Deregulation & Competition: Reducing Regulatory Burdens to Unlock Innovation and Spur New Entry

Before the

Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights

Testimony of the

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

by

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Mr. Chairman, Ranking Member Booker, Members of the Committee, I am Bill Bullard, CEO of the Ranchers Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA), and I thank you for the opportunity to provide testimony on *Deregulation & Competition: Reducing Regulatory Burdens to Unlock Innovation and Spur New Entry*.

R-CALF USA is the largest trade association exclusively representing United States cattle farmers and ranchers within the multi-segmented beef supply chain. Its thousands of members reside in 43 states and include cow-calf operators, cattle backgrounders and stockers, and feedlot owners. It also represents sheep producers. As such, R-CALF USA represents America's agricultural backbone – the independent, family-scale farmers and ranchers who raise the cattle and sheep that produce American beef and lamb. Our cattle industry alone – not including the downstream beef industry – is the largest segment of American agriculture, and together our cattle and sheep industries are America's last bastion of independently owned, family-scale livestock grazers and feeders.

Both the cattle and sheep industries are being decimated by a combination of two perils: unrestrained globalism and marketplace concentration. Last year, over 73% of lamb and 22% of beef consumed in America were imported.[1] In just over a generation, over half our nation's cattle farmers and ranchers and nearly two-thirds (63%) of our commercial sheep producers ceased operations;[2] our breeding cattle and sheep inventories have declined by 9.2 and 7.6 million head, respectively, relegating our cattle herd to the smallest size in over 7 decades and our sheep herd to the smallest size in history;[3] and, our family-scale cattle feedlot operations declined by over 75 percent.[4] All this, even though our U.S. population increased 49% during this period and beef and lamb consumption increased significantly, with marked upturns beginning in 2012 for lamb and 2015 for beef.[5]

Given today's subcommittee objective, I will focus on deregulation and competition within the multisegmented live cattle supply chain and downstream beef supply chain. Please know, however, that the live sheep supply chain and its downstream lamb meat and mutton supply chain are similarly, if not identically impacted by the issues herein discussed.

To begin, we must identify the specific location along the multisegmented beef supply chain where the presence of robust competition will unlock innovation and spur new entry, or the continued

[1] The calculation for the percentage of imported lamb consumption is based on USDA ERS' Meat supply and disappearance tables, historical, available at Livestock and Meat Domestic Data | Economic Research Service. The calculation for imported beef consumption is based on the total disappearance column derived from the same source, though import volume was obtained from USDA Foreign Agriculture Service' Global Agricultural Trade System (GATS) database with live cattle imports converted to a beef equivalent based on annual U.S. carcass weights.
[2] Percentages of reductions in beef cattle and commercial sheep operations were calculated using various USDA National Agricultural Statistics Service's Agriculture Census reports and previous USDA reports on Land, Land in Farms and Livestock Operations, which is no longer published.
[3] Reductions in cattle and sheep inventories were calculated using various NASS Agriculture Censes reports and various NASS Cattle reports.
[4] The decline in the number of U.S. feedlots was calculated based on various NASS Cattle on Feed Reports, available at Publication | Cattle on Feed | ID: m326m174z | USDA Economics, Statistics and Market Information System.
[5] *See* Meat supply and disappearance tables, historical, Columns L and M, available at Livestock and Meat Domestic Data | Economic Research Service.

absence of such competition will accelerate the ongoing contraction and destruction of the live cattle segment of America's beef supply chain.

