



**Written Testimony of Justin Tupper
St. Onge Livestock
St. Onge, South Dakota**

**On behalf of the
United States Cattlemen's Association**

**Submitted to the U.S. Senate
Committee on Agriculture, Nutrition, and Forestry**

"Examining Markets, Transparency, and Prices from Cattle Producer to Consumer"

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INTRODUCTION

On behalf of the United States Cattlemen's Association (USCA), thank you for the opportunity to testify on behalf of the nation's cow-calf producers, backgrounders, feedlot operators, livestock haulers, and independent processors.

In 2019, I was nominated by my peers to serve as Vice President of USCA after representing the organization's Region X (North Dakota, South Dakota, Minnesota). Today, along with my role on the USCA Board of Directors, I also serve on the Commodity Futures Trading Commission's (CFTC) Agricultural Advisory Committee and on the Board of Directors of the South Dakota Beef Industry Council as the South Dakota Livestock Auction Markets Association representative.

When I am not in board meetings, my wife, Brooke, and I manage St. Onge Livestock in St. Onge, South Dakota. The livestock auction holds sheep sales every Thursday and cattle sales every Friday. The business is a family affair, and you'll often see at least one of my four children – Emily, Maggie, Taylor, and Cody – helping out in the pens or up front in the office.

We are also cow-calf producers, grazing cows year-round in southwestern Wyoming and southeastern Montana and running yearlings on summer grass.

USCA was founded on the principle that a grassroots effort by U.S. cow-calf producers, feedlot operators, backgrounders, and livestock haulers can work positively and effectively with Congress and the Administration to reform U.S. agriculture policy and ensure a fair, competitive marketplace. I am here before you today to ensure that the U.S. cattle industry that we leave for the next generation is one that can be both profitable and sustainable.

Increasing consolidation and foreign ownership in the meatpacking sector has eroded the foundation of the U.S. cattle market. Congress holds the necessary power and tools to restore solid ground beneath the boots of U.S. cattle producers. We offer the following for consideration by this Committee.

BACKGROUND

In 1977, the number of cattle slaughtered by four firms accounted for only 25 percent of total slaughter capacity. Over the course of two decades, that number increased to 71 percent.

Today, four companies slaughter about 85% of U.S. fed cattle, according to the most recent data from the U.S. Department of Agriculture (USDA)¹. Two of those companies

¹ (Matilda Coleman, 2021)

– JBS USA and National Beef – are owned and operated outside of the United States, in Brazil.

The holding company behind JBS, J & F Investments, paid \$3.2 billion in fines in 2017 for its involvement in a government bribery scandal. That same year, news broke that JBS had paid federal meat inspectors to ignore tainted meat product leaving their processing facilities – with some of that product intended for U.S. borders.

It is a wholly unsustainable model for the U.S. beef production chain to rely on such a concentrated number of players, especially when half are foreign owned. Though the industry has been steadily building to this boiling point, three separate events in 2019, 2020, and 2021 served to heighten awareness of the increased level of concentration in the meatpacking sector.

On August 9, 2019, a fire broke out at one of the largest beef packing plants in the U.S. The Finney County Beef Plant in Holcomb, Kansas, owned by Tyson Foods, accounts for nearly six percent of the nation’s slaughter capacity. In the days following the fire, U.S. cattle producers witnessed extreme volatility in the daily feeder and live cattle futures.

A September 16, 2019, report released from Kansas State University listed projected values for finished steers in Kansas feed yards at *negative* \$184.99². During that same period, packer margins spiked significantly to nearly four times their annual average, or approximately \$549. Within that same report, Kansas State University predicted that cattle feeders would not see a positive net return on finished steers or heifers until May 2020.

Unfortunately, that positive net return never came. Instead, a global pandemic disrupted supply chains across the globe. The arrival of COVID-19 exposed inherent flaws in the U.S. meatpacking industry, resulting in a compromised food supply chain and exposing the vulnerability of our global meat processing workforce. In a report prepared by Brett Crosby of Custom Ag Solutions, Inc.³, USCA estimated that the total impact of COVID-19 on the cattle industry would exceed \$14.6 billion.

