure 2

Despite the fact that domestic beef consumption increased by nearly 3.8 billion pounds from 1993 to 2002, no recovery to the protracted depression in live cattle prices occurred until 2003, the year the Canadian border was temporarily closed to imports of Canadian beef and cattle.

Beginning in 2003, U.S. cattle prices hit historic highs, and these higher prices were sustained through 2006, albeit not without considerable price volatility. The rise in prices afforded a four-year healing period, at least for cow/calf producers that experienced less price volatility than their cattle feeding counterparts.

But the gains in live cattle prices during this period were perhaps less than they might have otherwise been due to the continued decline in the producer's share of each consumer's beef retail dollar over the same period. The spread between producer prices and retail prices in each of the years of 2003, 2004, 2005, and 2006 was wider than at any time in the industry's recent history. Furthermore, for the period June through August 2005, after USDA warned that beef prices were too high, the producer's share of the consumer's beef dollar fell below the historical low annual average of only 44 percent received in 2002, when live cattle prices were seriously depressed and selling for $11.52 per cwt. less than producers received a dozen years earlier in 1990. Live cattle prices fell to a 17-month low during the month immediately following USDA's public statement that beef prices were too.

Thus, despite the relief associated with higher cattle prices that resulted from the closure of the Canadian border, it was the beef processing and retailing sectors that increasingly captured the lion's share of the record high beef prices experienced in 2003, 2004, 2005, and 2006, not U.S. cattle producers.

While USDA reports issued as recently as December of 2005 continued to predict bullish prices for domestic cattle prices, something went terribly wrong beginning in January 2006 and live cattle prices fell precipitously. Fed cattle prices that were averaging $96.50 per cwt. in December of 2005 nosed downward in January 2006 and continued to decline for a full five months, hitting a low of $79.10 per cwt. in May of 2006. This substantial decline more than ate up the entire increase in cattle prices experienced between the years 2002 and 2003. U.S. cattle feeders again experienced staggering losses during the period of February through June of 2006. As revealed in Figure 3 below, U.S. cattle feeders lost over 3/4 of a billion dollars just from the sales of fed steers during the early months of 2006.

Figure 3

Month Great Plains Estimated Losses per Pound Estimated Live Weight Estimated per Head Loss Number of Steers Slaughtered Total Loss to U.S. Cattle Feeders
February 2006 (.0408) 1,200 ($48.96) 1,189,000 ($58,213,440)
March 2006 (.0983) 1,200 ($117.96) 1,481,000 ($175,052,640)
April 2006 (.1043) 1,200 ($125.16) 1,400,000 ($175,224,000)
May 2006 (.1293) 1,200 ($155.16) 1,674,000 ($259,737,840)
June 2006 (.0451) 1,200 ($54.12) 1,752,000 ($94,818,240)

Total 5-Month Loss on Steers 7,496,000 ($763,046,160)

Based on these large financial losses associated with only fed steers, it can be conservatively estimated that U.S. cattle producers lost more than $1 billion during this 5-month period, given that comparable losses were experienced by feeders who fed the over 4.2 million fed heifers that were also marketed during this timeframe. The circumstances surrounding the unexpected drop in cattle prices warrant careful review.

As revealed in Figure 4 below, weekly captive supply numbers increased significantly beginning in late 2005 and early 2006. In February 2006, all four major meatpackers - Tyson, Cargill, Swift & Co., and the National Beef Packing Co. - withdrew from the cash market in the southern plains for an unprecedented period of two weeks. The packers made minimal to no purchases on the cash market, relying on captive supplies of cattle to keep their plants running for two weeks and cutting production rather than participating in the cash market. As a result of the packers shunning the cash market, cash prices fell for fed cattle, replacement cattle, and in futures markets. Only with falling prices did packers reenter the cash market.