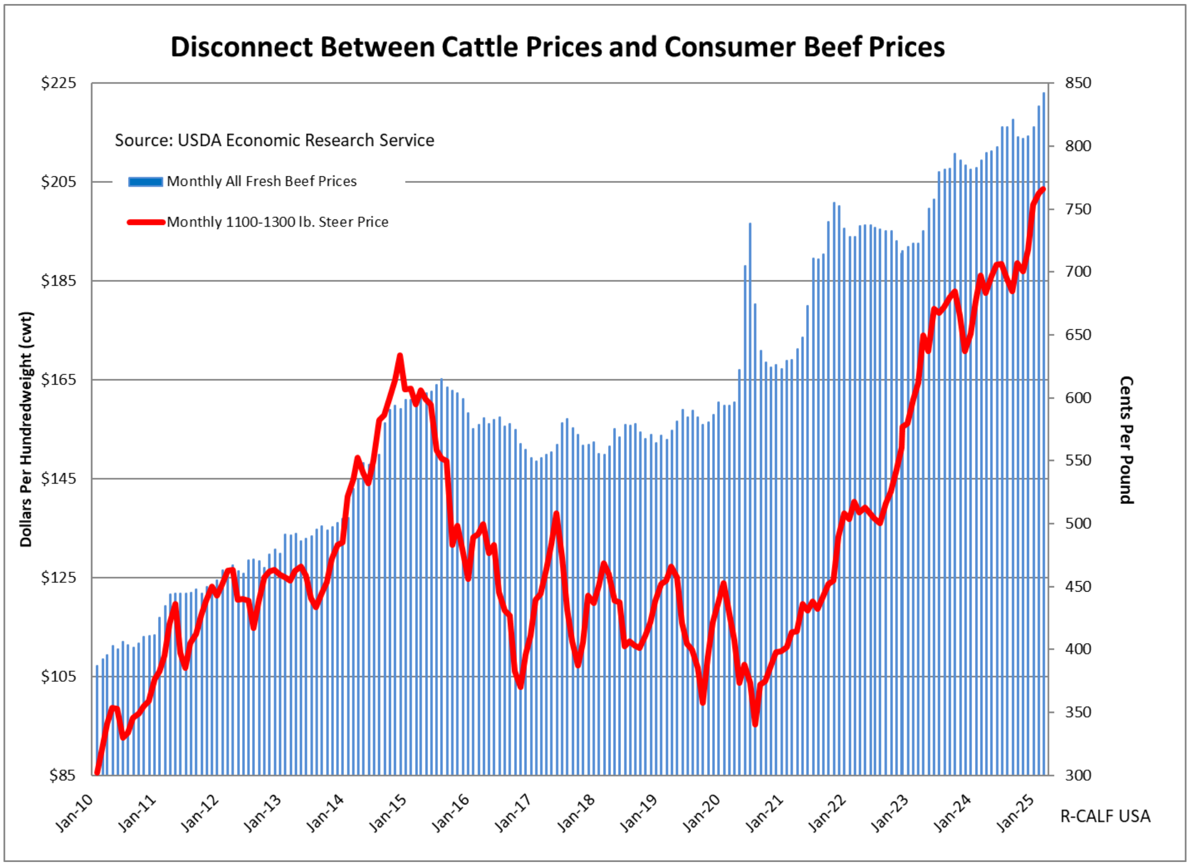
The critical demarcation point within the multisegmented beef supply chain, where competition must be robust, is between the live cattle industry and the beef industry. This is the point where the live cattle supply chain ends, and the beef supply chain begins. In other words, this is where cattle farmers and ranchers cease their contributions to the final beef product because they sell their live cattle to the beef packing industry that subsequently slaughters and fabricates their cattle into consumable beef products.

The reason this juncture is so critical to farmers and ranchers at the beginning of the supply chain and consumers at its end is because when there is a bottleneck between the upstream cattle industry and downstream beef industry, the market comprises many cattle sellers but a few buyers, thus creating market power disparity between cattle sellers and cattle buyers. And, moving downstream in the beef supply chain, there would be but a few beef sellers and many beef buyers (i.e., consumers), which creates yet another market power disparity, this one between beef sellers and beef buyers.

In such a market structure, the spoils go to the relatively few beef packers domiciled in the bottleneck as they can exert upstream or monopsony market power to lower the price of cattle paid to the cattle industry; and simultaneously exert downstream or monopoly market power to increase the price of beef paid by consumers.

This is the structure of today's multisegmented beef supply chain, replete with its contemporaneous monopsony- and monopoly-generating bottleneck separating the multisegmented beef supply chain's cattle industry and beef industry.