Then, on May 30, 2021, JBS detected a ransomware attack that temporarily halted all production at its U.S. facilities, and certain facilities around the world.

The combination of these so-called “Black Swan” events earned the attention of lawmakers, media, and the public. With the spotlight now on the cracks in the system, it is USCA’s hope that we can finally make meaningful change to ensure a robust and secure domestic food system.

² (Tonsor, 2019)

³ (Crosby, 2017)

ENSURING A FAIR AND COMPETITIVE MARKET

USCA supports clarifying definitions within the Packers and Stockyards Act of 1921 (P&S Act). The P&S Act was passed “to regulate the sale of livestock by farmers to the more economically powerful livestock buyers.” The Act passed following a long list of existing antitrust laws: the Sherman Antitrust Act of 1890, the Federal Trade Commission Act of 1914, and the Clayton Act of 1914. Congress recognized that while these existing laws addressed issues of anti-competitive and collusive behaviors in U.S. markets, they did not address the subject of individual producers interacting with the highly concentrated meatpacking sector. Thus, the P&S Act directly addressed this issue with its most critical portion of the law, Section 202.

The legislative history and purposes clearly demonstrate that sections 202(a) and (b) were to be distinct from the antitrust injuries illustrated in subsections (c), (d), and (e) based on the absence of anticompetitive language. The congressional intent was clearly to provide remedies for individual producers in the instance that meat packers took unwarranted actions to provide less than fair market value to similarly situated producers. Consistent with the language and structure of the P&S Act, USCA wholly supports the USDA’s longstanding position that the protections intended by sections 202(a) and (b) extend beyond the competitive injury required under the antitrust laws.

USCA also believes that the “harm to competition” phrase must be addressed. The interpretation of this phrase has led to preferential contract agreements between meatpackers and select producers that has increased packer’s control of supply and decimated price discovery, leading to a favorable position for the meatpacker. The “unreasonable” requirement allows packers to continue paying premiums for higher quality and value-based pricing without the threat of litigation.

USCA urges the USDA Packers and Stockyards Division to carry out its mission of promoting “fair and competitive trading practices for the overall benefit of consumers and American agriculture.”

Further, U.S. Senators Jon Tester (D-MT), Charles Grassley (R-IA), and Mike Rounds (R-SD) introduced legislation in June 2021 that would amend the Packers and Stockyards Act to establish the Office of the Special Investigator for Competition Matters.

This bill directs coordination between the U.S. Department of Agriculture, the U.S. Department of Justice (DOJ), the Federal Trade Commission, and the U.S. Department of Homeland Security. It grants subpoena power to aid in the investigation and prosecution of violators of the Packers & Stockyards Act and bolsters the legal power of the USDA by maintaining a staff of attorneys and other professionals with relevant expertise that can elevate cases of corruption.

Regardless of whether anti-competitive practices are occurring, the four largest packers obviously have enough power and market share to manipulate cattle prices. This

justifies additional oversight of the packing sector. For this reason, USCA strongly supports the successful passage of the Meat Packing Special Investigator Act⁴ into law.

CATTLE MARKETING IN 2021

Historically, packers have purchased most cattle through weekly negotiations with feedlots to agree upon the price of slaughter-ready animals' live weight (Live) or carcass weight (Dressed). Prices are stated either per pound (\$/lb.) or per hundred pounds (hundred weight, or \$/cwt). The industry generally refers to this pricing method as Negotiated Cash or Cash.

In most regions, packers presently purchase a small minority of cattle through Cash pricing, and instead use Alternative Marketing Agreements (AMAs). AMAs generally use two components, market price and carcass quality, to arrive at a final price for cattle. The market price (Base Price) is usually a function of the Cash price in a particular area, and premiums or discounts are given based on carcass quality (the Grid). AMAs with the Base Price contractually established as a function of Cash or other markets (i.e., futures, boxed beef, etc.) are considered Formula cattle. AMAs with a Base Price negotiated weekly between the feedlot and packer are considered Negotiated Grid.

Formula pricing is by far the most common AMA, and most formulas are based on a regional Cash price. Following is an example of a typical formula, including the timing of the information reported by MPR:

Base Price: Kansas weighted average Cash price.