Figure 4

It is important to note that the abandonment of the cash market in February of 2006 occurred after the Livestock Mandatory Price Reporting (MPR) program expired. Thus, much less information regarding the incident is available than would be if the program had still been in effect. The episode may have lasted for much longer than the two weeks we can verify through public sources, possibly dragging on for as long as three or four weeks. Yet, without the benefit of the market transparency provided by the MPR program, we are only able to rely on other public sources of information documenting that the withdrawal from cash markets lasted for at least two weeks. The simultaneous abandonment of the cash market for cattle began in early
February and continued through February 17. On February 13, 2006, market analysts reported that no cattle had sold in Kansas or Texas in the previous week. No cash trade occurred on the southern plains through Thursday of the next week, marking, as one trade publication noted, "one of the few times in recent memory when the region sold no cattle in a non-holiday week." Market analysts noted that "[n]o sales for the second week in a row would be unprecedented in the modern history of the market." During the week of February 13 through 17, there were no significant trades in Kansas, western Oklahoma, and Texas for the second week in a row.
R-CALF USA members are convinced that the meatpackers' strategic timing and use of their captive supply cattle was the principal force that drove cattle prices down in the first half of 2006.

During the 2006 summer, fed cattle prices remained in the low $80s. By September cattle prices began to recover and were in the low $90s. Then, during the week that ended October 13, the meatpackers cast a negative psychology upon the market: three of the nation's four largest beef packers announced they would all reduce cattle slaughter. Even though they had bought very few cattle in the south and were short supplied, they cited high cattle prices, tight supplies, weak beef demand, and limited export access as the reasons they were cutting back. During that week, the packers reportedly slaughtered an estimated 10,000 fewer cattle than the previous week, but 16,000 more cattle than they did the year before. Fed cattle prices still fell $2 to $3 and feeder prices fell $3 to $10.
By Friday of the next week, October 20, the packers slaughtered 14,000 more cattle than they did the week before and 18,000 more cattle than the year before - obviously they didn't cut back

slaughter like they said they would. But live cattle prices kept falling, with fed cattle prices down another $1 to $2 and feeder cattle down another $4 to $12. Following this October episode, fed cattle prices were pushed back to the mid to high $80s for the next five months. To those of us whose livelihoods depend on a properly functioning, competitive market, the events that took place in 2006 clearly show that the meatpackers are using their buying power to manage the price of domestic cattle. Using techniques such as negative market psychology, minimal market transparency, and increased captive supplies, the meatpackers gained significant control over the price of domestic cattle, to the financial detriment of us producers. 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.

C. NEEDED REFORMS

The Farm Bill should ensure that antitrust and competition laws are effectively and vigorously enforced. 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. 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. R-CALF USA supports the creation of an Office of Special Counsel at USDA to oversee both investigations under, and enforcement of the Packers and Stockyards Act (P&S Act).

Early last year, the Office of Inspector General (OIG) found that GIPSA's investigative tracking system for violations of the Packers and Stockyards Act was inaccurate and incomplete, that GIPSA's process for managing investigations was inadequate, that GIPSA left important policy decisions unmade for months and even years, and that previous recommendations from the OIG and the GAO to strengthen GIPSA had not been fully implemented. As a consequence of these failures, GIPSA has referred only one competition investigation to the USDA's Office of General Counsel (OGC) for follow-up since the end of 2002, and the OGC has not filed any administrative complaints against the meatpacking industry since 1999.

R-CALF USA believes that (1) Congress should amend the P&S Act to prevent unfair or deceptive practices, to define "unreasonable preference or advantage," and to correct a recent misinterpretation by the U.S. appellant court system: a meatpacker should not be allowed to avoid the P&S Act's jurisdiction by claiming it engaged in unfair market practices (that are harmful to the economic wellbeing of producers) in order to maintain competitiveness with other meatpackers, that are likewise engaged in the same unfair practices. (3) Congress should take steps to reduce the volume of captive supplies. Limiting packer ownership of livestock and requiring a certain percentage of daily slaughter to be purchased from the cash market would minimize the negative effects of current captive supply use. (4) Congress should take steps to prohibit the use of certain anti-competitive, forward contracts that are not transparent and that do not contain a firm base price. In addition, the law should require processors to bargain in good faith and prohibit other unfair contract practices by (5) requiring a fixed base price in formula contracts; (6) ensuring cattle purchase contracts include a clear disclosure of producer risks; (7) requiring contracts to be traded in open, public markets and prohibit confidentiality clauses; and (8) Improving termination and arbitration provisions to protect producers' rights. Many of these important reforms are presently included in S. 622, S. 305, S. 786, and S. 1017.