The following chart illustrates the effects of monopsony and monopoly power pervading the multisegmented beef supply chain as it shows that the during the multi-year period sandwiched between two widespread droughts, the marketplace was completely dysfunctional, with consumers paying ever rising prices for beef and U.S. cattle producers receiving depressed prices for their cattle – a phenomenon that cannot be explained by conventional market fundamentals, particularly when one considers that the only ingredient in beef is cattle.



Antitrust laws enacted at the turn of 20th century were intended to protect competition by preventing both the formation of market structures that facilitated the exercise of upstream (monopsony) or downstream (monopoly) market power, as well as the market wide exercise of that power (i.e., the Sherman and Clayton Acts). The ensuing Packers and Stockyards Act of 1921 (PSA) was enacted to further prevent unfair practices and conduct injurious to both livestock producers and their markets.

However, the bottlenecked beef packing sector underwent de facto deregulation beginning in the 1980s, a decade referenced as "merger mania" by the U.S. Department of Agriculture (USDA) on account of the period's unrestrained mergers and acquisitions.[6] The beef packing sector's 4-firm concentration ratio increased from 36% in 1980 to 78% by 1997, and according to the USDA, "No other manufacturing industry shows as dramatic an increase since the U.S. Census Bureau began regularly publishing concentration data in 1947."[7] The beef packing sectors 4-firm concentration ratio continued increasing and ranged between 81-86% from 2009-2021.[8]

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[6] *See* The U.S. Beef Industry Cattle Cycles, Price Spreads, and Packer Concentration, Kenneth H. Mathews, Jr., et al., USDA Economic Research Service, April 1999, at 10, available at Abstract.

[7] Consolidation in Meatpacking: Causes & Concerns, Agricultural Outlook/June-July 2000, USDA Economic Research Service, available at Consolidation-Meatpacking-Causes-Concerns-Economic-Research-Service-USDA.pdf.

[8] Various Packers and Stockyards Division Annual Reports, USDA Agricultural Marketing Service, 2019, 2021-2022, available at Packers and Stockyards Annual Reports | Agricultural Marketing Service.

The lack of enforcement of antitrust laws that empowered the unprecedented, competition-suppressing mergers and acquisitions within the beef packing industry was justified on the basis of efficiency gains – largeness of scale created efficiencies that policy makers and courts believed was a satisfactory substitute for the competition antitrust laws were intended to protect.[9]

Once the beef packing sector achieved its unprecedented, oligopolistic structure, it began experimenting with various cattle procurement devices to determine how to best capitalize on and exercise its inherent buying (monopsony) and selling (monopoly) power.

First, the dominant beef packers experimented with cattle ownership, acquiring feedlots that enabled them to own and feed a large portion of the cattle they needed to slaughter, a practice that insulated them from having to compete in the fed cattle market – the quintessential demarcation point between the cattle industry and the beef industry.[10] Later, packer ownership of cattle evolved into packer control of cattle through contractual arrangements, wherein large numbers of cattle were committed for delivery to the beef packers months before slaughter.[11]

The beef packers have perfected their ability to influence if not directly manage cattle prices paid to farmers and ranchers by devising four forms of cattle procurement: 1) cash, 2) negotiated grid,

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[9] *See, e.g.*, Assessment of Market Power and Cost Efficiency Effects in the U.S. Beef Packing Industry, Ji Inbae et al., Journal of Rural Development 39 (Special Issue): 35-58 (finding, as many other industry studies have, that "as concentration and captive supply increased, the cost efficiency effect outweighed the market power effect…" and concluded "that the increase of concentration and captive supply in the U.S. beef packing industry corresponds to an increase in social welfare."), available at JRD39-S-02.pdf. *See also*, Buyer power litigation in agriculture: Pickett v. Tyson Fresh Meats, Inc., C. Robert Taylor, Alfa Eminent Scholar of Agricultural Policy, Auburn University, 2008 (quoting the appellate court in *Pickett v. Tyson Fresh Meats, Inc*., 420 F.3d 1272, 1281 (11th Cir. 2005) as stating, 'If a packer's course of business promotes efficiency and aids competition in the cattle market, the challenged practice cannot, by definition, adversely affect competition.), available at Buyer power litigation in agriculture: Pickett v. Tyson Fresh Meats, Inc. - Free Online Library. *See also*, The Chicago School's Foundation Is Flawed: Antitrust Protects Consumers, Not Efficiency, John B. Kirkwood, Robert H. Lande, September 2008 (arguing that "the foundation of the Chicago School is flawed, and that the correct path of antitrust policy should not be determined by the view that increasing efficiency is more important than protecting consumers."), abstract available at The Chicago School's Foundation Is Flawed: Antitrust Protects Consumers, Not Efficiency | How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust | Oxford Academic. *See also*, Concentration and Competition in U.S. Agribusiness, EIB-256, James M. MacDonald *et al*., USDA, Economic Research Service, June 27, 2023, at 41 (stating, "In practice, economists agree that mergers that increase concentration substantially to high levels are likely to be anticompetitive unless there are sufficient offsetting efficiencies gains like economies of scale or other offsetting factors (citations omitted)," available at Concentration and Competition in U.S. Agribusiness | Economic Research Service.