Grid: Premiums for prime, choice, and high-yielding carcasses. Discounts for select, standard, low-yielding carcasses, and carcasses over 1,000 lbs. or under 700 lbs.

- a. Day 1 (Monday): Feedlots commit slaughter-ready cattle to a single processor.
- b. Day 6 (Saturday): Weekly Kansas Cash trade, reported daily (MPR Reports LM_CT119, LM_CT120), averages \$124/cwt for the week.
- c. Day 8 (Monday): MPR Weekly Cash trade is released (MPR Report (LM_CT161), setting Base Price at \$124/cwt.
- d. Day 9-18: Cattle are processed and graded. Grid Premium to seller is \$1/cwt.
- e. Day 21: (Monday): MPR reports Formula Cattle Net Price of \$125 (MPR Report LM_CT151)

While AMAs offer advantages of reduced transaction costs and quality incentives, they also adversely affect price transparency, price discovery, and price competition.

⁴ (Senator Jon Tester, 2021)

ENSURE TRANSPARENCY AND TRUE PRICE DISCOVERY

The livestock industry is a historically up and down, ever-changing marketplace due to its dependence on consumer trends, domestic and international policies, and foreign market factors; however, today's marketplace lacks the transparency and true price discovery indicative of a healthy industry.

Fewer and fewer cattle are sold on a negotiated cash basis, which reduces the ability for true price discovery in the cattle marketplace. Negotiated cash cattle make up less than 20 percent of the market yet set the price for the other 80 percent of cattle sold through formula contracts and or cattle futures market.

The Livestock Mandatory Reporting (LMR) program expires September 30, 2021, following a one-year extension that was granted in December 2020. USCA would like to see changes made to this program to provide more accurate and transparent reports of daily prices and number of cattle purchased via the cash market.

The Base Price and grid structure of formula agreements may vary significantly between feedlots, and the variation of these agreements is currently known only to the packers. This places cattle feeders at a disadvantage when negotiating formula agreements, because packers know what they have negotiated with other feedlots and the negotiating cattle feeder does not. For this reason, the USCA strongly supports creating a contract library and including it in LMR, as set forth in the Cattle Market Transparency Act of 2021⁵.

Also, timely live cattle price information presently exists only for Negotiated Cash transactions. LMR currently requires packers to report Negotiated Cash transactions (Cash) twice daily, within at least 16 hours of establishing a price. But LMR only reports prices for cattle purchased under Formulated (Formula), Negotiated Grid (Grid), and Forward Contract purchases only after they have been slaughtered.

Formula, Grid, and Contract price reports are reported once weekly as an aggregated price of cattle slaughtered the prior week and daily prices are not reported. Because Formula and Grid prices include a carcass quality component, a substantial time lag exists for reporting these transactions.

The time lag between base price establishment and slaughter for Formula and Grid Cattle is 7 to 21 days after the base price is established. The result is that prices for Formula, and Grid cattle, comprising roughly 60%-80% of all cattle slaughtered, are reported an average of 2 weeks later than Cash prices.

USCA's proposed solution is to require Base Price reporting twice daily. The Agriculture Marketing Service (AMS) publishes live cattle prices daily, weekly, and monthly through

⁵ (Senator Deb Fischer, 2021)

its LMR Datamart web portal. MPR reports include average, high, and low grid premiums and discounts weekly. Daily base price reports, combined with recent weeks' grid reports, offer a good estimate of the final value of formula cattle within the same timeframe of Cash reports.

However, USCA also believes that overly burdensome Cash requirements may incentivize formula traders to bypass true negotiation. Packers and Feedlots who exclusively use Formulas for marketing and procurement may find the transaction cost of overly burdensome negotiation requirements large enough to circumvent the process completely.

Feedlots may circumvent negotiation by simply offering cattle later, after the base price for their formula cattle has been established. A hypothetical example is described below:

- a. Feedlot Formula uses the average Kansas Cash price as a base.
- b. The feedlot's three-week rolling average grid premium has been \$1/cwt.
- c. Feedlot waits until Kansas Cash price is reported, then offers cattle to packer for \$1 over reported Kansas price.
- d. Packer accepts offer because the long-run average of procuring cattle this way is nearly identical to procuring through a formula.