Importantly, Congress should also remove the present deterrent against the expansion of state inspected meat processing plants. This deterrent is the result of restrictions that prohibit state inspected meat plants from engaging in interstate commerce. This deterrent can be lifted by allowing the interstate shipment of state inspected beef.

III. CONSUMER INFORMATION AND INFORMATION DISCLOSURE

A. MANDATORY COUNTRY OF ORIGIN LABELING

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. 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. The vast majority of other developed countries have already implemented country-of-origin labeling programs for such products, including beef. 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.

Congress should restore COOL by moving its implementation date to September 30, 2007, as provided in S. 404. In addition, Congress 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 burdensome and expensive, and could be simplified significantly. 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.

B. PRICE TRANSPARENCY

The 2007 Farm Bill should help promote transparency in the market by extending and 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.

IV. HEALTH AND SAFETY

A. PREVENTING DISEASE INTRODUCTION

Congress should take steps to counteract the radical policy shift recently initiated by the USDA to abandon longstanding U.S. import restrictions established to prevent the introduction of foreign animal diseases in favor of attempting to mitigate disease spread after it is introduced. Unfortunately, the Animal Health Protection Act does not contain standards with which to measure the USDA's performance in preventing the introduction of foreign animal diseases; nor does it expressly state under what conditions the USDA is to impose import restrictions for this purpose. Congress should provide clearer direction to the USDA in this regard by amending the Animal Health Protection Act in the 2007 Farm Bill. Meanwhile, Congress should pass a Resolution of Disapproval to force the withdrawal of the USDA's proposed rule to allow the importation of cattle over 30 months of age and beef products from cattle over 30 months of age from Canada, a country that has detected multiple cases of BSE born years after the implementation of its feed ban.

In addition, Congress should take immediate steps to (1) prevent the USDA from continually relaxing BSE-related import standards for both Canada and Japan as this action subjects the U.S. cattle industry to increased exposure to BSE. (2) Prevent the USDA from relaxing our foot and mouth disease (FMD) disease protections via its proposal to allow a region of FMD-affected Argentina to begin importing fresh and chilled beef into the United States. (3) Require the USDA to impose more effective restrictions on the importation of cattle from Mexico in light of recent testimony by the USDA Office of Inspector General that indicates that approximately 75 percent of all bovine tuberculosis cases detected under U.S. slaughter surveillance originated in Mexico.

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 two years 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
? 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. beef is among the safest, highest-quality product in the world.

B. IMPROVING ANIMAL DISEASE TRACE-BACK CAPABILITIES

The 2007 Farm Bill should be used to prohibit the USDA from imposing a costly and onerous mandatory animal identification system on the U.S. cattle industry. Congress, instead, should take steps to strengthen and expand the time-proven Brucellosis surveillance and vaccination program, which involves the placement of a permanent metal ear tag in breeding females. This current disease trace-back system, if strengthened and combined with the state brand laws in 17 states, would significantly improve the United States' current disease trace-back capabilities as desired by U.S. animal health officials.

V. 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. 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, 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. 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.

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. 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." 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."

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."

VI. SUPPORT A STRONGER, MORE COMPETITIVE CATTLE AND BEEF SECTOR

The 2007 Farm Bill is the ideal vehicle to make needed reforms to the current beef check-off program. Amendments are needed to this current program to (1) allow U.S. cattle producers to use their check-off contributions to promote beef that is exclusively born, raised, and slaughtered in the U.S., rather than to promote generic beef regardless of its origin; (2) provide for a periodic referendum every five years; (3) allow direct contracting of the program with vendors to avoid possible conflicts of interest; (4) limit representation by any one national policy organization on the Cattlemen's Beef Board to no more than 40 percent; (5) expand the definition of eligible program contractors to include organizations formed after the implementation of the program; and (6) limit contract awards to prevent any recipient from receiving more than 30 percent of annual award amounts.

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 competition title in the 2007 Farm Bill should guarantee a competitive domestic market for cattle and beef, improve consumer information and information disclosure, strengthen safeguards for health and safety, address global distortions in cattle and beef markets, and strengthen programs to support the continued vitality of the largest sector of United States agriculture.

Thank you, again, for allowing me the opportunity to provide input at this important hearing. I welcome any questions that Members of the Committee may have.