[10] *See, e.g.,* Recent Acquisitions of U.S. Meat Companies, Congressional Research Service, Renée Johnson, March 10, 2009, at 1 (stating, "The proposed JBS acquisition of Five Rivers Ranch Cattle Feeding, which was part of the Smithfield deal, also took place, making JBS the largest cattle feeder in the United States."), available at Recent Acquisitions of U.S. Meat Companies.

[11] *See, e.g.,* Packers and Stockyards Division Annual Report 2018, USDA AMS, at 17 (stating, "In 2018, the largest U.S. beef packers finished divesting their feedlot interests. Cargill sold the last of its feedlots in 2017. In January 2018, JBS USA Food Company announced the sale of its cattle feeding subsidiary, JBS Five Rivers Cattle Feeding, LLC, to Pinnacle Asset Management. Five Rivers Cattle Feeding was the largest cattle feeding operation in the world…"), available at Packers and Stockyards Annual Report 2018. *See also*, Annual LMR Live Cattle Purchase Type Breakdown by Region, USDA AMS Livestock, Poultry & Grain Market News (showing that the volume of cattle procured through contractual arrangements known as formula and forward contracts increased from 38% in 2005 to 71.9% in 2021.), available at LMR Live Cattle Annual Purchase Type Breakdown.

3) formula contract, and 4) forward contract.[12] However, the base price of cattle is determined by only the cash market because each of the other three procurement methods are directly linked to the base value of cattle determined in the cash market.[13] In other words, any change that occurs in the base value of cattle determined in the ultra-thin cash market translates to a corresponding change in the base price used to calculate the value of all cattle procured by the beef packers.

The cash market has become the beef packers' residual market as they have shifted large volumes of cattle out of the cash market and into their other cattle procurement markets.[14] Today, the beef packers procure only about 18% of their cattle needs from the cash market and about 82% of their needs from their negotiated, formula, and forward markets, all of which are tied to the cash market.[15]

This means that beef packers need only manipulate the thin, residual cash market to effectively lower the price of all the cattle they purchase each week from U.S. farmers and ranchers. A recent study shows that a 1% increase in the volume of cattle procured in the formula and forward market is expected to reduce the price of cattle by .06% percent. The researchers noted that while this appears to be a small marginal effect, "over the course of our sample period the formula contract share increased by 130%."[16] This inverse relationship between the volume of cattle procured in the formula market and the price producers receive for their cattle indicates beef packers have long been extracting equity from the cattle industry simply as a result of the beef packers' chosen cattle procurement method. This is particularly disturbing given the volume of formula marketed cattle increased nationally from 33.2 % to 64.7% between 2005 and 2024.

Congress intended to prohibit the execution of the type of market power manifest in the fed cattle market through enactment of the Packers and Stockyards Act of 1921 (PSA), which sought to prohibit beef packers from "engaging in or using "any unfair, unjustly discriminatory, or deceptive practice or device"; making or giving "any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject[ing] any particular person or locality to any

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[12] *See* Annual LMR Live Cattle Purchase Type Breakdown by Region, USDA AMS Livestock, Poultry & Grain Market News (showing the four categories of cattle procurement in the fed cattle industry), available at LMR Live Cattle Annual Purchase Type Breakdown.