Transactions such as the one described in the previous example will be reported earlier than formula transactions, but they are not truly negotiated, as they rely on other market participants to negotiate the base price.

As the number of negotiating market participants continues declining, market liquidity dwindles, and the possibility of price manipulation becomes a greater risk. The result is the appearance of price discovery without sufficient real price negotiation to keep markets truly competitive. USCA offers four proposed solutions.

The first is to establish Negotiated Cash requirements high enough to facilitate price discovery, thereby reducing marketing costs and incentive for formula traders to circumvent the intent of the law.

The second is to allow a base price proxy peg that is not easily manipulated to satisfy conditions for cash trade under certain conditions. USCA proposes allowing formula contracts with Base Prices that are either negotiated, or that are established using liquid, actively traded markets (e.g., live cattle futures) to satisfy negotiated cash requirements.

A liquid, actively traded market reflects very little risk of price manipulation. Using such a market to establish base prices for formulas substantially decreases the risk that true price negotiation becomes so thinly traded as to be manipulated by any particular packer.

Establishing base prices in this way still relies on others to negotiate, but the sheer volume of market participants ensures a competitive market.

If the base price in the example described above were either negotiated weekly or based on an actively traded market like futures or boxed beef prices, and offered cattle for sale as described, it would be a true negotiated price.

Allowing this type of trade to satisfy negotiated cash prices (assuming timely reporting) may encourage packers and feedlots to move toward a base price that is dependent on something other than Cash because the base price has less potential for manipulation.

The third proposed solution is to limit the number of cattle any one plant can procure in advance, thereby limiting packer control of supply and the need for packers to be active bidders every week.

This solution requires some analysis to determine the appropriate limit, but a packer who has 90% of their kill procured or otherwise committed in advance obviously has less incentive to be an active market participant than a packer who only has 30% of their cattle committed.

This is the one proposed solution that appears certain to require changes to the Packers & Stockyards Act rather than using LMR reauthorization to implement.

Finally, USCA believes packers should be required to offer cash bids or floor prices for cattle they would like feedlots to commit. Currently, most feedlots are required to commit cattle for sale without any cash offer or floor price. This forces feedlots to decide whether to commit cattle without any knowledge or guarantee of a base price or floor price.

BUILD INDEPENDENT PROCESSING CAPACITY

The cost to build a new construction meat-processing facility is estimated at approximately \$400 per square foot, inclusive of permits, site prep, utilities, property, building, refrigeration, and other costs.⁶ At that estimation, a small 20 head-per-week operation would need at least a 3,000 to 4,000 square feet of facility at an estimated cost of \$1.2 million. Repurposing an existing building is slightly more economical, at a cost of approximately \$150 per square foot.

Before breaking ground, however, there are pre-occupational capital expenses to be accounted for, including design of the facility, blueprints, consulting, utility prepayments, soil tests and environment impact. These expenses are estimated at 20% of the overall plant. For our small plant example listed above, we estimate \$300,000 in pre-occupational capital.

⁶ (Newlin, 2020)

Next, the facility will need to be filled with the necessary equipment for slaughter and processing, which includes rails, hand tools, cookers, smokers, and grinders. New equipment will run approximately \$300,000 to \$400,000.

Just in our example, this small operation would require \$1.8 million just in start-up capital. To meet this need, they may turn to private or public financing depending on their individual situation. Examples of public financing opportunities include Tax Increment Financing; Tax Abatement; the Rural Economic Development loan and grant program; or the Small Business Administration's (SBA) Certified Development Corporation ("504") Loan Program⁷.

However, more public funding opportunities are needed; in addition to streamlining and increasing the efficiency of current loan and grant programs. USCA recommends the following programmatic updates:

- Congress should direct funding authority to USDA to provide capital infrastructure improvement grants to communities for water sewage systems to support the development of independent slaughter and processing facilities.
- Congress should provide tax income incentives to individuals who invest in the construction of independent slaughter and processing facilities.
- Congress should direct funding authority to USDA to provide substantial grants, rather than cost-share programs, to individuals for the purchasing of re-use buildings and to upgrade the buildings to meet USDA Food Safety and Inspection Service (FSIS) regulations for the development of independent slaughter and processing facilities.