[13] *See* Investigation of Beef Packers' Use of Alternative Marketing Arrangements, USDA Grain Inspection, Packers and Stockyards Administration, July 2014, at 12, fn. 8 (stating, "For formula, negotiated grid and forward contract purchases, base prices are often not established until the week following delivery…"), available at 200721-2014-GIPSA-Investigation-of-Cattle-Market.pdf. *see also, e.g.,* Buyer Power in the Beef Packing Industry, Francisco Garrido, Nathan H. Miller *et al*., January 2024, at 5 (explaining that under a formula contract, which is the most used cattle procurement method, "prices are pegged to those realized in the cash market near the delivery date of the cattle[,]" and under a forward contract "…the payments are pegged to the futures price on the Chicago Mercantile Exchange . . ." which "…converges with cash market prices as the delivery month approaches." Note that the second form of cattle procurement listed above, the negotiated grid, is, as its name implies, tied to the negotiated cash market, though subject to premiums and discounts enumerated on a grid.

[14] Harvested Cattle, Slaughtered Markets? C. Robert Taylor, Eminent Scholar of Agricultural Economics and Public Policy, at 35, 36 (referring to the cash market as residual: "The combination of partial vertical integration and institutionalized formula arrangements tied to the residual cash market essentially rigs the system in favor of the dominant packers."), available at 220428-C.-Robert-Taylor-Cattle-Report-Final.pdf.

[15] *See* National Weekly Cattle And Beef Summary, USDA Livestock, Poultry & Grain Market News, Feb 10, 2025, available at LSWWCBS (44).PDF.

[16] Buyer Power in the Beef Packing Industry, Francisco Garrido, Nathan H. Miller *et al.*, January 2024, at 1, available at cattlemarkets.pdf.

undue or unreasonable prejudice or disadvantage in any respect"; and engaging "in any course of business or do[ing] any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce."[17].

Unfortunately, just as the beef packers were accorded a de facto deregulation of antitrust laws, which facilitated the above described merger mania and led to a beef packing oligopoly, so too was the beef packing sector granted a de facto deregulation of the PSA, as even today the USDA does not yet have regulations with which to properly and consistently administer and enforce several of the key prohibitions described above.

My testimony today will explore whether additional deregulation at the critical juncture between the cattle industry and beef industry will lead either to more or less competition, and whether additional deregulation in other areas along the multisegmented beef supply chain will unlock innovation and spur new entry.

The de facto deregulation of the beef packing sector beginning in the 1980s due to lack of antitrust enforcement and the insufficient administration and enforcement of the PSA have contributed to the systematic dismantlement of the beef supply chains competitive infrastructure. It has caused the elimination of participants (i.e., hundreds of thousands of cattle farms and ranches); elimination of cattle from our mother cow herd (i.e., the loss of over 9 million head, shrinking our herd to the smallest level in over 7 decades); elimination of small- to medium-sized feedlot operations (i.e., a loss of over 75%); and has resulted in the creation of a monopolistic beef industry structure. This fact-based outcome has severely weakened national security, leaving the U.S. with a marginalized cattle industry highly susceptible to economic shocks, whether caused by disease, climate, or geopolitical conflict.

Though it is inarguable that the U.S. cattle industry has been innovative during the past few decades, adopting, e.g., improved genetics, disease management, and managerial practices. The question becomes whether more competition arising from an environment free of a monopolistic structure and its attendant exercise of abusive market power would have resulted in even more innovation. I submit it would have based on my belief that competition is the primary catalyst of innovation.

It is equally inarguable that under this de facto deregulation scheme, the goal of spurring new entrants is unattainable. Indeed, the loss of hundreds of thousands of cattle farms and ranches combined with the ever-increasing average age of America's agriculture producers (over 58 years of age)[18] is testament that the U.S. cattle industry continues suffering from an attrition of its participants.

The goal should be to reverse the ongoing decline of the U.S. cattle industry, to rebuild its competitive infrastructure, and to restore competition as the means of accomplishing both.

[17] *See* 7 USC § 192.
[18] Table 52. Selected Producer Characteristics: 2022 and 2017, U.S. Agriculture Census, available at st99_1_052_052.pdf.

To this end, I offer the following recommendations in the context of the subcommittee's inquiry regarding how to increase innovation and spur new entry. Because both these objectives are natural outgrowths of robustly competitive industries, creating a robustly competitive cattle and beef industry should be the subcommittee's goal, and the prudent use of either regulation or deregulation the catalyst to achieve that goal.

1. **Antitrust Enforcement:** To create a competitive market structure in both the cattle and beef industries, there must be rigorous enforcement of U.S. antitrust laws.
2. **PSA Rulemaking:** To eliminate the ongoing exercise of abusive market power over cattle prices emanating from the concentrated beef packing industry, current cattle procurement methods and devices must be reformed through regulatory action. Specifically, the USDA Packers and Stockyards Division should be encouraged to complete the PSA rulemaking processes started under the previous administration to, *inter alia*, restore the integrity of the cattle industry's price-determining cash market by prohibiting formula contracts that do not contain a negotiated base price at the time of the transaction but are, instead, simply linked to an unknown future price to later be discovered in the cash market from which the formula cattle were removed.
3. **LMR Confidentiality:** For competition to exist, sellers and buyers must have symmetrical market information. That is not the case today. Current regulations under Livestock Mandatory Reporting prohibit the disclosure of critical pricing information in regions dominated by one or two beef packers. For example, fed cattle prices have not been reported under the LMR for several years for the entire state of Colorado because regulations governing confidentiality prohibit such disclosure. This is a glaring example of a regulation that severely impedes competition in the fed cattle market. Current confidentiality rules should be reformed, if not eliminated to fully restore information symmetry in the cattle industry.
4. **MCOOL:** Just as there is asymmetrical information between cattle sellers and cattle buyers that distorts competition in favor of the largest beef packers, so too is there asymmetrical information between beef sellers and beef buyers that distorts competition in favor of beef sellers as they are not required to disclose the country-of-origin of the beef they offer to consumers. For example, consumers are disadvantaged when a retail outlet offers to them a grass-fed ribeye steak sourced from a developing country, whose production cost is roughly half that of the United States, alongside a U.S.-sourced grass-fed ribeye steak produced under the United States' more stringent production and food safety standards. The consumer cannot distinguish the foreign product from the exclusively domestic product as the packaging can be identical, with no origin markings. Therefore, a consumer desiring to buy beef produced under the U.S. food safety regime, or who may desire to support U.S. cattle farmers and ranchers, are deprived of that choice due to a lack of such fundamental information as the origin of beef. Moreover, because beef importers can unilaterally satisfy domestic demand for beef using cheaper foreign substitutes, the demand for live cattle produced exclusively by U.S. cattle farmers and ranchers is artificially reduced. To increase competition at the retail counter, Mandatory Country of Origin Labeling (MCOOL) for beef must be restored.