USCA partners with independent local, state, and federal meat processors to ensure that American beef is an option on every American plate. We value the independent processors' role in our supply chain and believe that our enhanced collaboration can bring policy changes that are both mutually beneficial and economically sustainable. USCA supports increased competition in this sector by increasing the opportunities for independent processors to succeed. Aside from capital investment, the following recommendations would greatly strengthen the bottom lines of independent processors:

- Plants classified by the USDA FSIS as small or very small should be provided a USDA licensed grader by the USDA Agricultural Marketing Service (AMS) free of charge; or be allowed to utilize electronic instrument grade augmentation systems within their plant.
- Congress should immediately halt the payout of federal subsidies to any of the Big Four meat packing plants, distributors, and retailers and instead prioritize subsidy distribution to Very Small/Small independent meat packing facilities.

⁷ (Niche Meat Processors Assistance Network , 2021)

- Congress should direct USDA to set aside a percentage of their bids for meat purchase to Very Small/Small independent meat packing facilities.
- USDA and DOJ need to have stronger, clearer, and enforceable predatory pricing guidelines to protect these new properties and investments.

Finally, an outdated regulation (9 CFR 201.67) that dates back to the terminal stockyards of the 1920s prevents livestock auction owners from owning or investing in a processing facility. In today's environment, where the cattle industry is focused on additional shackle space and wanting more packers to compete for livestock, this dated ban should be removed. Having another local or regional packer would bring more competition for cattle, and we should not be excluding people in the cattle industry that may want to invest in the packing segment.

ESTABLISH TRUTH IN LABELING

Currently, there exists a loophole which allows imported beef product, most often lean ground trim from South America, to be transported to our borders; undergo a "significant transformation", which can be as insignificant as trimming, rewrapping, or blending a small percentage of domestic product; and then claim the "Product of the U.S.A." label on the final product.

With the existence of this loophole, it is virtually impossible to provide assurance to consumers that the product they are purchasing is truly U.S. beef.

Because of the large number of cattle from Canada and Mexico that enter the United States each year and are slaughtered in U.S. packing facilities, the possibility of beef products which are not born and raised as well as harvested in the United States carrying a label indicating "Product of USA" or some such other claim of U.S. origin is very real.

It is our understanding that all products advertised or sold in the U.S., including food products like beef, must meet the Federal Trade Commission's (FTC) "all or virtually all" standard if "made in USA" or "product of USA" (or similar labeling) is to be applied. Without clear guidance from USDA FSIS, product either is already or will likely be mislabeled and cause confusion to consumers who are purchasing beef products and harm to American cattle producers.

To eliminate the likelihood of confusion and to better inform consumers, USCA contends that labels indicating "Made in USA," "Product of USA" or similar content should be limited to beef from cattle born, raised, and harvested in the United States.

In 2019, USCA submitted a petition for rulemaking to USDA FSIS⁸ requesting this change. In its official response, FSIS acknowledged that the current regulatory

⁸ (U.S. Cattlemen's Association, 2019)

framework “may be causing confusion in the marketplace” and decided to initiate rulemaking.

CONCLUSION

On Monday, May 10, 2021, member leaders of the American Farm Bureau Federation, National Cattlemen’s Beef Association, National Farmers Union, R-CALF USA, and USCA met in Phoenix, Arizona.

These groups convened at the request of the Livestock Marketing Association to discuss challenges involved in the marketing of finished cattle with the ultimate goal of bringing about a more financially sustainable situation for cattle feeders and cow-calf producers.

This historic meeting of industry groups underscores the importance of advancing much needed market reform to ensure the viability of our nation’s food supply. However, our work is not done. We need bold, immediate leadership from Congress to enact these changes.

With the help of our lawmakers, we will overcome the industry’s current challenges and continue to produce a healthy and abundant food supply; while simultaneously serving as stewards of the environment and ensuring a thriving rural and national economy.

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