5. **Gatekeepers:** In a concentrated market where four beef packers control over 80% of the roughly 25 million fed cattle marketed each year, the deregulation of their upstream conduct and buying practices can have the same effect on U.S. cattle farmers and ranchers as would occur if the government were to prescribe costly regulatory conditions for market access – this because their dominant market positions accord them the status of gatekeepers. Indeed, this is occurring today with one or more of the dominant beef packers requiring cattle sellers to become BQA (Beef Quality Assurance) certified as a condition to market access.[19] This is not unlike the command-and-control power the government could legitimately wield through lawmaking or rulemaking processes that would necessitate the finding of a public need prior to implementation and enforcement. However, no such finding has been made here, not even a finding that beef consumers prefer beef produced by domestic cattle producers who are BQA certified, and despite the plausible presumption that beef the packers acquire from foreign sources is not similarly encumbered with such a requirement. Nevertheless, the beef packers exploit their gatekeeper status and exact their corporate control with the same force and effect as government regulations. Without regulatory prohibitions, the dominant beef packers can readily restrict market access with a host of costly conditions, including, e.g., the costly requirement that all cattle be electronically identified prior to accessing the market.
6. **Safety and Health Standards:** There are several regulations that have lowered U.S. food safety and animal health standards for imported beef, with the effect of granting foreign producers an unfair economic advantage over U.S. cattle producers. This is because foreign producers are now exempt from the more stringent food safety standards that must be met by domestic producers. These regulations include that which overturned previous law requiring importing countries to have food safety systems at least equal to that of the United States (60 Fed. Reg., 38,667-668), and that overturned the requirement of monthly inspections of foreign meatpacking plants (71 Fed. Reg., 43,958-961). In addition, the USDA relaxed the longstanding requirement that foreign countries eradicate pernicious livestock diseases and pests from within their borders prior to exporting livestock or meat to the United States (62 Fed. Reg., 56,027-033). These three regulations should be repealed to ensure that U.S. cattle producers are competing on a level playing field with foreign producers; that the U.S. continually maintains an effective food safety and animal health regime to prevents the introduction of foreign animal diseases and pests; and, to ensure that all meat sold in the U.S. meets identical food safety standards as are required of domestic producers.
7. **High Risk Imports:** Despite the fact that the U.S. has realized a persistent, price-depressing volume-based trade deficit in the trade of cattle, beef, beef variety meats, and processed beef for at least the past three decades, the USDA nevertheless issued a regulation in 2023 to allow fresh beef from Paraguay – a country not free of foot-and-mouth disease (FMD) – without

[19] Cattle buyers to require Beef Quality Assurance certification, Daniel Buskirk, Michigan State University Extension, August 1, 2018 (stating "Cargill Protein, and Tyson Foods (as of Jan. 1, 2019) [will] require that purchased cattle come from operations that are BQA feedyard certified."), available at Cattle buyers to require Beef Quality Assurance certification - Beef.

conducting an on-site review of Paraguay's food safety system anytime during the previous nine years. And this despite the agency's finding that U.S. cattle producers would be expected to incur losses as high as $24 million per year as a direct result of the rule. 88 Fed. Reg., 77,883-888. This regulation should be repealed to ensure the safety of the U.S. cattle herd and to protect the economic viability of U.S. cattle producers. Prior to the Paraguay rule, the USDA issued regulations to allow fresh beef from Brazil, another country not free of FMD, and predicted the rule would result in 40,000 MT of additional beef imported into the U.S. market that would then cause U.S. cattle producers to incur an annual loss of $216.01 million (referred to as "a decline in surplus"). 90 Fed. Reg., 37,933. Alarmingly, imports of Brazilian beef averaged nearly 222,000 MT each year during the past four years (2021-2024), which exceeded the USDA's annual volume estimate of additional imports by 455% and demonstrated that the USDA grossly understated the losses U.S. cattle producers are incurring under the rule.[20] This Brazil rule should likewise be repealed.

8. **Electronic Identification:** Just as the USDA has promulgated rules the agency knew would cause annual financial losses to U.S. cattle producers, so too did the USDA recently finalize a rule the agency estimated would cause producers to incur an annual cost of $26.1 million, without any means of recovering such an annual cost from the marketplace or elsewhere.[21] That rule mandates the use of costly electronic identification (EID) eartags on certain adult cattle and bison shipped interstate. This, even though the agency promised U.S. cattle producers in a previous 2013 final rule that they would be afforded flexibility to choose between low-cost metal eartags and high-cost EID eartags. This mandatory electronic identification eartag rule (89 Fed. Reg., 39,540-566) should be repealed and the USDA should be prohibited from mandating the exclusive use of EID eartags – the costliest animal identification device commercially available today.
9. **Beef Checkoff Program:** Though the U.S. cattle industry is the largest segment of American agriculture and prides itself as not a recipient of government price-support subsidies, the beef industry maintains a multi-million dollar subsidy program that taxes every head of cattle sold by U.S. cattle producers to subsidize certain beef industry actors, significantly increasing the influence of such beef industry actors over government policies. For example, the National Cattlemen's Beef Association (NCBA) receives tens of millions of dollars annually from the mandatory beef checkoff program and yet it has long lobbied in opposition to many public policy reforms widely supported by independent cattle producers. For example, on December 14, 2007 the NCBA lobbied against the ban on packer ownership initiative that many U.S. cattle producers had worked hard to include in the Senate version of what was then the 2007 Farm Bill;[22] on January 27, 2014 the NCBA lobbied against the mandatory country-of-origin labeling law that many cattle producers had worked hard to successfully enact in Congress,

[20] *See* Beef and veal: annual and cumulative year-to-date U.S. trade (carcass weight, 1,000 pounds), available at Livestock and Meat International Trade Data | Economic Research Service.
[21] *See* 89 Fed. Reg., 39,561.
[22] *See* NCBA: Senate Farm Bill Remains Problematic For Cattle Producers, December 14, 2007.

stating that "COOL is a broken program that has only added costs to our industries without any measurable benefit for America's livestock producers[];"[23] and, on February 23, 2016 the NCBA lobbied in support of the Trans-Pacific Partnership (TPP) agreement that many independent cattle producers vehemently opposed, and which, fortunately, was ultimately rejected by President Donald Trump during his first presidential term.[24] The beef checkoff program should be repealed as U.S. cattle producers should not be forced by the government to subsidize organizations that lobby directly against their interests.

10. **Small-Scale Packers:** Increasing the number of beef packers so there are more cattle buyers for the many cattle sellers and more beef sellers for the many beef consumers would help restore competition between the cattle industry and beef industry. However, current regulations governing small- to mid-sized packing plants, and the inspection regime associated with those regulations, are not scalable as they were designed to address the food safety risks of very large beef packing plants. As such, the regulatory compliance costs associated with current requirements, along with the reported inflexibility of Food Safety and Inspection Service (FSIS) inspections and inspectors, represent a regulatory impediment for small- to mid-sized plants. Based on personal interviews with several smaller-scale packers, a common concern is that the regulatory regime under which they operate, along with the attendant inspections, are biased in favor of large packers. For example, while every plant is required to operate under a Hazard Analysis Critical Control Points (HACCP) plan and to comply with said plan to ensure food safety and address food safety risks, the costs of establishing and complying with such a plan are disproportional to the actual risks in plants that do not slaughter thousands of cattle per day as do the largest plants, or even hundreds of cattle per day as do some plants considered to be among the largest beef packing plants in the nation. Indeed, even plants that slaughter fewer than 10 head of cattle per week are reportedly subject to burdensome HACCP compliance costs regardless of the increased hands-on attention they routinely devote to each animal. Another concern expressed by smaller-scale plants is the perceived disparity regarding inspection frequency and overtime costs between large plants, which are provided free second shifts; processing-only plants, which share one inspector per multiple plants; and very small slaughter plants that slaughter only a few days each week but are nevertheless assigned a full-time inspector and a patrol veterinary inspector every day. To address additional concerns related to disparate enforcement of inadvertent infractions, such as missed stunning that may lead to the suspension of the smaller slaughtering plant's operation while such inadvertent infractions in larger plants result only in a record of non-compliance, but without suspension, an independent ombudsman should be appointed to represent small-scale plants to resolve inspection- and inspector-related problems. Further, the government can support the proliferation of smaller slaughtering plants by requiring all government meat purchases be from small-scale slaughtering plants when available.

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[23] Letter from NCBA to the leadership of the U.S. Senate and House agriculture committees, January 27, 2014.
[24] *See* Letter from NCBA to the U.S. Senate, February 23, 2016.

Both the U.S. cattle industry and the U.S. sheep industry are being crushed by highly concentrated meat packers that are unrestrained in their exercise of market power derived from their dominant market positions. To reverse the ongoing contraction of these two industries, Congress must initiate immediate reforms to substitute market power with competitive market forces. Deregulation may work in some instances, such as those described above to remove unnecessary and costly regulatory burdens that reduce the competitiveness of independent producers and their respective industries. However, given the disparity in market power between producers and downstream meatpackers, and between meatpackers and downstream consumers, prudent regulatory interventions are needed to reverse the negative outcomes caused by their absence.

Without the reforms suggested above, innovation will likely remain stymied and both the U.S. cattle industry and U.S. sheep industry will continue their ongoing and rapid contractions.

Thank you for this opportunity to testify before you today.